

Canon 844 in Light of Canonical Tradition

By Dorothea Ludwig-Wang, 27 October 2020

Introduction

Of all the canons in the 1983 Code of Canon Law, promulgated so “that the Church may progress in conformity with the spirit of the Second Vatican Council,”¹ there is none more scandalous than canon 844, which codifies the false ecumenism of *Unitatis redintegratio* into law. Although it simply reiterates perennial Catholic discipline in its first paragraph, stating that “Catholic ministers administer the sacraments licitly to Catholic members of the Christian faithful alone, who likewise receive them licitly from Catholic ministers alone,” the ecumenical nature of this canon can be detected from the very beginning. The reference to “Catholic members of the Christian faithful,” which implies that there can be non-Catholic members of the Church, already contains the premise that baptized non-Catholics are to be regarded as “separated brethren” who possess an “imperfect” communion with the Church,² rather than as heretics and schismatics.

Canon 844 §1 lists various exceptions to the general norm outlined above, which are contained in §§2, 3, and 4 of the same canon, as well as canon 861 §2. Canon 861 §2 deals with the minister of baptism, giving provisions for situations in which the laity may find themselves obliged to perform baptisms when ordinary ministers are unavailable, and it is not relevant to the discussion of false ecumenism. Rather, the exceptions discussed in this study are those contained in the second, third, and fourth paragraphs of canon 844, which contain serious doctrinal and juridical issues. These exceptions are intended for cases of necessity in which the general rule outlined in canon 844 §1 cannot be applied without endangering the salvation of souls, which is the supreme law of the Church (c. 1752). Exceptions are subject to strict interpretation (c. 18), which means that they apply in as few cases as possible; however, the practical application of this canon has been much broader than what is appropriate, and the justification for this—as will be demonstrated—is contained in the law itself.

A strict interpretation is necessitated by the very nature of canon 844; although one may argue that burdens are to be restricted and favors multiplied,³ the fact that §§2, 3, and 4 grant favors does not derogate from canon 18 in this case. Exceptions “must be strictly interpreted, even if the exception grants a favor, whenever broad interpretation would have an ‘odious’ result, in particular, when...a broad interpretation would be unreasonable.”⁴ The results of broadly interpreting the exceptions to canon 844 §1, thereby applying them to as many situations as possible, would indeed be disastrous: it is difficult to see anything other than religious indifferentism resulting, which the canon itself says should be avoided. Further, there is a theological reason: if the Church granted in many cases some deviation from the general rule that

1 John Paul II, *Sacrae disciplinae leges*.

2 Vatican II, *Unitatis redintegratio*, 3.

3 Boniface VIII, *Regulae iuris*, 15.

4 J. Beal *et al.*, *New Commentary on the Code of Canon Law* (New York, NY and Mahwah, NJ: Paulist Press, 2000), 77.

Catholic ministers are to administer the sacraments to Catholics only, who in turn receive licitly from Catholic ministers alone, it would foster the idea that heretical and schismatic sects are in some way equivalent to the true Church of Christ.

With this in mind, the following analysis of these exceptions will be conducted in accordance with the directives of canons 17 and 6 §2, so as to arrive, insofar as possible, at an interpretation according to the mind of the Church and her canonical tradition. After doing so, it will become clear that the current practice of broadly applying the exceptions to canon 844 §1, such as the decision of the German bishops in 2018 to allow habitual intercommunion for the Protestant spouses of Catholics,⁵ is not in accord with the law. However, even after following a so-called “proper” interpretation, several doctrinal and juridical problems remain, indicating that the so-called “abuse” of canon 844 was actually intended by the innovators themselves.

Reception of Sacraments by Catholics from Non-Catholic Ministers

Canon 844 §2 allows for the reception of the sacraments of penance, holy communion, and extreme unction by Catholics from non-Catholic ministers “in whose Churches these sacraments are valid” provided that “necessity requires it or true spiritual advantage suggests it, and provided that danger of error or of indifferentism is avoided.” Already subject to strict interpretation as required by canon 18, the words of this exception and the context set restrictive conditions. The phrase “necessity requires it” indicates a situation in which natural or supernatural goods are in such danger that one is required to set aside the law to salvage them. The words “true spiritual advantage” explain how this necessity relates to the salvation of souls, the supreme law of the Church.

However, the use of the disjunctive “or” (*aut*) rather than the conjunctive “and” (*et*) introduces some ambiguity by implying that “true spiritual advantage” may be gained from an ordinarily prohibited action without there being a state of necessity. In reality, performing such an action without necessity would be a case of simple disobedience and cannot bring about any advantage. The words themselves are also rather vague and can easily be distorted: instead of allowing the *objective* state of necessity to determine whether one may set aside the norm contained in canon 844 §1, a Catholic may theoretically abuse its second paragraph to justify receiving sacraments from non-Catholic ministers if he *subjectively* perceives that he might somehow gain an advantage. Perhaps the local Eastern Orthodox church celebrates more reverent liturgies than the local Catholic parish, and one might think—erroneously—that it would be more advantageous to attend the schismatic church.

The text attempts to rectify this issue by stipulating that the “danger of error or of indifferentism” must be avoided; here, canon law corresponds to theology and follows it. A Catholic must avoid the appearance of putting heretical and schismatic sects on equal footing with the true Church, and the reception of sacraments from non-Catholic ministers certainly raises this danger if proper precautions are not taken. This is why canon 844 §2 only allows for the reception of three sacraments, rather than all seven. However, there remains a serious

5 D. Montagna, “A handy timeline of the controversy over the German bishops’ intercommunion plan,” *LifeSiteNews*, 5 July 2018, <https://www.lifesitenews.com/news/a-handly-timeline-of-the-controversy-over-the-german-bishops-intercommunion/>.

deviation from canonical tradition and prior discipline: despite this attempt at damage control, the law is in itself conducive to indifferentism by permitting Catholics to receive holy communion and extreme unction from non-Catholic ministers in addition to confession.

Under the 1917 Code, a Catholic was permitted to confess to a validly-ordained non-Catholic minister “only when there is danger of death, provided that no scandal be given, that no other priest be present, that there be no danger of perversion, and that the non-Catholic administer the sacrament in valid form, i.e. *secundum ritus Ecclesiae*.”⁶ There is no participation in non-Catholic ceremonies in such cases, as the sacraments belong to the Church, and under certain conditions, the Church may authorize a non-Catholic minister to act as her representative. If absolution is necessary in danger of death but only available at the hands of an unworthy minister, then there is nothing wrong with the Catholic making use of what is available to him as long as the dangers are avoided. However, unlike the current canon 844 §2, this exception *only* applied to absolution, and there was no similar provision for receiving any other sacrament at the hands of non-Catholic ministers.

For a Catholic in danger of death,⁷ it is not necessary for his salvation to also receive holy communion or extreme unction following absolution, so he is never permitted to do so. Because the salvation of his soul would no longer be in danger, the state of necessity would *ipso facto* cease, rendering it illicit to make further exceptions to the norm of canon 844 §1. Receiving any other sacraments from the non-Catholic minister would necessarily lead to indifferentism, particularly with regard to holy communion, because the Eucharist is the sacrament of the unity of the Church. The reception of this sacrament, even if valid, at the hands of a non-Catholic minister necessarily implies acceptance of that heretical creed or schismatic state. By deviating from canonical tradition and permitting Catholics to receive two other sacraments in addition to penance, canon 844 §2 is itself conducive to indifferentism, despite its own text stating that this ought to be avoided.

Continuing with the text, the words “physically or morally impossible” demonstrate that a non-Catholic minister should be approached *only* if there is no other alternative. The purpose of the law is to provide a solution in a case when a Catholic is in need of absolution but is impeded from receiving it ordinarily. Even so, there is a final condition attached: the canon mentions those “Churches in which these sacraments are valid.” The capital “C” (corresponding to the capital “E” for “*Ecclesia*” in the Latin) indicates that the validity of absolution must be dependent upon the *denominational* non-Catholic “Church” possessing material Apostolic Succession, and not merely upon the non-Catholic minister being validly ordained. So while it would be permissible to approach an Orthodox priest in danger of death, it would not be permissible to approach an Anglican minister who simply happens to be validly ordained, such as in the case of a former Catholic priest who defected to Anglicanism. This raises several doctrinal questions.

Bishops who possess material Apostolic Succession have the fullness of the power of orders but do not have a canonical mission to teach and govern. In the case of non-Catholic

6 C.A. Bachofen, *A Commentary on the New Code of Canon Law, Vol. VI* (St. Louis, MO and London: B. Herder, 1921), 194.

7 By applying the principle of *epikeia* during canonical interpretation, one may theoretically conceive of other situations apart from danger of death that would also satisfy the criteria for a true state of necessity; however, given the scope of that particular question, it will not be addressed by this study.

bishops such as the Orthodox, this is due to a lack of communion with the pope, through whom the power of jurisdiction is passed down.⁸ However, the sacrament of penance requires both orders and jurisdiction, and the latter is something that non-Catholic priests do not have because their bishops, lacking it themselves, cannot delegate it to them. How then do schismatic priests validly absolve, except by supplied jurisdiction, which canon 844 ignores completely? If the validity of the sacrament of penance is dependent upon orders alone, then one would conclude that non-Catholic ministers simply do not *need* supplied jurisdiction to absolve validly.

This is a theological error, as the necessity of jurisdiction for absolution was instituted by Our Lord Himself, Who willed that power of orders only be exercised “in dependence on the power given to Peter, according to His appointment.”⁹ The judgment given by the confessor in the internal sacramental forum is upheld in the heavenly court, rendering jurisdiction necessary. Not every priest has jurisdiction over every person, because “those who have received authority over distinct persons cannot use the keys on everyone, but only on those over whom they are appointed, except in cases of necessity.”¹⁰ A non-Catholic priest, because he is out of communion with the Successor of Peter who was given the keys to the kingdom, does not have jurisdiction over any member of the Catholic faithful, and so he cannot pass a judgment within the sacramental forum, rendering him unable to absolve unless *Ecclesia supplet* applies.

In other words, jurisdiction is *essential* to the sacrament: the need for jurisdiction is not what *gives rise* to the juridical nature of the sacrament of penance, but rather is one of its *consequences*. While the radical capacity to forgive sins is contained in the power of orders, it can only be exercised efficaciously in conjunction with jurisdiction. In *Omnis utriusque sexus*, the Fourth Lateran Council declared that one who had reached the age of reason must confess his sins at least once a year to his own “proper priest” (one with authority) and emphasized the confessor’s role as doctor and judge, “carefully inquiring into the circumstances of the sinner and the sin, from the nature of which he may understand what kind of advice to give and what remedy to apply.” Simply put, the priest needs jurisdiction to make a judgment prior to the granting or withholding of absolution, ascertaining facts before pronouncing a judgment.

The Council of Trent declared: “If anyone says that the sacramental absolution of the priest is not a judicial act, but an empty service of pronouncing and declaring to the one confessing that his sins are forgiven...let him be anathema.”¹¹ Regarding the juridical nature of the sacrament, Trent decreed that “because the nature and character of a judgment requires that sentence be pronounced only on those who are subjects (of the judge)...the absolution which a priest pronounces upon one over whom he has not either ordinary or delegated jurisdiction, is of no effect.”¹² Ordinary jurisdiction, as understood by the Tridentine Fathers, is that power which is attached to an ecclesiastical office; if a priest did not hold ecclesiastical office but had been granted jurisdiction by the competent superior, his jurisdiction was delegated. Thus, Trent reaffirmed the usage of the term “proper priest” by Lateran IV, which refers to the office of the parish priest who holds jurisdiction over the members of his parish.

8 Pius XII, *Ad Apostolorum Principis*, 39.

9 *Summa Theologiae Suppl. IIIae*, q. 20, art. 1, ad. 1.

10 *Ibid.*, art. 1, co.

11 Council of Trent, Session XIV, *Canons Concerning the Most Holy Sacrament of Penance*, Canon IX.

12 *Ibid.*, chapter 7.

As the relationship between orders and jurisdiction became increasingly clear in the Church's law, a true development of doctrine, in which teachings that were implicit earlier become explicit later on, took place. The requirement that the minister possess jurisdiction for absolution does not *give rise* to the juridical nature of the sacrament of penance, but rather *flows forth* from it as a matter of divine law. By failing to make this clear, canon 844 §2 of the 1983 Code supports false ecumenism by implicitly asserting that the power of orders alone suffices for a valid absolution, rendering non-Catholic "Churches" equally capable of providing the means of salvation as the one true Church. In practice, the state of necessity is sufficient for the Church to supply jurisdiction to the non-Catholic minister in question, but in theory, this canon is worded in a way that undermines Catholic ecclesiology.

Reception of Sacraments by Schismatics from Catholic Ministers

Canon 844 §3 permits Catholic ministers to provide three sacraments—penance, holy communion, and extreme unction—to "members of Eastern Churches which do not have full communion with the Catholic Church if they seek such on their own accord and are properly disposed." The term "not in full communion" supports false ecumenism by implying that "partial communion" can exist; in fact, §3 is even more scandalous than §2, given that it does not even mention a state of necessity at all. In addition, while Catholics who wish to approach non-Catholic ministers must be physically or morally impeded from approaching a Catholic minister, the same requirement is not extended to Eastern schismatics, who may approach a Catholic minister even when one from their own community is readily available; the only requirements are that they must come "on their own accord" and be "properly disposed."

With regard to whether the non-Catholic in question possesses a proper disposition, canonical tradition provides instructions for determining this: it cannot be presumed insofar as the person remains publicly attached to a non-Catholic religion. Canon 731 §2 of the 1917 Code forbids the administration of the sacraments "to heretics or schismatics, even though they err in good faith and ask for them, unless they have first renounced their errors and been reconciled with the Church." The words "heretics or schismatics" must be understood objectively, given the principle *Ecclesia de occultis non iudicat*—even if a baptized non-Catholic were only a material heretic or schismatic, he would still be prohibited from the sacraments. For example, if someone publicly belongs to the Orthodox "Church," which is objectively in schism, then he cannot receive the sacraments from a Catholic minister under ordinary circumstances, as even the current canon 844 §1 makes clear.

If he finds himself in extraordinary circumstances, such as danger of death, then there may be an option to receive, provided that he is "properly disposed," which entails a renunciation of his errors and a reconciliation with the Catholic Church, as demonstrated by canonical tradition. An essential element of being properly disposed is full acceptance of the Catholic faith, sacraments, and ecclesiastical governance. Yet it is possible for a schismatic to have already *privately* renounced his errors, yet not have been *publicly* received into the Church—in that case, strictly speaking, he would be a schismatic in appearance only. If he were to find himself in danger of death or some other state of necessity, and his disposition can be demonstrated to be truly Catholic, then he may receive the sacraments. The juridical problem here is that there is no

indication from the canon itself that there must be a renunciation of error, even if only done privately in the Catholic minister's presence prior to the reception of the sacraments.

While the 1917 Code was explicit about how a heretic or schismatic may be reconciled with the Church and subsequently permitted to receive the sacraments, the 1983 Code only mentions having a proper disposition. By failing to mention that such a proper disposition entails a renunciation of error, the new law may be easily exploited, as the distinction between the internal and external fora is not made clear. A renunciation of error in the internal forum cannot be presumed so long as the non-Catholic in question remains in his objective state of heresy or schism in the external forum. Thus, by failing to make this legal distinction, canon 844 §3 subtly supports false ecumenism: if it can be presumed that objective heretics and schismatics err in good faith without requiring at least a private renunciation of error and a profession of faith before the minister, then what prevents habitual intercommunion?

The post-conciliar *Catechism of the Catholic Church* (CCC), promulgated by the same pope who oversaw the creation of the 1983 Code, states this conclusion, which is only logical at this point: between Catholic and Orthodox, "very little is lacking...to attain the plenitude authorizing a common celebration of the Eucharist of the Lord" (CCC 838). The scandal caused by such an assertion cannot be overstated, but at least the true motives of false ecumenism are made explicit by this declaration. While canon 844 §3, interpreted strictly, can only apply to Eastern schismatics who have already privately converted and are awaiting public reception into the true Church, during which period some state of necessity arises, the ambiguity in its wording and the failure to distinguish between the internal and external fora can lead to scandal.

Reception of Sacraments by Heretics from Catholic Ministers

Canon 844 §4 states that if there is danger of death or some other "grave necessity" as determined by the diocesan bishop or conference of bishops, Catholic ministers can administer the sacraments of penance, holy communion, and extreme unction to those who are not in so-called "full communion" with the Church and "cannot approach a minister of their own community." The requirements for the non-Catholics seeking these sacraments are that they must "seek such on their own accord," "manifest Catholic faith in respect to these sacraments," and "[be] properly disposed." From these words alone, the problem of false ecumenism is evident; like the earlier two exceptions, the misleading term "full communion" is used, implying that heretics can be in "partial communion" with the Catholic Church.

Again, canonical tradition must be considered, so one must return to the old canon 731 §2, which prohibits administering the sacraments to objective heretics and schismatics. Once again, the non-Catholic in question must be "properly disposed," but just like §3, §4 fails to require this proper disposition to be manifested before the Catholic minister, a juridical difficulty that encourages religious indifferentism. While a proper disposition presupposes *full* acceptance of the Catholic faith, sacraments, and ecclesiastical governance, it is required for the person to manifest this faith *only* in respect to the sacraments of penance, the Eucharist, and/or extreme unction, depending on which he wishes to receive. This leaves open the possibility of sacrilege: say the person only professed belief in the Eucharist but not in the sacrament of penance. Can it

really be presumed that he would *not* be in need of absolution before receiving communion worthily?

The failure to require a full profession of faith stems from yet another error. The faith is not a heterogeneous mixture of parts that one may accept to a greater or lesser extent: either one is fully Catholic or one is not Catholic at all. And just as one mortal sin destroys all charity in the soul, knowingly believing in one heresy causes an individual to lose all supernatural faith. If a person obstinately refuses to accept even one dogma, he has just as much supernatural faith as an atheist, and he is equally indisposed as an atheist to receive any sacraments. The entirety of the true faith must be kept as a whole, which is why the Angelic Doctor teaches: “Neither living nor lifeless faith remains in a heretic who disbelieves one article of faith.”¹³ Both heretics *and* schismatics ought to be required to renounce their errors and to make a *full* profession of faith before being admitted to the Catholic sacraments because it is necessary for their disposition to be manifested, even if only privately before the minister.

In canon 844 §3, no renunciation of error or profession of faith is mentioned at all; in §4, the heretic in question is only required to manifest Catholic belief with respect to the sacrament(s) he will receive. Both of these are woefully insufficient, as illustrated above. Further, drawing a distinction between schismatics and heretics, in contrast to the old canon 731 §2 which combines them, seems to indicate that the Orthodox (and other “Churches” that possess material Apostolic Succession) are somehow “closer” to the true Church than Protestant denominations and other heretical sects. This only reinforces the misleading claim of *Unitatis redintegratio* that the Catholic Church has the “fullness of...truth.”¹⁴ While not incorrect *per se*, such terminology gives the indication that false religions contain “partial truth,” an error reinforced by the use of the phrase “not in *full* communion” (emphasis added) in canon 844 itself.

On the contrary, Our Lord makes it exceedingly clear that partial communion cannot exist: “He that is not with me, is against me: and he that gathereth not with me, scattereth” (Matt. 12:30). It is true that false religions have taken—stolen, rather—many elements from the Catholic faith; however, it would be inappropriate to present these religions as being “partially true.” When dirty water and clean water are mixed together, what results is dirty water, not “partially clean” water. Likewise, religions which juxtapose truth and error are not “partially true” but wholly false. While so-called Orthodoxy may be closer to Catholicism than Protestantism in terms of the raw number of truths it teaches, this does not change the fact that both are false religions and should not be measured according to only their parts: “According to this doctrinal aberration, the Catholic religion would be distinct from others, not as the true is distinct from the false, but only as the plenitude is distinct from incomplete participations of itself.”¹⁵

How may canon 844 §4 be applied in real life? Say a validly baptized Protestant individual finds himself in danger of death. He was considering converting to Catholicism and had internally accepted the Catholic faith, sacraments, and ecclesiastical governance, but he had not yet been received into the Church in an official manner. Having not yet been received into the Church *publicly*—despite having the proper disposition *privately*—, he should ordinarily refrain from the

13 *Summa II-II*, q. 5, art. 3, co.

14 Vatican II, *Unitatis redintegratio*, 3.

15 J. C. Fenton, *The Catholic Church and Salvation: In the Light of Recent Pronouncements by the Holy See* (Westminster, MD: The Newman Press, 1958), 47.

sacraments until his formal reception to avoid scandal. In extraordinary circumstances such as danger of death, however, canon 844 §4 would apply to him, and he is exactly the type of person envisioned by this canon, properly interpreted. In such a case, if the danger of death or other emergency comes to pass, that person's renunciation of error and profession of faith before the minister would have to be made known publicly.

Conclusion

As the above analysis demonstrates, the terms used by canon 844 are ambiguous and can easily lead to abuse, causing the three exceptions to be interpreted more broadly than intended by the law itself. Using vague colloquial definitions of the terms defined earlier, such "properly disposed" or "grave necessity," a distorted interpretation of the law may be used to justify prohibited *communicatio in sacris*. In order to arrive at a proper interpretation of canon 844 to suit its limited nature, it is necessary to turn to canonical tradition, something which has been frequently sidelined and ignored, as demonstrated by the scandalous proposal of the German bishops in 2018 to allow for the habitual reception of holy communion by the Protestant spouses of Catholics. Even when a proper interpretation is used, however, various issues still remain.

Allowing the reception of *three* sacraments by Catholics from non-Catholic ministers, as §2 does instead of restricting the exception to confession alone, undermines the unity of the Church by denigrating the Eucharist, the literal Body of Christ and the very sacrament of unity for the Mystical Body. This unity is further undermined through the implication that the validity of absolution depends upon orders alone, rather than orders *and* jurisdiction, which presents schismatic "Churches" with material Apostolic Succession as sharers in Church governance. This is reinforced by the implication that the true faith is a heterogeneous mixture of parts that a person may pick and choose from, along with the idea that non-Catholics can be in different degrees of "imperfect" communion with the Church.

These theological errors are then amplified and codified juridically through the failure of §§3 and 4 to define what exactly constitutes a proper disposition, in addition to the failure to require an adequate external manifestation of this disposition before the minister should a material heretic or schismatic who has privately repented of his errors desire the sacraments under extraordinary circumstances. This destroys or at least confuses the distinction between the internal and external fora, which violates the principle *Ecclesia de occultis non iudicat* and makes it possible to replace the objective criteria provided by canonical tradition with new subjective ones. The latter situation can then be easily exploited to engage in unlawful *communicatio in sacris* in the name of being "pastoral," as the German bishops did in 2018.

With the foregoing facts resolved, Catholic theologians and canonists can conclude with moral certitude that the very text of canon 844 needs to be revised, the calls for stricter interpretations from certain quarters of the Church notwithstanding. Even the strictest interpretations fail to rectify the very real doctrinal and juridical problems with this canon, which pose a danger to the mission and supreme law of the Church, the salvation of souls.