

Canonical proofs *Cum ex Apostolatus Officio* is retained in the 1917 Code of Canon Law

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Introduction

Those who claim that the Bull written by Pope Paul IV in 1559, *Cum ex Apostolatus Officio*, need not be obeyed nor given the slightest attention have given as their reason for this claim that since *Cum ex...* is a disciplinary law which they wrongly profess has not been retained in the Code of Canon Law, they can just discard this infallible document. My hope is that the following article will help free those who are being “taught” to believe in this error by those who present themselves as the theologians and/or spiritual directors of this modern era with no papal approval nor even an understanding of what it takes to be an approved theologian/spiritual director.

These self-made theologians are some of the false prophets Jesus warned us about. You will know them by the cautions they proclaim to try to keep you, the laity, from learning the laws of your Church, such as “Canon Law is only for the Bishops; the laity cannot possibly understand.” One friend confided that at a certain U.S. Traditional “seminary,” Canon Law books were kept locked up and only the seminary rector could view them. The “seminarians” were never allowed to see them. A Trad “cleric” told a friend of mine, after they had a vigorous conversation wherein she proved to him that she did, in fact, understand the Code, “Don’t tell anyone what you have spoken about here. They (meaning his “flock”) don’t have the intellectual ability to understand. Please don’t tell them.”

This man was no priest. Ever since the loss of Pope Pius XII, our last valid Pope, we have had no bishops, priests or clergy (unless there are, we pray, some in hiding these past 60 years, watching and waiting, remaining faithful, never partaking in Novus Ordo or independent chapels as Traditionalist “clerics”). This is a hard truth but one that must be faced, embraced and understood.

Every age, every situation, every institution has what is known as its very own “golden moment” in time — that brief interval crucial to its development and continued existence. Certain Traditionalists possessing credibility among their fellow co-religionists once held such a moment in the palm of their hands; a moment so fragile that upon it hinged the unification of remaining faithful Catholics and the restoration of the Church or the disappearance of the faithful into the fatal hinterland of quietism, even unbelief. Can it be a mere coincidence that this golden moment was seized upon by these individuals to force the Church into the wilderness and set the prospects of unity back indefinitely? For all attempts to apply Pope Paul IV’s Bull *Cum ex Apostolatus Officio* to the situation in the Church following the death of Pope Pius XII would meet only with contempt, obscurity and the same species of silence that permeated the chambers of Pontius Pilate after asking Our Lord, “What is truth?”

***Cum ex...* wording in the Canons**

What is written below mainly applies to censures regarding validly ordained and consecrated priests and bishops who abandoned the faith. This means that its application is limited to those

who actually occupied offices and functioned as clerics during the reign of Pope Pius XII. The Canons from the 1917 Code cited here are those that feature Pope Paul IV's 1559 Bull, *Cum ex Apostolatus Officio*, as a footnote from the old law. These are found in the Latin edition of Peter Cardinal Gasparri's *Codex Iuris Canonici* printed in 1957 by The Newman Press. The sections that very nearly repeat the old law in its substance are highlighted in bold.

As Reverend Nicholas Neuberger has explained in his Canon Law dissertation *Canon 6, or the Relation of the Codex Iuris Canonici to Preceding Legislation* (Catholic University of America, 1927): "Legislation may be converted into canons not in the identical but in equivalent terms. Most of the previous enactments are thus contained in the canons... There are canons which reproduce the old law in its entirety... Canons may restate the old law verbatim." Or the old law can be expressed "in different terminology. This is the most common form of integral conversion of the old law. The codifiers had for their objective a succinct and pithy systemization of the law. It was necessary, therefore, to cast aside the narrative and also the dilated and dispositive part of the former discipline. Such reconstruction necessitated a change in terminology... These old laws have juridical force only inasmuch as they are embodied in the Canons. They are the interpretive norms of the new law whenever the new and the old coincide... Thanks to the eminent canonist Gasparri, not a little chaotic interpretation has been averted through the alignment of the sources under each canon" (pgs. 62, 70, 71).

Cum ex Apostolatus Officio is a universal law because it is an enactment of the Roman Pontiff affecting the entire Church (pgs. 38-39). But universal laws also can be special law, and "All special legislation is inviolate according to the prescriptions of Canon 6, no. 5" (p. 54). Special law is any law to which an oath is attached, such as *Cum ex Apostolatus, Quo Primum, Execrabilis* and others, and such laws are not abrogated, Neuberger says, unless express mention is made to that effect (p. 33). No such mention has been made by any reigning pontiff regarding Paul IV's bull, either before the Code was issued or after its promulgation. In fact, the teachings in the bull can be found in the Code, some nearly verbatim, and several of these are listed below.

CANON 167 — "The following persons may not cast a vote [in ecclesiastical elections]:

§3 "Persons suffering from censure and infamy of law if such censure has been inflicted by a declaratory or condemnatory sentence." (A declaratory sentence is declared in the law itself, such as found in Canon 2314. A condemnatory sentence is issued by a judge.)

§ 4 — "Persons who have joined an heretical or schismatical sect or have adhered to such (Catholics who have fallen from the faith)."

CUM EX APOSTOLATUS —

"...One who has *strayed from the Catholic faith* or fallen into some heresy... *shall ipso facto incur excommunication, and, become infamous.... They shall not and cannot be admitted [to] a Conclave of Cardinals or ...anyone's election*" (paras. 3, 5. Infamous means that they are guilty of infamy of law, which is a punitive penalty for certain crimes committed. These penalties result in removal of office, deposition and degradation.)

CANON 188 — "All offices shall be vacant *ipso facto* by tacit resignation:

4) If a cleric has publicly lapsed from the Catholic faith."

CUM EX APOSTOLATUS — “One who has strayed from the Catholic faith or fallen into some heresy...[these] 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**” (para. 6).

CANON 2198 — “In order that a crime may be called public, it is necessary that the fact be publicly known as a criminal or morally imputable act, i.e., that the act is known as a crime.” (The fact of the actual act must be known as criminal and the offender must be positively identified.) “... An offense which violates the law of both Church and State may be punished by both.” If the offender does not stand identified before the public as the perpetrator of the criminal act, his offense is occult, called *formaliter* occult in the Code. (Paul 6 was publicly accused of heresy by members of both the clergy and the laity beginning in the early 1970s.)

CUM EX APOSTOLATUS — “All and sundry Bishops, Archbishops, Patriarchs, Primate, Cardinals, Legates... who, in the future, shall stray or fall into heresy, confess or be convicted of incurring, inciting or committing schism ...**They shall be left to the judgment of the secular power, to be punished with a fitting chastisement. Or else, 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**... If ever at any time **it becomes clear** that any [member of the hierarchy] has strayed from the Catholic Faith or fallen into some heresy then his promotion or elevation shall be null, invalid and void...” (para. 3).

CANON 2209 — (Liability of Accomplices in Offenses):

“(1) Persons who conspire to commit an offense and also physically concur in the execution of the same are all guilty in the same degree unless circumstances increase or diminish the liability of some individual.

“(7) Praise of the accomplished offense, participation in its fruits, **hiding or sheltering of the offender**, and other acts done after an offense has been fully accomplished may constitute new offenses, if in the law these actions are forbidden under penalty; but unless one had made an agreement with the offender about those acts (e.g., to share spoils, to hide or shelter him, etc.) before the execution of the offense, one incurs no liability for the offense itself.

CUM EX APOSTOLATUS — “**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... Furthermore, no one shall be obliged to answer to them in any affair... (para. 5).”

CANON 2264 — “Acts of jurisdiction by an excommunicated person are illicit and if a condemnatory or declaratory sentence has been issued against him, his acts of jurisdiction are **invalid**, without prejudice to the rule of Can. 2261 §2.” Prejudice to the rule means that this does not cancel out Canon 2261 §2. However, Canon 2261 §2 must be understood as the canonists themselves understand it, not as Traditionalists understand it. See below.)

(CANON 2261 §2: "...The faithful may, for any just cause, ask the Sacraments and sacramentals from an excommunicated person, especially if there is no other minister available, and the excommunicated person, at their request, may minister to them without any obligation to inquire into the reason for their request." Canonists agree that the jurisdiction for such acts is *supplied* by the Roman Pontiff. As stated in Canon 2261 §1, Canon 2261 §2 is an exception to the law and therefore, Reverend Amleto Cicognani states in his work *Canon Law*, must be interpreted strictly.)

Ed. Comment — There seems to be a confusion among Traditionalists between excommunication for various offenses as mentioned in Canon 2261 §2 and the *ipso facto* excommunication of Canon 2314 for heresy, apostasy and schism. Such excommunication under Canon 2314 (see below) is the very declaratory sentence mentioned in Canon 2264 that invalidates certain jurisdictional acts. These are to be treated as two separate issues, just as *Cum ex...* demonstrates. Traditional priests and bishops have always assumed that Canon 2261 §2 applies to *all* excommunicates, regardless of why they have been excommunicated. But when it is specified that there shall be no prejudice in barring such men from acting under Canon 2261 §2, this does not apply to those who have been excommunicated for heresy, apostasy or schism; they are not considered *vitandus* under the 1917 Code but are treated as the equivalent thereof because they have incurred the declaratory sentence under Canon 2314. This because their heresy is public or notorious and is known as such. In excommunicating the false Old Catholic bishop Reinken in his *Etsi Multa*, Pope Pius definitely indicates he is to be considered a *vitandus*. So any doubts about the status of these clerics must be resolved by returning to the old law, *Cum ex...* listed as a source for this canon. Reverend Francis E. Hyland, in his 1928 dissertation, *Excommunication*, comments on this subject as follows:

Those excommunicates under consideration in [Canon 2261 §2] are not those [*ipso facto*] excommunicated for heresy and schism, **for these are already outside the church**, as Reverend Tanquerey observes.... In pre-Code law, all excommunicates were deprived of ecclesiastical jurisdiction in such a manner that they could not exercise acts thereof, at least licitly. This privation affected even the *tolerati*... *Vitandi* were altogether stripped of ecclesiastical jurisdiction; the *tolerati* were not altogether stripped of the power of jurisdiction, but were forbidden to exercise acts thereof. Even if they were publicly known to be under a ban of excommunication, they could validly exercise jurisdiction as long as they were not objected to by the faithful. [However], *the faithful could prevent their jurisdictional acts from having effect by objecting to them on the score of excommunication and by proving the existence of the censure*, [Canon 2259; also Canon 2294, which invalidates their acts].

Canons 2261 §2 and 2264 are referring, instead, to *simpliciter tolerati* (those who are simply tolerated) whose excommunication for an offense (other than heresy, apostasy or schism) are *not* notorious because they have not been formally condemned by a judge or incurred a declaratory sentence, nor has the pope declared them a *vitandus* (Canon 2258). So there is no prejudice to Canon 2261 §2 in this drawing the line between those who function invalidly and those who *can* function under the given circumstances as described in the law. ***It must be remembered, however, that there is no longer any true pope to supply for these acts under Canon 2261 §2***, making the entire controversy over this canon a rather moot point.

CUM EX APOSTOLATUS — If any member of the hierarchy “has strayed from the Catholic Faith or fallen into some heresy, then his promotion or elevation shall be null, ***invalid and void***... 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” (para. 6).

CANON 2294 §1 — A person who has incurred infamy of law is not only irregular as declared by canon 984 n. 5 but in addition he is incapacitated from obtaining ecclesiastical benefices, pensions, offices and dignities from performing legal ecclesiastical acts; from discharging any ecclesiastical right or duty and must be restricted from the exercise of sacred functions of the ministry.

CUM EX APOSTOLATUS — “We sanction, establish, decree and define, ...all and sundry Bishops, Archbishops, Patriarchs, Primates, Cardinals, Legates... *who, in the future, shall stray or fall into heresy, confess or be convicted of incurring, inciting or committing schism*...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*... 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*, then his promotion or elevation shall be null, invalid and void... 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. 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* (para. 6).

CANON 2314 §1 — All apostates from the Catholic 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 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, and, if they are clerics and the admonition to repent has been fruitless, they shall be degraded. **Canon 188 n. 4** provides, moreover, that the cleric who publicly abandons the Catholic faith *loses every ecclesiastical office ipso facto and without any declaration*.

CUM EX APOSTOLATUS — “We sanction, establish, decree and define, ...all and sundry Bishops, Archbishops, Patriarchs, Primates, Cardinals, Legates... *who, in the future, shall stray or fall into heresy, confess or be convicted of incurring, inciting or committing schism*...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*.... 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*, then his promotion or elevation shall be null, invalid and void... 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. 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 (para. 6).

CANON 2316 — “A person who of his own accord and knowingly helps in any manner to propagate heresy, or who communicates in sacred rites (*in divinis*) with heretics in violation of the prohibition of Canon 1258 incurs suspicion of heresy.”

CUM EX APOSTOLATUS — “*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... Furthermore, no one shall be obliged to answer to them in any affair... (para. 5).”

(**Ed note:** Canon 2315 states that one suspected of heresy who does not amend within six months’ time “shall be considered as a heretic and be liable to the penalties for heresy.”)

CANON 2317 — “Persons who stubbornly teach or defend, either publicly or privately, a doctrine which has been condemned by the Apostolic See 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 censure of condemnation of the doctrine may have perhaps decreed...”

CUM EX APOSTOLATUS — “*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... Furthermore, no one shall be obliged to answer to them in any affair... (para. 5).”

(**Ed. Note** — *Cum ex...* says only that clerics will be punished with excommunication, but as the canon indicates, this is not for heresy. Penalties more similar to those for infamy are indicated in the wording of the Canon. Reverends Woywod-Smith indicate in their Canon Law commentary that this Canon involves matters so closely connected with the faith they cannot be tolerated without endangering it. They caution that this does not refer to doctrines that have been condemned as heretical, for then the penalties attached to Canon 2314 automatically apply.)

Conclusion

The opponents of *Cum ex Apostolatus Officio* who claim that the Bull was abrogated because it is a censure (disciplinary law) and therefore it is not retained in the Code are mistaken. Had Pope Pius IX wished to exclude *Cum ex...* from the Canons he missed the perfect opportunity in issuing *Apostolica Sedis*, which concerned itself strictly with *latae sententiae* (*ipso facto*) censures. Pope Paul IV’s Bull is mentioned nowhere in that document. Neuberger writes that in a doubt of law, it is always presumed a censure still binds (p. 57). And regarding the *Apostolica Sedis* of Pope Pius IX, he affirms that none of the censures for crimes committed in the election of the Roman Pontiff were abrogated (p. 51). *Cum ex...* may not be a constitution concerning the actual papal election process, but in the sense that it excludes certain persons from having ever been elected, it does treat of elections. And it is mentioned as a source of law for Canon 167 §4 dealing with ecclesiastical elections. So implicitly, at least, it references the election of the Roman Pontiff, and

Pope Pius XII's 1945 election law *Vacantis Apostolicae Sedis* excludes cardinals who have been deposed, referencing Canon 188 no. 4.

The preface to Canon 6 reads, "In reference to the former Canon Law the Code states that, as a rule, the old discipline is retained though there are some modifications of the old law." It has been demonstrated above what those modifications are in the case of *Cum ex Apostolatus*. Canon 6 no. 1 excludes from the Code universal laws that are opposed to the provisions of the Code. Considering the above, this is not the case with *Cum ex...* The interpretation of approved authors must be used when the former law is restated in the Code as Canon 6 no. 2 prescribes; Reverend Neuberger bases his dissertation on all the approved authors of his time, which he lists in the final chapters of his work. Canon 6 no. 3 states that those laws which agree only in part with the old law must be followed in that part and those which differ from the old laws must be interpreted according to the meaning of the words employed in the Code. If there is any doubt that the law does indeed differ, Canon 6 no. 4 solves this problem by instructing canonists to adhere to the old law. Canon 6 no. 5 says if no mention is made of certain ecclesiastical penalties in the Code, including *ipso facto* penalties (*latae sententiae*) such as are found in *Cum ex...*, then they are abolished. As proven above, the Code does mention *Cum ex Apostolatus* in the footnotes of several canons.

And finally, Canon 6 no. 6 states that all other disciplinary laws not contained either explicitly or implicitly in the Code lose all force unless they are derived from the natural or positive divine law. First of all, it has been shown that *Cum ex...* is indeed contained in the Code and how it is retained in the law. Secondly, it should be noted here that positive divine law can be that law which the popes infallibly decree. This is precisely why those demonizing *Cum ex...* insist it is a disciplinary law not contained in the Code and categorically deny it is infallible, despite all proofs to the contrary. But clearly this law is retained in the Code as an interpretive norm and is embodied in the Code itself; and, in certain places, it is repeated in precisely the same language found in *Cum ex Apostolatus*. Therefore these naysayers have no leg to stand on. The final determination of what is and is not heresy and who is and who is not to be considered a formal heretic has ever been the duty of the Supreme Pontiff and the Ecumenical Councils approved by him. All such acts are considered infallible determinations, and this is positive divine law. It must be remembered that Pope St. Pius V in his *Inter Multiplices* renewed and confirmed *Cum ex Apostolatus* (<https://www.betrayedcatholics.com/pope-st-pius-vs-inter-multiplices-confirms-cum-ex/>).

Cum ex Apostolatus Officio has satisfied all the prerequisites for retention in the 1917 Code of Canon Law. To date there has been no credible, detailed exposition by any of the eminent "canonists" of Traditionalist description demonstrating how *Cum ex...* was abrogated by the 1917 Code. Instead, they simply wave their hands, quote a few canons and authors and declare it abrogated — in virtue of their exalted "clerical" status. This even though they were obligated to present canonical proofs to support their case. So let those who wish to prove it is abolished deny the applicability of Canons 2314, 2316 and 2317, as well as Canon 188 no. 4, and deprive these Canons of any interpretive norms whatsoever — THEN there can be a debate. For in doubt, the old law applies and today we must obey *Cum ex...* and Pope Pius XII's *Vacantis Apostolicae Sedis* exclusively, since such doubt truly reigns among Traditionalists.

(Irene Keast contributed material used in the Introduction.)