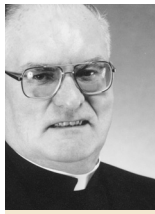


DISPENSATIONS PROVIDE FOR FLEXIBILITY IN CHURCH LAW

Since the Code of Canon Law is addressed to the entire church, comprising well over a billion members, we should not be surprised if, on occasions, its provisions cannot be applied in a way that would be beneficial to some of the faithful who are facing particular situations.



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For this reason, the code contains a practical mechanism, derived in part from the Roman law, to allow for exceptions to the legislation. This mechanism is known as a dispensation. Canon 85 defines it as “the relaxation of a merely ecclesiastical law in a particular case.” When the code used the term “merely,” this is not used in a derogatory sense, but rather in a very particular meaning: a law that derives only from ecclesiastical legislation and not from divine or natural law.

When a dispensation is granted, the law itself remains intact and continues to apply to others, unless they too were legitimately dispensed from its provisions.

The 1983 code has significantly expanded the previous legislation, particularly in regard to the dispensing power of bishops. While, prior to Vatican II (1962-1965), bishops had to obtain from the pope what were known as “quinquennial faculties,” allowing them by delegation to dispense from certain matrimonial impediments, the council had determined that this right to dispense was attached directly to the office of bishop and no further faculties were required.

In addition to recognizing this right of bishops, the code also extends the same authority to the major superiors of pontifical clerical religious institutes and societies of apostolic life. However, this power was not extended to the major superiors of other religious institutes — such as communities of sisters or of brothers. For this reason, it is important to make certain that the constitutions of these latter institutes provide for the dispensing power of superiors.

We could ask what would be the object of a dispensing power for a major superior in a religious institute. We usually find the expression “disci-

plinary norms” when speaking of this power. A disciplinary norm is, generally speaking, one that refers to rules that the community has given itself: For instance, by stating that a counselor could not serve more than two consecutive terms on the council, although the code makes no such provision. The same would apply to the number of terms a local leader could serve in the same community. Also, some communities have provisions relating to a minimum age or to a number of years of perpetual profession before a person becomes eligible for a given position. While many of these norms were put in place when there was a sufficient number of persons available to assume these offices, today, with the aging of members of religious communities, it becomes more and more difficult to find people for certain offices. Leaving aside for now possibilities for postulation, if the constitutions do not contain a provision allowing for dispensation from these disciplinary norms, then it would be very difficult to justify the action of a superior who, nevertheless, proceeded to dispense from the internal rules of the community.

Canon 86 has an interesting provision: It states that those things which are “essentially constitutive” of a juridical entity cannot be the object of a dispensation. For this reason, since the vows a religious pronounces are constitutive of the religious state (in other words, if the person does not pronounce the vows of religion — chastity, poverty, obedience — that person is not considered to be a religious), a superior cannot dispense from them, either for a time or definitively. Thus, a superior couldn’t dispense a member of the community from his or her vows on the occasion of holidays or other events. These dispensations are reserved to the appropriate church authorities.

We find a very interesting provision in canons 688 and 692. Although, in certain specified cases, a major superior can grant a member in temporary vows an indult to leave the community, he or

she cannot dispense from the vows themselves. But canon 692 provides that when the indult is granted, and on condition that it is not rejected in the act of notification, it is the law itself which dispenses. Since the law was issued by the pope, this comes back to saying that the dispensation is granted by the pope, but through the office of the major superior. This avoids the issue as to whether a person who is not a cleric could grant a dispensation.

We find a similar situation today in many dioceses, where the chancellor is a lay person. In North America, for instance, it is customary for the diocesan chancellor to grant dispensations for marriages, but, if the chancellor is not a cleric, he or she cannot grant the dispensation personally. However, following upon the example of canons 688 and 692, the diocesan bishop can grant the dispensation if the chancellor, having verified that the right conditions exist, issues an indult to this effect. This might seem like some type of legal gymnastic, and perhaps it is; but, it is an example of how the church's law can adapt to particular circumstances.

A cleric who wishes to be dispensed from the obligations arising from the clerical state must present his request to the Holy See. For this reason, even in danger of death cases, diocesan bishops cannot grant to a priest a dispensation from clerical obligations or allow him to get married (see canons 1078, 1080).

A dispensation is a favor, not a right. Therefore, if a person requests a dispensation from a marriage impediment, or from vows, or from clerical obligations, if the motives are not sufficient, the dispensation is not granted. An example: Recently a sister who has been in the convent for well over 50 years requested a dispensation from her vows so that she could look after her cat, because the other sisters in the convent were either allergic to it, or did not want it around. The Holy See refused the request. The same would apply to priests who ask for a dispensation from clerical obligations, but for reasons which would throw ridicule on the church's legislation relating to priestly celibacy.

This characteristic of canon law — allowing for adaptations to certain situations — shows how the law can be flexible when it comes to particular cases. Thus, canon 1245 allows a parish priest to dispense his parishioners from the obligation of observing a feast day or a day of penance.

Of course, there are times when even a dispensation would not be required. For instance, if a person is sick and unable to attend Mass, that person is automatically excused from the obligation.

There are very special provisions in the code in relation to marriages, especially those celebrated when one or both parties are in danger of death. Even though, in many instances, the dispensation from a given impediment would be reserved to the diocesan bishop, or even to the Holy See, the priest or deacon who is mandated to witness the wedding can dispense personally from many of them, if there is not time or opportunity to approach the person who can regularly grant the dispensation. The reason behind this norm is that the faithful not be deprived of the sacraments because of disciplinary laws over which they have no control at a given moment. This provision could, on occasion, be important for priests involved in chaplaincy services in health care institutions.

Of course, a number of impediments cannot be dispensed, even in cases of danger of death, because they are not “merely” ecclesiastical laws, but are based on divine or natural law. Thus, a dispensation could not be given for a man to marry his mother or his sister (or vice versa), or to marry someone who is already validly married.

This institution of canon law is a very pastoral provision, allowing the necessary adaptations according to circumstances. Of course, if it were abused — such as, for instance, using trivial rea-

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sons for granting a dispensation — then the overall pastoral good of the faithful would not be well served. Each law has its purpose — for the good of the community. Therefore, before dispensing from it, the person doing so must verify that there exists a valid reason for granting the favor. It is not a question of being scrupulous, but, rather, of seeing how the law as it stands can best serve the entire community of believers.

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