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PRÉSENTATION

In an ever changing world and in a Church constantly in the spotlights, the important informations and the meaning to give them may be buried under a mass of commentaries, opinions and fake news. At a time when it is urgent to restore the magisterium and pontifical authority so that the Church may continue its mission received from Christ, *Res Novæ* intends to be an informational and analysis tool at the service of the petrinian power.

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Editor in Chief : Rev Fr. Claude Barthe.
Rome Correspondant : Don Pio Pace
Contact : resnovaeroma@free.fr
CPPAP : 0220K93862
Director of publication : Ch. Sergent.

L'ÉDITORIAL

Preliminary note

The present issue will address issues more specifically related to the Church in France, but its general theme – **the abdication of Church sovereignty in front of the modern State and its tribunals** – can be extrapolated to the whole contemporary catholic world. The proof is in a disturbing official declaration from the Press room of the Vatican, on 26 February 2019, after the condemnation of Cardinal Pell by an Australian tribunal : "we have the utmost respect for the Australian judicial authorities. Out of this respect, we await the outcome of the appeals process."
In this way, the Roman Church renounces, with a sort of laughable solemnity, her right to judge the clerics (even though She cannot prevent them from being brought in front of civil and criminal tribunals), and first Her right to judge the firsts of them, the cardinals of the Roman Church. The press release even indicated that Cardinal Pell would also be judged by the Congregation for the Doctrine of the Faith, but only after the Australian justice has pronounced a verdict.
As to the tar and feather to which the judiciary system and the media submitted Cardinal Barbarin, it was only able to be orchestrated thanks to a long line of renunciations concerning the revendication of *plenitudo potestatis*, the plenitude of power, which possesses in its order the Spouse of Christ.

The French anti gay « marriage » demonstration movement and the ambiguities on the defence of marriage

Within a context of extreme social shrinkage of Catholicism, in the last few years, France saw the last awakening of this Catholicism : the legalisation of homosexual « marriage » provoked a considerable opposition with a catholic matrix, structured by the Manif Pour Tous movement, LMPT. Contrary to what had happened in 1984 with demonstrations in favour of state-free private schools in which they had strongly taken part, the agencies of the French episcopate remained very prudent with this movement in defence of true marriage. Thus, it is individually that some bishops took part in favour of the demonstration movement, Cardinal Barbarin among others, Archbishop of Lyon, first in line which maybe explains the recent outburst against him.
If the courage of these episcopal reactions is to be noted, the in-depth explanations as to the reason of this opposition were not mentioned. One noted exception is Mgr Centène, Bishop of Vannes, who introduced a reflexion of this type pointing out to the classical doctrine of legitimacy and common good : *« What reaction should we have vis-a-vis a regime that thinks it can go against the common good funded on Natural law ? »* (in French daily, *Le Figaro,* 14 december 2012).
At least, it was necessary to clearly determine the reasons why Catholics, as members of the City, had to rise against the Taubira Law (named after the Minister of Justice who introduced the law). They had to know that their op-

position was not the exercise of a democratic freedom of speech, but a moral duty to resist a *violence*, that was in no way a law. Because, *« every human law has just so much of the nature of law, as it is derived from Natural law »* (*Summa Theologiæ*, Ia IIæ, q. 95, a. 2), so that *« unjust laws are acts of violence rather than laws, thus they do not bind »* (q. 96, a. 4).

Moreover, the awaited explanation from the bishops of the Church became a more sensitive matter, although necessary, concerning not what was to be rejected but what was to be protected, that is to say a marriage legislation conformed to Church law. Even before this caricatural disfiguration of marriage, there had been in the past laws on divorce, on the equivalence of legitimate and illegitimate filiation, and also laws offending the sanctity of marriage and family, laws on contraception, on abortion, on civil union for same sex couples as well as regular couples.

But even further before that, there had been laws that constituted a major offense to the freedom of the Church : the obligation made to Catholics (under penalty of criminal sanctions by the Ministry of Worship) to submit themselves before contracting the sacrement – which alone has value to them – to a marriage civil ceremony, without which none of the rights attached to the institution of marriage would be granted to them.

Against the secularisation of marriage, promoted since long ago by regalian Gallicanism and Josephism, then imposed by the Revolutionary laws, the magisterium had vigorously defended the inseparability between the contract and the sacrament since Pius VI, and in doing so, the proper and exclusive right of the Spouse of Christ over Christian marriages. The code of Canon Law reminds us (canon 1055) that « between the baptised, there can be no valid matrimonial contract without it being by fact a sacrament. »

As a consequence of this, civil marriage (*« Mariage républican »*, as it is sometimes labeled in France to show it originated from the laws of the Republic and the Revolution) is inexistant for the Church :

– Between catholics, the Church only recognises marriages contracted sacramentally with the proper religious authority.

– Between non-catholic Christians, without having to submit themselves to canonical forms, the Church recognises also as a sacrament of marriage their contract ; it is indissoluble (furthermore, the Church considers an eventual divorce as non-existant).

– Finally, between non-Christians, the Church recognises the exchange of vows, not as a sacrament but as an indissoluble natural and sacred contract.

The exchange of vows for marriage can receive its publicity, for the non-catholics by a religious ceremony (as it is the case for example with Jews, and a fortiori with Christian Orthodox), but also, accidentally should we say, by the exchange of vows at the City office (as it is the case for protestants where marriage is considered as already contracted in front of the public officer/judge).

Protesting against the institutionalisation of homosexual unions, through the channel of civil unions or through their qualification as « marriages », was a good and necessary thing. Except that, it made it look like we were defending a « good » civil marriage (*« mariage républicain »*) against its deviations. Some in-depth explanations from the shepherds of the Church were much needed : if the Catholics had to protest vigorously, it was against the pretence to institutionalise living as homosexual couples, in the same way they protested in the past against the pretence to institutionalise the rupture of the matrimonial bond with divorce.

But, the shepherds should have, at the same time, affirm the full sufficiency of religious marriage for catholics. The deviance of civil marriage from the nature of marriage offered them an historic occasion to negotiate cautiously the recognition of the catholic religious ceremony as the sole requirement for Catholics. This is the rule in Italy and in Spain, where religious marriage is automatically registered by civil authorities. At the minimum, the Catholic authorities could have asked for provisions inspired by the English system, in which the Catholic ceremony is sufficient, once filed with the state.

Or, simply, follow the example of German Catholics who, since 2009, have obtained – as well as Protestants – that one could marry in the Church without having to first go to the public officer. Certainly, it still requires it be filed afterwards with a state official in order to benefit from the rights attached to marriage. Yet, it is a first victory, in its principle, against the secular laws of the *Kulturkampf.*

Father Claude Barthe

When Church authorities encourage divorce

French ecclesiastic tribunals show a strange subjugation in front of the civilian courts.

In the Church, where there are no separation of powers like in the modern democracies, the bishop of a diocese possesses himself the judicial power which he exercises through a judicial vicar, or episcopal official, eventually assisted by other judges (unless, considering the difficulty there is to find qualified individuals, several dioceses will come together to form such tribunal). Most of the activities of these tribunals, nowadays, concerns with causes for marriage annulments (for cases when a person did not freely give consent or, was not capable of fulfilling the rights and duties of marriage because of a psychological disability, etc.)

Most spouses who petition for a declaration of nullity do so with the intention of getting married again. If spouses have a coherent christian approach, it is only after the prospective annulment of their marriage that they will petition for divorce in the civil courts, once it has ceased to be scandalous.

But the independence of the Church jurisdiction being less and less recognised, it has happened that within the frame of this civil divorce procedure, the canonical procedure petitioning for an annulment be instrumented : looking to obtain the best possible conditions for the divorce, the lawyer of one of the party wants to utilise elements contained in the canonical procedure to the advantage of his client, and, to this effect, petitions the civil judge to request from the bishop the communication of informations from the canonical trial.
Rather than to reject the request at all cost, the ecclesiastic authorities have adopted a tactic proving them handsomely weak : for now decades, the chanceries ask from the spouses that their divorce be first pronounced before starting the canonical procedure (it is true that a good number of spouses engage the civil action without asking for any authorisation). In other words, the ecclesiastic judges, in the name of the French bishops who mandated them, encourage these couples who question them about the validity of their marriage, to divorce. This invitation is not only objectively scandalous, but it is a grave violation of the principle « in favour of marriage », which requires the marriage be considered valid till proven otherwise (canon 1060). This is without counting the fact that spouses, whose chancery shall judge their marriage valid, will find themselves civilly divorced for being obedient to the ecclesiastic injonction.
This abandonment of the independence of the Church is as much deplorable than the bishop and its judges could invoke a judgement of 29 March 1989, rendered by the Court of Cassation (the highest court in the French judiciary system) (*Bulletin des arrêts des chambres civiles*, II, n. 88, p. 42). This judgement has indeed been quashed without a referral by judgement from the court of appeal in Nouméa, French Caledonia, with respect to divorce proceedings for fault, which ordered under penalty the Archbishop of Nouméa to provide a copy of a procedure in declaration of nullity. The court of Cassation considered that the documents the civil judge requested *« had come to the knowledge of the religious authority only because it had been entrusted with them »,* and also that *« no one can be obligated to produce in court documents relating to facts known only because of one's position and having to do with the intimacy of the life of private persons »*, and thus that the Bishop of Nouméa had a legitimate motive to deny the request to communicate these elements.
In truth, this is quite satisfactory. Sad times though when one has to use the humiliating recourse of individual right to privacy to preserve the sacred liberty of the Spouse of Christ !
Pio Pace

DOCUMENTS

Has the Church renounced her right to judge ?

Father Alexis Campo

Attorney Claire Quétant-Finet, a specialist in Family law, reacted in a salutary way, to an article published in the French daily *La Croix,* in its January 14th, 2019 issue : "The urgency of a true ecclesial criminal procedure." Her reaction came in times inauspicious in regards to the law proper to the Church in its canonical procedure.

Thought provoking facts

October 2018, France. After the city of Rouen, then the city of Orleans is in chock following the suicide of a young priest of thirty eight years old, suspected of inadequate behaviour with minors. A preliminary investigation, following French criminal law, was opened after the identity of the priest was released to the Public Prosecutor by the ecclesiastic authorities, and without any administrative investigation eventually opening the way to a canonical trial. None. The immediate recourse to State justice has become common in the French Catholic Church. It is even a pressing recommendation made to an abbot by a canonist of the CORREF (French Conference of Men and Women Religious). To the point that a Public Prosecutor recently expressed astonishment realising the bishop of his district turned into media fodder one of his priests without having proceeded to a minimal canonical verification upstream : the presumption of innocence and the rights of the defence are two fondamental principals which seem to escape a few bishops or superiors of religious institutes (canon 220 which also regulates good reputation).
On the same line, the Conference of French Bishops, located on Avenue de Breteuil, in Paris, entrusted a high-ranking official, former Secretary General of the Government, Honorary Vice-president of the Council of State, Jean-Marc Sauvé, the presidency of the independent Commission of investigation on sexual abuse in the Church (CIADE) which will provide its conclusions in 2021 in a public report. Sauvé already sets himself up as judge of the Church and said in an interview for the French weekly *Journal du Dimanche* that pedophilia in the Church could be systemic, that is to say that it affects the Church in all of its ramifications.
Furthermore, it is significant that marriage declaration of nullity procedures in the French diocesan tribunals in general requires an initial procedure of civil divorce, which is one indicator among others when French law is in tension with Canon law (parental authority for baptism, civil marriage before church, whether it be sacramental or simply natural). Last, it is to be noted that the notion of offence

has a broader scope in Canon law (abortion, violation of the secret of confession, profanation, etc…).

Mgr Minnerath points out

How did the representatives of the hierarchy of the Catholic Church in France get to the point of ignoring so much what is based on the sovereignty (referred as plenitudo potestatis) of the universal Church ? Quite a few Ordinaries don't know anymore, what Mgr Minnerath, Bishop of Dijon and eminent canonist points out : *« the Church has never hesitated to define herself as a society, because externally, she has all its characters »* (Roland Minnerath, *L'Église catholique face aux États,* Paris, Cerf, 2012, p. 125). The rights and prerogatives claimed by the Catholic Church are not concessions of the State : the entitled rights constitutes a judicial autonomous order. The Church is free and independent of all political power to ensure its internal organisation. It's what she does by giving herself a legislative corpus with the rights and prerogatives she enjoys by divine law and the dispositions of Canon law, in the strictest sense of the Gregorian reform. The prescriptions of its judicial system are exempt from the sovereignty of civil society : the Church possesses a sovereignty and its canonical legislation is independent from civil legislation. The right of the Church in no way derives from State law nor does it derive from Temporal order. *« The body of divine and ecclesiastical laws forming Canon law is in itself a complete legislative system […] The autonomy of the ecclesiastic judicial power is based on the power the Church has to put in place its own corpus of laws ». Ibid.*, pp. 129-130.

Christian democratic Italy will formulate with precision the judicial status of the Catholic Church in article seven of its 1947 constitution : *« The State and the Church are, both in their order, independent and sovereign. »* Sovereignty is not exclusively proper to territorially organised states, but *« to all legal system that does not derive its existence from an other legal system. »* This is why, it is called « primary. » It is worth noting that Mgr Minnerath specifies that *« the official doctrine of the two perfect societies is understood only if one is subordinated to the other, because of the lesser perfection of its end »* (*ibid.*, p. 137). The 1887 Concordat with Colombia (in effect till 1936) is a complete exposé on the status of the primary judicial system which gives it a universal and transnational legal capacity. This concordat is a compendium of the teaching of Leo XIII on Church as a perfect society ; it even indicated that the Church had the capacity to influence the civil *« in virtue of a right proper to Her. »*

Why are so many French prelates unaware of these fundamentals ? Classical ecclesiastic public law insisted so much on the exteriority of the nature of the Church in the XIX century – in a context of temporal changes and disruption – until the eve of the Vatican II Council (Cardinal Ottaviani in his *Instutiones juris publici ecclesiastici,* 1960) that it would have stifled a more theological approach, as noted for example by Fr. Congar (*Sainte Église*, Cerf, 1963) who favoured a sacramental approach of the Church. Chapter IX of the preparatory commission to the conciliar constitution on the Church (1962) provides the last state of the classical doctrine and an excellent synthesis. It also sounded the death knell for this doctrine : the anti-judicial conciliar reaction opposes « societary » ecclesiology, from before the council, to « communion » ecclesiology which sounds the « end of the perfect society. »

Just need to apply Canon law

The independence of canonical legislation is under attack or simply forgotten nowadays. Canon law is not well considered, especially in its procedural form which is reduced to caricature : legal wrangling, blinkered legalism, conglomerate of formal requirements, abstruse language with latin reigning supreme… Consequences : the representatives of the Catholic Church in France renounce their freedom and submit themselves to civil power though incompetent. In a context of withdrawal towards the private individualist sphere, it is symptomatic that most bishops and the Conference of French Bishops have come to giving accounts to earthly powers, or should we say, worldly. Isn't this attitude of impregnation the attitude of a resignation, a « subjugation », as Houellebecq would say ?

« Bishops just need to apply Canon law ! », writes Fr. Bernard du Puy-Montbrun, renowned canonist, in an article titled « Sexual assaults in the Church. The upheavals and wiping out of the Law » (*Smart Reading Press*, 25 janvier 2019). The first duty of a bishop is to carry out the discreet preliminary administrative inquiry according to the norms proper to the Church (canon 1717) – sheltered from any kind of pressure. This inquiry is to verify, without any rush, the charges or suspicions before a possible canonical trial, according to administrative or judicial procedure, although the bishop has limited ressources in terms of investigation. It is essential in order to respect the fundamental rights of the faithful, clerics included, and to avoid situations arbitrary or with a tragic end. **Abbé Alexis Campo** ◆

1. Also see : Cyrille Dounot : « Scandales sexuels : la justice de l'Église est-elle devenue inopérante » https://www.hommenouveau.fr/2786/politique-societe/scandales-sexuels---la-justice-de-l-eglise-brest-elle-devenue-inoperante--.htm

Church and State, perfect societies

« Certainly, it cannot be disputed that the end pursued by Church and State belong to different orders and that Church and state are, in their own area, perfect societies, thus having their own legal system and their means and their own laws, each within its area of responsibility. But both must also be concerned with the welfare of the one who is their common subject : namely man, called by God to obtain eternal salvation and placed on this Earth to allow him, with the help of divine grace, to attain his salvation by his action which tends to his own well-being and the well-being of his brothers, in peaceful coexistence. »

(Paul VI, *Sollicitudo omnium Ecclesiarum*, 24 June 1969).