

Some Notes on the  
Congregation for Divine Worship's *Responsa ad Dubia*  
in light of Canon Law  
from the Latin Mass Society

In this document we give some brief notes on the status and practical implications of the *Responsa ad dubia* published by the Congregation for Divine Worship on 18<sup>th</sup> December 2021, in light of the advice we have received from more than one canonist.

### General Considerations

**Status of the *Responsa*:** This is not an instruction or a law, but an administrative act, an interpretation of *Traditionis Custodes* (TC). It has force, but it cannot go beyond what TC requires, and is itself subject to the Church's law. The approval of this clarification by the Pope (mentioned in the introduction) is *generic* not *specific*: only in the latter case would it become an act of the legislator, rather than of the Dicastery.

**On certain issues** these *Responsa* present difficulties which have been noted by many canonists, in apparently restricting the prerogatives of bishops, and also of priests, even prerogatives established in Canon law and in the documents of the Second Vatican Council, often in a way which goes beyond the text of *Traditionis Custodes*.

See Canon 33.1:

General executory decrees, even if they are issued in directories or in documents of another name, do not derogate from laws, and their prescripts which are contrary to laws lack all force.

Again, bishops' power to dispense from the law set out in Canon 87.1, is simply the legal expression of the principle expounded by the Second Vatican Council in *Christus Dominus* 8. The role of the bishop, and his exercise of pastoral judgment, is emphasised by TC Art.2.

These difficulties are such that, in certain cases noted below, the normative force of the *Responsa* is at best unclear, pending a further clarification from the Council for the Interpretation of Legislative Texts or the Holy Father. See Canon 14:

Laws, even invalidating and disqualifying ones, do not oblige when there is a doubt about the law.

## Issues raised by the *Responsa*.

**1. Parish churches.** Many have pointed out that TC 3.2, forbidding the celebration of the 1962 Mass to ‘groups’ in parish churches, is impractical, and bishops have been using Canon 87.1 to derogate from it. The Congregation now offers to grant derogations itself.

Derogation from this law is not ‘reserved’ to the Congregation, however: accordingly, bishops may still dispense from it by their own authority under Canon 87.1. Now, in principle, the faithful could ask for a dispensation from the CDW if the bishop declined to do so.

The *Responsa* go on to ask that 1962 celebrations not be advertised in parish bulletins, and that they do not take place at the same time as ‘pastoral activities’. Although the precise meaning of the second demand is unclear, both appear to go beyond what is required by TC, and beyond what the Congregation can, of its own authority, demand as a matter of law.

**2. The *Rituale* and the *Pontificale*:** the *Responsa* restrict the former to ‘personal parishes’, and the latter is forbidden entirely.

This seems to go beyond an interpretation of TC; by the same token, since the use of these books are not mentioned in TC (and therefore do not conflict with it), the permission for them granted in *Summorum Pontificum* Art. 9 would seem to remain in force. TC Art. 8 abrogates only those provisions in previous legislation which conflict with its own.

There is no explanation of why the *Rituale* may be used in personal parishes and not, for example, in formally established Chaplaincies or Shrines dedicated to the 1962 liturgy, or indeed more widely, or how this distinction might be derived from TC.

**3. Bination.** The first of the two questions about bination concerns weekdays specifically, when the rules on bination are stricter than they are on Sundays. The *Responsa* suggest that a priest should not binate (celebrate a second Mass on a given day) in order to celebrate a 1962 Mass. He may, presumably, celebrate his one daily weekday Mass as a 1962 Mass, and he can, presumably, celebrate the 1962 Mass on Sunday alongside the other Masses on his parish schedule.

The *Responsa* describe permission for the older Mass as ‘a concession to provide for their [sc. the people’s] good.’ This being so, it is unclear why a second Mass could not provide for the people’s good, and therefore have pastoral justification: for example, for those who could not physically fit into the church the first time, if the church’s capacity is reduced in response to Covid. The same goes for a weekday after the celebration of the reformed Mass.

In any case, these answers must be read in the context of the bishop’s prerogative to judge whether there is a pastoral justification for bination: see Canon 905 §2, which remains intact.

**4. Concelebration.** TC tells us that the groups for whom the 1962 Mass is to be provided should accept the ‘validity and the legitimacy of the liturgical reform, dictated by Vatican

Council II and the Magisterium of the Supreme Pontiffs.’ This rather vague principle is extended by the *Responsa* to priests given permission to celebrate it. The *Responsa* continue:

The explicit refusal not to take part in concelebration, particularly at the Chrism Mass, seems to express a lack of acceptance of the liturgical reform and a lack of ecclesial communion with the Bishop, both of which are necessary requirements in order to benefit from the concession to celebrate with the *Missale Romanum* of 1962.

This however must be read in the context of Canon 902:

Unless the welfare of the Christian faithful requires or suggests otherwise, priests can concelebrate the Eucharist. They are completely free to celebrate the Eucharist individually [integra tamen pro singulis libertate manente Eucharistiam individuali modo celebrandi], however, but not while a concelebration is taking place in the same church or oratory.

Bearing in mind the right not to concelebrate, the dialogue recommended by the *Responsa* between the bishop and the priest who does not wish to concelebrate at the Chrism Mass may reveal that this unwillingness does *not* imply a ‘lack of ecclesial communion’. Ecclesial communion can be manifested in many ways: intercommunion with the bishop, mention of the bishop in the Canon, presence at the Chrism Mass in choir, use of the oils blessed by his bishop at the Chrism Mass, etc..

**5. Sacred Ministers:** the *dubium* on the ‘participation’ of Deacons and Instituted Ministers in the 1962 Mass presumably refers to their taking part in its *celebratio*, and not merely as members of the congregation. This happens when they act as Deacon and Subdeacon in *Missa Solemnis*. (Instituted Acolytes may act as Subdeacon.)

This point seems to go beyond what is required in TC.

**6. Private Masses:** these are not mentioned in the *Responsa*; nor were they mentioned in TC. Despite many bishops seeking to restrict the private celebration of the 1962 Missal (which suggests that this issue must have come to the attention of the CDW), the Congregation’s silence indicates that private celebrations of the 1962 Missal remain legitimate for all priests of the Latin Church.

**7. The Traditional Institutes and Communities.** The Fraternity of St Peter has noted:

The recent document from the Congregation for Divine Worship released on December 18th does not directly address the former *Ecclesia Dei* communities such as the Priestly Fraternity of St. Peter who possess their own proper law.

The FSSP and other entities established by *Ecclesia Dei Adflicta* were granted the use of the *Pontifical*, and this could not be changed by a document from a Dicastery interpreting another document, neither of which even mentions the Institutes.

**8. Vernacular readings.** The CDW insists that the readings be those specified by the 1962 Missal, but that no attempt be made to create a vernacular Lectionary to present these readings in a convenient format.

In this way the Congregation discourages any kind of hybrid Missal from developing: the 1962 Missal with vernacular readings, or with the 1970 Lectionary, as has sometimes been suggested by proponents of the 'Reform of the Reform'.

The *Responsa*, like TC itself, makes no suggestion that the Lections *not* be proclaimed in Latin first. Vernacular readings should, rather, simply be added to the celebration of Mass, as indeed has long been the practice.

The problem of the lack of correspondence between the text of the Bible translations authorised by Bishops' Conferences and the text of the 1962 Lectionary is not addressed.

**9. The Letter of the Cardinal Vicar of Rome (7<sup>th</sup> October)** claimed that the *Rituale Romanum* could not be used and the Easter Triduum could not be celebrated. The *Responsa* disagrees, permitting the *Rituale* at least in some places, and not mentioning the Triduum. This suggests that the putative restrictions of the Diocese of Rome are overturned.

## **Implications**

Given the nature of the *Responsa*, its consequences for the Faithful depend above all on bishops: it is addressed, indeed, to the Presidents of Bishops' Conferences.

Bishops who allowed the 1962 Mass to continue as before, or with slight modifications, following TC, can certainly continue this policy. They can, if they feel it is necessary, confirm the judgement of pastors about the justification for bination, as is their right under Canon 905, and permit the use of the *Rituale* under Canon 87.1; their existing permissions for the use of parish churches, under Canon 87.1, remain valid.

They can also celebrate the Sacrament of Confirmation using the older books, since their right to do so cannot be removed by an administrative act of a Vatican Dicastery. Where the Traditional Institutes are present, they are in any case not covered by the *Responsa*.

At the same time, bishops may take the *Responsa* as an indication of the preferences of the Congregation and seek to implement them to a greater or lesser extent in accordance with local circumstances. As noted above, the *Responsa* acknowledge that the good of souls is implicated in the availability of the 1962 Mass, and this must be uppermost in the minds of bishops in regulating its availability.

As far as priests and the laity are concerned, it seems reasonable to assume that current arrangements may continue until we are informed otherwise.