

# The Altar-Girl Debate

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## THE ALTAR-GIRL DEBATE

### A LEARNING OPPORTUNITY

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#### **A. Preliminary Considerations**

I had not intended to offer a catechesis on the altar-girls issue because the traditional axiom that they who may do what is greater may do what is lesser (cf Regula Iuris n.53) has had an immediate appeal to common sense. It means that if women can read and distribute Holy Communion, from within the sanctuary, then they can do the lesser activities of an altar server.

However, for some people the matter continues to be a problem, and this fact itself merits our pastoral attention. It becomes apparent that the problem results from our failure, over a long period of time, to catechise successfully on how the Church understands law. Some of the protagonists in this debate (some who are in favour of the law and some who are against it) do not understand their own Catholic tradition.

Indeed, their understanding of law has more to do with the legal positivist or legal voluntarist tradition, which supposes that the validity of laws is a purely juridic question, based solely on the fact that some authority has so decided and commanded. In the end, this assumption fails, because the validity of laws needs to be tested against certain rights which are antecedent to "positive" (i.e. posited) laws. Indeed, historically speaking, consciousness of natural law arose precisely because without it there is no appeal against whatever a law-giver may decide.

Just as legal positivism assumes that promulgation by the law-giver is sufficient to make valid law, so too, it assumes that repeal by the law-giver is the only way the law can cease to bind. From this perspective, it also appears, and must appear, that every departure from the law's observance amounts to "disobedience". This is not the Catholic tradition.

According to the Catholic tradition, mere promulgation by the law-giver is *not* sufficient on its own to make valid law; repeal by the law-giver is *not* the only way a law ceases to bind or even ceases to exist; and departure from a law which has ceased to bind in particular circumstances or ceased to exist is *not* disobedience.

According to the Catholic tradition, any human law, whether it is Church law or civil law, in order to be valid and binding in conscience, must be *both* promulgated by lawful authority, *and* positively promote the common good. The common good is the sole "reason for being" of law, and law is defined in terms of promoting the common good. Consequently, a supposed law which does not promote the common good is no law at all. Mere promulgation by a legislator is not sufficient to make it valid if it does not promote the common good. This is solid and undisputed Catholic teaching.

In answer to the question "whether law is always related to the common good", St Thomas says that any law which is not so directed is not a law; cf S.T. I/II, Q.90, art 2, corp. In answer to the question "whether every human law is derived from the natural law", he says that law only has the nature and force of law to the extent that it is in some way derived from natural law, cf S.. I/II, Q.95, art 2, corp. In answer to the question "whether human law creates an obligation in conscience", he points out that a law is non-

binding not only if it is opposed to the common good, but also if it simply fails to be "useful" to the common good; cf S.T. I/II, Q.96, art 4, corp.

Some might be tempted to say "yes, but only the legislator can decide what is appropriate for the common good." But in this way they would once again be making the role of the legislator the sole determinant of valid law. The Catholic tradition, both in its moral theology and in its canonical jurisprudence, explicitly allows that subjects of the law are involved in making the judgement as to whether a law is binding in particular circumstances, and even whether it is binding at all.

The subjects of the law are involved in judging whether a valid law binds them in particular circumstances when, for example, they have to decide whether they are "excused" from a Church law as distinct from requiring a dispensation. The same is true when a choice has to be made between a particular law and a higher law, and between the spirit of the law and the letter of the law. Likewise, the whole artifice of what moral theologians call "probabilism" is based on the fact that the subjects of the law are able to make the judgement as to whether and when they are bound by a particular law.

This moral tradition is reflected in the Church's canonical tradition. Church law differs from civil law. Civil law (except in the case of common law) is based on legislation (its sole base) and is interpreted by precedent. Canon law, on the other hand, has two bases: the law ("ius") can be derived from legislation ("lex") or from custom ("consuetudo"). Accordingly, in the 1983 Code of Canon Law, Title I of Book I treats of legislation, and Title 2 treats of custom. The point is that legislation is not the only basis of Church law, and custom is capable of prevailing against legislation. This is not true of civil law.

Here, too, it is the subjects of the law (i.e. those "bound" by the law) who make the necessary judgement about whether and when they are bound by the law. Cessation of the law by contrary custom presupposes that subjects of the law are not being disobedient by the fact of ceasing to observe a law when it ceases to promote the common good. Likewise, subjects of the law are involved in making the judgement about whether a law ceases to bind on account of its disputed character (canon 14). This is our canonical tradition.

In a word, those who think the law ceases to bind only through repeal by the legislator, simply do not understand their own Catholic tradition.

Of course, timid souls will see all this as a recipe for chaos. What they need to see is that it is the Catholic tradition! Furthermore, even though it is open to abuse, far from being a recipe for chaos, it is necessary for moral maturity. The problem we experience with people who regard every departure from the letter of the law as "disobedience" is precisely their own over-dependency on the legislator alone. They need to be told and untold in order to know whether or not they can act in a particular way. If they could make the Catholic tradition more seriously, they would benefit by the way it promotes moral maturity.

## **B. Application to the Matter of Altar-girls**

(1) The legal positivist approach:

This is the position of those who, without regard for any other canonical, moral or pastoral considerations, simply regard the previous restriction against altar girls as still binding till the legislator intervenes to repeal it. This approach has no pastoral regard for those Catholics who are being disaffected. moreover, this approach also foregoes the pastoral opportunity of helping other Catholics realise that repeal by the legislator is not the only way that such a rule ceases to bind. And, anyway, the legal positivist tradition is not the Church's tradition.

(2) The canonical approach:

(a) change by legislation

The restriction against female altar servers contained in the 1917 Code (c.831/2) is not contained in the 1983 Code, which means that the restriction is abrogated unless some other source of liturgical law provides otherwise.

The prohibition is referred to in the 1980 Instruction, *Inaestimabile Donum*. But it is to be noted that the Instruction is not a law. "Instructions" pertain to the administration of Church law and are not themselves legislative. According to c.34/3, an Instruction ceases to hold if the law on which it is based ceases to hold. Is there any true law on which this Instruction is based?

The General Instruction of the Roman Missal, 1969 (which in fact is more than an "instruction", it is an "institution") has the same force for liturgy as the Code has for other Church laws. N.70 of the GIRM *did continue* the earlier restriction. However, it has been affected by legislation enacted since 1969. These legislative changes include those provisions of the Code which remove the restriction against women in fulfilling liturgical functions, and they include the 1975 revision of the GIRM itself, which revision was made in order to allow women readers and women distributing Holy Communion to fulfil these functions from within the sanctuary. According to c.20, such restructuring of the matter in hand has the effect of abrogating restrictions which are not included in the revised law. This is the basis on which some argue that the earlier restriction against female servers has been abrogated, not only in Canon law, but also in liturgical law.

However, others disagree. And so we end up with a "doubt" in the technical sense. This in turn, is governed by c.14: "when there is a doubt of law, the law does not bind".

Mere reminders that the Holy See has not actually repealed the previous restriction make no difference, because repeal is not the only way in which Church laws change. Nor do such official reminders have any legislative effect.

(b) Changes by contrary custom:

Up to the sixteenth century, the principal way that liturgical practices changed was not by law, but by custom. Even today, the Code of Canon Law provides for the same process. In other words, the law can change not only by repeal or abrogation, obsolescence and non-inclusion in revised law, but also by contrary custom. (This is how the directive of Pope John XXIII that all theological studies were to be conducted in Latin never took effect. It was simply ignored because at local level people knew better.) It may well turn out that in the matter of altar-girls, local customs of parishes and dioceses have more practical relevance than changes in the universal law. Apart from those countries where cultures prevent girls from exercising such roles, the practice of having altar-girls is widespread, and includes the Diocese of Rome.

(3) The approach based on the philosophy of law and Catholic moral teaching: This approach resolves the issue on the basis that such a restriction lacks the validity of true law. Precisely because the discrimination between males and females, in this context, lacks any theological rationale, it is therefore a discrimination which not only fails to promote the common good, but actually contradicts it. It can become a girl's first experience of discrimination by the Church, on the grounds of gender. The harm already being done by perceived discrimination conflicts with the Church's commitment to recognising the equality of persons (c.208) and opposing unjustified discrimination (GS.29). For this reason, to put aside the previous restriction is not only an option, it is a pastoral requirement.

### **In conclusion:**

Consequently, even without any further intervention by the Holy See to repeal it, the restriction against female altar servers previously given in c.831/2 of the 1917 Code, and in the 1969 edition of the Roman Missal, and referred to in various "Instructions" can quite properly be regarded as not binding by reason of canonical and moral principles of the Catholic tradition.

Because this particular issue has been singled out and somewhat dramatised by some Catholics, it is possible that the "doubt in law" may yet be clarified by an "authentic

interpretation". (A private response by a Roman Congregation saying that the law has not yet been repealed is not an "authentic interpretation" in the canonical sense.)

An aspect of the pastoral problem is, of course, the way this issue has become a preoccupation for some Catholics out of all proportion to its real significance, and out of proportion to other matters more central to the gospel to which some of them seem to give less attention. For some, it looms large because it is seen as a bulwark against "feminism", ordination of women, etc. For some it looms large because they see it in terms of disregard for the laws and authority of the Church. This, in turn, is related to a legal positivist or voluntarist idea of law. (It is interesting that several of them are in fact civil lawyers.) That, as I said at the beginning, highlights our failure over the years to help the Catholic people understand the Catholic moral and canonical tradition.