

THE ORDINATION OF MALE INFANTS

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UNTIL RECENTLY, it has been the common opinion of Catholic theologians that the Church has the power to ordain male infants, that is, that ordination conferred on them is valid, though not licit since they do not meet several of the requirements of canon law. That opinion, however widespread, depended on an analysis of the basis of the validity of orders which may no longer be persuasive in the light of the decree *Inter insigniores* of October 15, 1976, and Pope John Paul II's letter *Ordinatio sacerdotalis* of May 22, 1994. In this note, I shall try to document the shift in theological reasoning which has taken place and to draw some appropriate conclusions.

THE DOCTRINE OF THE MANUALS

The validity of ordination conferred on baptized male infants is recognized by a cross section of the dogmatic and moral manuals of the last two centuries, continuing right up to the post-World-War-II period. I have no reason to doubt that other manualists are in agreement with those whom I have consulted: Eduardo Regatillo (1882–1975),¹ Ludovico Fanfani (1876–1955),² Hieronymus Noldin (1838–1922),³ Franz Diekamp (1864–1943),⁴ Arthur Vermeersch (1858–1936),⁵ Gennaro Buceroni (1841–1918),⁶ Adolphe Tanqueray (1854–1932),⁷ and August Lehmkuhl (1834–1918).⁸ All of them specifically mention the case of male infants. Fanfani, for example, says,

Here it must be noted (a) that infants who have been validly, albeit completely illicitly, ordained are given the choice when they reach their sixteenth year

¹ E. F. Regatillo and M. Zalba, *Theologiae Moralis Summa* (Madrid: Biblioteca de Autores Cristianos, 1954) 3.512–14.

² Ludovicus J. Fanfani, *Manuale theorico-practicum Theologiae Moralis* (Rome: Ferrari, 1951) 4.625–27.

³ H. Noldin, *Summa Theologiae Moralis iuxta Codicem Iuris Canonici*, 30th ed., ed. A. Schmitt and Godefridus Heinzel (Innsbruck: Feliciani Rauch, 1954) 3.399–400.

⁴ Franciscus Diekamp, *Theologiae Dogmaticae Manuale*, 6th ed., ed. Adolph M. Hoffmann (Paris: Desclée, 1934) 4.412–14.

⁵ Arthurus Vermeersch, *Theologiae Moralis Principia, Responsa, Consilia* (Rome: Università Gregoriana, 1923) 3.557–58.

⁶ Januarius Buceroni, *Institutiones Theologiae Moralis*, 6th ed. (Rome: Institutum Pii IX, 1915) 3.574.

⁷ Ad. Tanqueray, *Synopsis Theologiae Moralis et Pastoralis*, 8th ed. (Rome: Desclée, 1921) 1.728.

⁸ Augustinus Lehmkuhl, *Theologia Moralis*, 10th ed. (Freiburg-im-Breisgau: Herder, 1902) 2.420–21.

of choosing for the clerical state or not; and if they do not wish to take on the obligations associated with holy orders, they are permitted (although ordained) to live as laymen do (cf. also can. 214, §1). (b) The same applies to the insane, if they should recover the use of reason.⁹

Noldin adds a rationale for the doctrine:

A boy is validly ordained before he has use of reason: for an infant is capable of those sacraments which do not demand a condition which he cannot fulfill, like matrimony, and which do not require the ability to sin, like penance and extreme unction; for orders does not require the recipient to do anything. But a boy ordained in this way is given the choice, after he has sufficient use of reason, either of ministering in the order he has received or of passing over to worldly commitments; but when he has chosen he is thenceforth bound to fulfill the obligations of the order he has received and to persevere in it.¹⁰

Regatillo claims that this applies even to episcopal ordination: "An infant and the like is capable of ordination, even episcopal, although he is unable to consent and refuse. This is common doctrine."¹¹ Diekamp likewise holds that "all orders can be validly bestowed on infants who lack the use of reason."¹²

Vermeersch lists among validly ordained subjects the following: "the chronically insane, boys in infancy, and those who consent while forced by grave fear."¹³ But he comments: "An ordained infant is bound by no obligation, unless when he is fully *sui compos* and past the age of puberty, even the age of majority, he approves his ordination." Bucceroni gives a similar list:

⁹ Fanfani 626: "Hic notandum: a) quod infantibus *valide*, etsi omnino *illicite*, ante usum rationis ordinati, optio datur, cum ad annum decimum sextum pervenerint, optandi pro statu clericali vel non; et si noluerint obligationes Ordinis adnexas acceptare, eis permittitur ut, quamvis ordinati, more laicorum vivant (cf. etiam can. 214, §1). (b) Idem dicatur de *amentibus*, si ad usum rationis redierint."

¹⁰ Noldin 399: "Puer ante usum rationis valide ordinatur: infans enim capax est illorum sacramentorum, quae non exigunt condicionem, quam ipse praestare nequeat, ut matrimonium, et quae non exigunt capacitatem peccati, ut poenitentia et extrema unctio; atqui ordo nullum actum a suscipiente ponendum exigit. Eiusmodi autem puero ordinato post sufficientem usum rationis optio datur vel ministrandi in ordine suscepto vel trans-eundi ad vota saecularia; electione facta demum tenetur obligationes ordinis suscepti implere atque in eo perseverare." At this point Noldin has a note to an instruction of Pope Benedict XIV, *Eo quamvis tempore*, of May 4, 1745; the latter text will be considered separately below.

¹¹ Regatillo and Zalba 513: "*Infans* et similis capax est ordinationis, etiam episcopalis, licet consentire et dissentire nequit. Est doctrina communis."

¹² Diekamp 414: "Infantibus usu rationis carentibus omnes ordines valide conferri possunt."

¹³ However he adds, "Invalide ordinatur dormiens, ebrius adultus qui antea non habuerit intentionem recipiendi ordinem; qui exteriore vi rapitur ad ordinationem; qui iocando vel fabulam recitando se ordinandi praesentat."

Wherefore these are incapable of orders: a woman, a hermaphrodite in whom the female sex is dominant, and a nonbaptized man. But by contrast these are validly ordained: infants, the chronically insane, the blind, the mute, those without hands, etc., although by natural law they are irregular. But St. Thomas says that boys before they have attained the use of reason cannot validly receive the episcopate.¹⁴

Tanquerey merely specifies that, although these infants are validly ordained even though they lack the intention of receiving the sacrament, they must be given the choice at age sixteen of living as laymen if they wish.¹⁵ The final author in my sample, Lehmkuhl, says that an infant is validly ordained in the same way he receives other sacraments, and by the same rationale, but must be given a way out of the obligation of celibacy and the other burdens of priesthood.¹⁶

THE TEACHING OF POPE BENEDICT XIV

Several of these authors¹⁷ cite as an authority for the possibility of ordaining male infants an instruction of Pope Benedict XIV, *Eo quamvis tempore*, of May 4, 1745, which deals with problems encountered by Latin missionaries working in Egypt.¹⁸ The third *dubium* which the pope answers concerns boys ordained to the diaconate in the Coptic Church: When they reach the legal age for marriage, is it legal for the missionaries to give them a dispensation to enter into not just a first but a second marriage, without a special indult from the Holy See?¹⁹ The fourth asks if these deacons are bound to the recitation of the divine office. Pope Benedict XIV notes that the ordination of boys to the diaconate was known to occur in the Eastern churches, and he cites some of the studies available to him.²⁰ It does not seem likely that the Coptic boy-deacons were ordained on the basis of any theory that ordination could be conferred on those who lacked the use of reason. Rather it is likely that because small Christian communities and their priest might want to celebrate the liturgy with rites which called for the assistance of a deacon (a much more frequent requirement in Eastern

¹⁴ Buceroni 574.

¹⁵ Tanquerey 728; his language is almost identical to Fanfani's.

¹⁶ Lehmkuhl 421.

¹⁷ Regatillo, Noldin, Diekamp, Vermeersch, and Tanquerey.

¹⁸ This instruction is conveniently available as no. 357 in *Codicis Iuris Canonici Fontes*, ed. Peter Gasparri (Rome: Typis Polyglottis Vaticanis, 1937) 1.890–903.

¹⁹ Ibid. 891: "An Cophitis proprio Ritu in aetate puerili ad Diaconatus Ordinem promotis, ubi legitima ad contrahendum Matrimonium aetas advenerit, liceat nedom primum, sed alterum quoque inire Matrimonium, ex vi dispensationis obtentae a PP. Missionariis absque ullo speciali indulto Apostolico."

²⁰ These included a manual of mission work in the Orient by a Capuchin, Carolus Franciscus a Breno (Carlo Francesco da Breno, *Manuale missionariorum orientalium* [Venice: Balleoniana, 1726]; a work on conversion by "Thomas a Jesu," probably the Augustinian Tomás de Jesús; and letters from Cairo by a Jesuit missionary, B. Bernat, as published by one of the Bollandists. I have not seen any of these sources myself.

liturgy than in Western, at least from the Middle Ages on), the economic decision was taken to ordain a boy, perhaps one of the priest's own sons, to serve in the liturgy.

The pope extends his answer to the *dubia* to great length,²¹ and the entire text throws light on relations between the Roman Church and all the Oriental Churches in the 18th century. But it is the first part of his answer, where he lays out in the abstract the principles of Western canon law on the matter, which has drawn the attention of the manualists:

§19. No one is so ignorant as to be unaware of the various orders and grades of ministry in the Western Church. Those who are to be initiated with first tonsure are endowed with reason, which is presumed by the age of seven. As to the minor orders, although the sacred canons do not set a fixed age, still they are customarily conferred between the seventh and fourteenth year, provided the development of the qualities called for by Trent (session 23, chapters 5 and 11) in the one to be ordained keeps pace with his age. But the same Council lays down the law that the age of twenty-two is necessary for the subdiaconate, twenty-three for the diaconate, twenty-five for the presbyterate, and thirty for the episcopate, making a distinction between the sacred orders and the episcopate that for the former it is sufficient to have begun the year in question, but for the episcopate the thirtieth year must be complete.

§20. But if it should happen, in contempt of such wisely instituted legislation, that not only minor but also sacred orders be conferred upon an infant by a bishop who possesses lawful authority, the theologians and canonists are in agreement in their opinion that this ordination is valid but illicit, provided it is not marred by a substantial defect of matter, form, or intention on the part of the ordaining bishop. The contrary view, which has few supporters and which has never persuaded the highest tribunals and congregations, may be disregarded. Nevertheless, it is equally certain and verified that those who have been promoted by this conferral of orders are not bound by the obligation to preserve chastity nor by the other burdens imposed by the church, since each person's choice of state in life depends on his free will, and we are bound to keep our own promises to the Most High, not those of others.

§21. For the old discipline of the church has become obsolete, which subjected those promoted to the priesthood and episcopacy by coercion or force to the yoke of servitude and observance of the burdens and laws imposed upon the respective order, despite every protestation of the one ordained or promoted against the force which was used, and despite their heartfelt declaration that they refused the order they had received. Likewise, although until the twelfth century parents used to dedicate their sons while still infants by placing them in monasteries, and to hand them over to the service of God, forever barred from leaving the monastery walls, that law was abrogated by the milder decrees of Clement III, Celestine III, and the Council of Trent, since the rights of nature and free will seemed to cry out against it.

§22. However, there remain weighty theologians who have looked into the matter in greater detail. They say that infants who have been promoted to sacred orders should be carefully questioned, when they have become *sui com-*

²¹ Ibid. §§17-53, pp. 894-903 of Gasparri's edition.

pos, on whether or not they intend to remain in the order conferred upon them. If they openly consent, with firm and deliberate mind, in that case [the theologians] think they are bound by the vow of chastity; otherwise it is all right for them to pass over to secular pursuits, the power of exercising their order having been suspended.

The reader can see that the manualists have fairly extracted the bottom line from the pope's instruction, as regards a narrow question. Some of the broader pastoral concerns and principles which Pope Benedict XIV employs are lost without their context.²² But despite those pastoral concerns, the pope takes it as certain that the bishop can ordain male infants and nothing can stand in his way. Where does this certainty come from?

THE TEACHING OF ST. THOMAS AQUINAS

In the Supplementum to the *Summa theologiae*, q. 39, a. 2, Thomas considers whether boys, even those who lack the use of reason, can receive orders. This article and article 1 ("Utrum sexus femineus impediatur ordinis susceptionem") occur together in Thomas's *Comm. in libro IV Sententiarum*, dist. 25, q. 2, a. 1, q^a 1–2, where they are prefaced by the note that they concern whether anyone is impeded by defect of nature ("propter defectum naturae") in contrast to defects which are due to misfortune.²³

Three *objectiones* argue against the possibility of ordaining male infants: first, the decree of Pope Nicholas quoted by Peter Lombard in distinction 25 sets minimum ages for the various orders; second, order is more worthy than matrimony and thus requires at least as much attainment of the use of reason; third, since the act which realizes the power of orders requires the use of reason, so too must the power itself. Against these arguments Thomas cites the fact, based on a decretal of Gregory IX,²⁴ that orders are not repeated in the case when underage

²² Students of the new Code of Canon Law will no doubt note in particular the pope's strong argument for the free choice of a state in life, currently reflected in canon 219.

²³ Peter Lombard does not deal with the issue at all in the *Sentences*, but that Thomas was no innovator when he raised the question in connection with IV dist. 25 is shown by the fact that Bonaventure raises in the same place in his commentary on the *Sentences* the question about who can receive orders—whether one must be male, have the use of reason, have an intact body, and be in a free condition (Bonaventure, *Comm. in Libro IV Sententiarum*, dist. 25, a. 2, q. 1–4). Bonaventure does not distinguish between defects of nature and misfortunes; see below for a summary of his view on the ordination of male infants.

²⁴ "Ille qui est ante annos discretionis promotus ad ordines, sine iteratione ipsorum quandoque in eis conceditur ministrare, ut patet Extra, *de Clerico per saltum promotio*. Hoc autem non esset si ordinem non suscipisset. Ergo puer potest ordines suscipere." The text referred to is from the Decretals of Gregory IX, 1.5, tit. 29, c. 1, "De clerico per saltum promotio," which can be read in *Corpus Iuris Canonici*, 2nd Leipzig edition by Emil Ludwig Richter, with additional notes by Emil Friedberg, Pars Secunda: Decretalium Collectiones (Graz: Akademische Druck- und Verlagsanstalt, 1955), col. 833–34. The text, which begins "Tuae litterae," is a reply from Innocent III to the Bishop of Bologna, who has heard of a presbyter who was ordained to the presbyterate without having been ordained a deacon. The presbyter said that he had been informed by trustworthy people

boys who were ordained begin to exercise those orders, and the parallel with baptism and confirmation, which likewise impress a character and can be received by boys.

Thomas points out that children who have not reached the use of reason are barred from the sacraments which require an action of the recipient; but since powers are conferred before actions take place there is no intrinsic reason why these powers cannot be conferred as long as their immediate implementation is not required. Applying this to orders, he says that the times prescribed for worthy conferral of minor orders are neither binding nor intrinsically necessary for the sacramental sign, though they are needed *de honestate*, that is, for it to be done right. Major orders, however, require the use of reason both *de honestate* and because the law demands it, on account of the vow of continence which the recipient makes and the sacraments which are entrusted to him. Episcopal orders, since they involve pastoral care, also necessarily require the use of reason. The necessity in these cases is legal necessity (*de necessitate praecepti*), not a necessity intrinsic to the sacramental sign itself (*de necessitate sacramenti*), for Thomas dismisses the position of those who see such a necessity of the use of reason as supported "neither by reason nor by authority."

Bonaventure, in his *Commentary on the Sentences*, takes a similar position in the end, after noting that "some say that the ordained must have the use of reason, or nothing whatever happens." He cites as an authority the same decretal of Gregory IX, the practice of ordaining boys to minor orders, and the validity of early confirmation; and goes with "the other opinion of the elders that use of reason is required for the order of bishop *de necessitate sacramenti*, for the other holy orders *de necessitate praecepti*, and for minor orders *de honestate et congruitate*."²⁵

The reader's attention is called to the distinction which Thomas and Bonaventure make between *de necessitate praecepti* and *de necessitate sacramenti*. This distinction runs throughout Thomas's question 39, which is devoted to impediments to the sacrament of order, namely, being female, lacking the use of reason, being a slave, being a murderer, having been born out of wedlock, and physical defects or mutilation. None of these impediments stands in the way of ordination *de necessitate sacramenti* except not being male; all of them stand in the way *de necessitate praecepti*.

that he had been, at the same time as he had received minor orders, before he had reached the age of discretion (*infra annos discretionis*). Pope Innocent III told the bishop that the presbyter should do penance, and then be ordained deacon, "since what is not known to have happened is not understood to have been repeated (*quia non intelligitur iteratum quod factum esse nescitur*)." If this is the text to which Thomas is referring, it offers extremely slender evidence for the ordination of infants.

²⁵ Bonaventure, *Comm. in libro IV Sententiarum*, dist. 25, a. 2, q. 2, c.: "et ideo dicunt quod usus rationis requiritur in ordinato, alioquin nihil omnino fit." The text is taken from the edition by Pacificus M. Perantoni, *Bonaventure, Opera Theologica Selecta* (Quaracchi: Collegium S. Bonaventurae, 1949) 4.640-41.

To see what Thomas himself meant by the distinction, we have only to turn to the previous article (or *quaestiuncula* in the *Commentary on the Sentences*): if something required *de necessitate sacramenti* is missing, the person receives “neither the sacrament nor the reality it effects (*neque sacramentum neque rem sacramenti*).” If what is lacking is *de necessitate praecepti*, the recipient receives “the sacrament but not the reality it effects (*sacramentum, sed non rem sacramenti*).”

Why is the female sex incapable of participating in the integral sign of the sacrament of order? It is a problem of signification: “Since any loftiness of station cannot be signified in the female sex—since woman has a status of subjection—therefore she cannot receive the sacrament of order.”²⁶ This difficulty does not stand in the way of a slave, because a slave’s subjection comes not from nature but from circumstance.²⁷ In short, due to woman’s natural subjection the sign cannot convey the loftiness of station which order confers, and when the sign fails so does the reality which it effects.

When these articles are compared with the treatments of order by the manualists, it is apparent that the manualists equated *de necessitate sacramenti* with what is necessary for validity, as contrasted with licity. That is not exactly what Thomas meant by it, since he was less concerned with canonical matters than with the integrity of the sensible sign itself; but since without the integrity of that sacramental sign there literally was no sacrament for Thomas, it was reasonable for the manualists to say that what was done was not valid. Whether it is still reasonable to handle the issue in that fashion is doubtful, however, especially since the recent magisterial pronouncements on the ordination of women.

THE NEWER REASONING

Any reader who, after reading Thomas Aquinas’s argument in *Summa theologiae*, Suppl. q. 39, a. 1, reads *Inter insigniores* and *Ordinatio sacerdotalis* cannot help but be struck by their studious avoidance of Thomas’s focus on woman’s natural subjection to man and its incapacitating consequences.²⁸ The new documents pick up and amplify another old theme, the express will of Jesus Christ in choosing those whom he would associate with himself in his ministerial priesthood.

²⁶ “Cum igitur in sexu femineo non possit significari aliqua eminentia gradus, quia mulier status subiectionis habet; ideo non potest ordinis sacramentum suscipere.”

²⁷ *ST*, Suppl., q. 39, a. 3, ad 4.

²⁸ The official commentary published by the National Conference of Catholic Bishops in an appendix to the USCC translation of *Inter insigniores* makes that point explicitly, saying “that some arguments adduced on this subject in the past are scarcely defensible today. The most famous is the one summarized by Saint Thomas Aquinas: *quia mulier est in status subiectionis [sic]*” (*Declaration on the Question of the Admission of Women to the Ministerial Priesthood*, with Commentary [Washington: U.S. Catholic Conference, 1977] 22).

This motif was hardly prominent among the manualists, though not entirely neglected as a factor determining who could be a subject of ordination.²⁹ If this shift toward the express will of Jesus as the principal factor in determining capacity for ordination is applied to our case of male infants, it points to some significant conclusions.

The first is that if validity of the conferral of orders is determined by the will of Jesus Christ for his Church, then apparently in order to maintain the conclusion of Thomas and the manualists we should need to suppose that small boys (and the chronically insane) lie within the scope of Christ's will as expressed at least implicitly in Scripture. If that were the case, then it would be only the law which sets qualitative standards of age, character, and training, *de necessitate praecepti*. Can it be true that on this point canon law is the hero, saving the Church from its Savior by assuring us of leadership by those who are best qualified? This question may seem cruel and even rhetorical, but it points up a difference between Eastern and Western Christianity which is absolutely vital at a time when Rome seriously hopes to enter into communion with Orthodoxy. It is virtually impossible in an Eastern perspective to imagine such a huge gap between church law and the known will of Jesus Christ as the manuals portray on this issue, and it is unimaginable that church law and the decisions of churchmen would improve greatly on Christ's own provisions for the Church. In the scenario proposed above for the Coptic boy-deacons, the bishop would have seen his actions as relaxing the canons for the spiritual good of the faithful, in the spirit of Christ's pastoral love and without creating a binding precedent for other situations. I do not believe that many Roman Catholic leaders and thinkers fully appreciate the profound implications of the difference between East and West on matters of sacramental validity, but failure to do so could undermine further progress toward the reestablishment of communion.

Second, if Christ's express will is the basis on which the conditions for validity of ordination must be established, why should we continue to say that ordination conferred upon male infants is valid? Nothing in the Gospels or the tradition of the early centuries suggests that anyone ever thought Jesus intended to entrust a special participation in his priestly functions to infants. Someone might object, on the basis of the first *sed contra* argument in *Summa theologiae*, Suppl. q. 39, a. 2, that if orders conferred on infants were not valid, it would imperil the spiritual well-being of people who relied on the validity of the later ministry of these boys. But first, we should emulate the skepticism of Pope Benedict XIV, who wondered how many cases there really could

²⁹ It is mentioned summarily by Noldin ("Constat ex institutione Christi, qui solis viris ordines conferri voluit," citing CIC 1917, can. 968, 1) and at greater length by Diekamp ("Christus nulli feminae, ne matri quidem suae sanctissimae, potestatem sacramenta perficiendi tradidit"). Otherwise the express will of Christ does not enter into these manualists' discussion of why women cannot be ordained.

be of convert Coptic boy-deacons who needed dispensations to enter first or second marriages;³⁰ was this a big problem? Second, if the tradition was wrong to consider such ordinations valid and should have ordained those boys in adulthood if they went on to be priests, those who relied on the ministry of such priests in good faith and in an ignorance shared by their legitimate pastors will surely not suffer harm. Third, such a change in the conditions for validity need not be retroactive.

That leads us to a final conclusion, the need to revise the *Codex Iuris Canonici*, canon 1024, which at the moment reads simply, "Only a baptized male receives sacred ordination validly."³¹ It cannot be objected that church law can affect only issues of liceity, of what is *de necessitate praecepti*. In the case of matrimony, the Council of Trent in its decree "Tametsi" changed the conditions for validity on precisely the point at issue here, rendering candidates for matrimony unable to marry unless certain legal requirements were met.³² That same principle could be used in the case of ordination, by setting as a condition for validity of the sacrament that the candidate must be certified as qualified for orders by the ordinary or major superior. Qualification for orders could even be defined, if desired, perhaps through using the admirable criteria spelled out in canon 1029: "Sound faith . . . upright intention . . . the requisite learning . . . a good reputation . . . sound morals and tested virtues, and other fitting qualities of body and soul."³³ There is, in short, much to recommend and nothing to prevent the Church from ceasing to claim, even in the most abstract and theoretical way, that it has the power to ordain male infants.

³⁰ At the end of *Eo quamvis tempore*, in §53, he seeks further information from the missionaries, including the question, "An Diaconi Ritus Cophti attingant hodie eximum illum numerum, qui a Scriptoribus praefertur."

³¹ *Sacram ordinationem valide recipit solus vir baptizatus.*

³² Council of Trent, Session XXIV, November 11, 1563: "Qui aliter, quam praesente parochi vel alio sacerdote, de ipsius parochi vel ordinarii licentia, et duobus vel tribus testibus matrimonium contrahere attentabunt: eos sancta synodus ad sic contrahendum omnino inhabiles reddit, et huiusmodi contractus irritos et nullos esse decernit, prout eos praesenti decreto irritos facit et annullat" (*Conciliorum Oecumenicorum Decreta*, ed. G. Alberigo [Basel: Herder, 1962] 732).

³³ The full Latin text of the canon reads: "Ad ordines ii soli promoveantur qui, prudenti iudicio Episcopi proprii aut Superioris maioris competentis, omnibus perpensis, integram habent fidem, recta moventur intentione, debita pollent scientia, bona gaudent existimatione, integris moribus probatisque virtutibus atque aliis qualitibus physicis et psychicis ordini recipiendo congruentibus sunt praediti."