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The papacy: A canonical problem

Richard McBrien | Nov. 2, 2009 Essays in Theology

Over nine years ago one of the Catholic church's finest canon lawyers, Fr. James Provost, a professor at The Catholic University of America, published an exceedingly important article in *America* magazine, "What If the Pope Became Disabled?" (7/30/00).

He had pointed out that the Catholic church's Code of Canon Law makes no provision for the situation in which a pope becomes completely disabled, by lapsing into a coma, for example. The concern had become progressively acute as then-Pope John Paul II began to manifest signs of severe physical frailty.

Provost died a month later at the age of 60. Unfortunately, his urgent words of advice in that article have still not been acted upon.

John Paul II died before the problem became full-blown, but the current pope, Benedict XVI, is over 82, although in relatively good health. But there is still no canonical provision to deal with the kind of situation that worried Provost and many others in the Catholic church.

I did a column on the subject just two months after Provost's death, pointing out that of all the questions the media usually posed about John Paul II's legacy, there was never any expressed concern about the pope's "inexplicable failure to provide for his own succession (and for that of any other pope) in the case of physical and/or mental incapacity."

"In this new age of advanced medical technology," the column continued, "it is a fact that people can be kept alive long past the time when they can function in any meaningfully human manner."

At the time, former President Ronald Reagan, who had left office in January 1989, was in the advanced stages of Alzheimer's disease. One could only have imagined the chaos that would have ensued within the U. S. Government and the world community generally if Reagan had still been president and there were no constitutional provisions, such as now exist in the 25th Amendment, for the legal transfer of authority.

But that is the very risk to which the Catholic church continues to be exposed today. Provost had referred to this glaring canonical deficiency as a "serious vacuum in the church's constitutional law."

Most recently, Jesuit Fr. Peter Schineller, associate editor of *America*, raised this question once again in an article entitled, "Power Vacuum? Canon law and the continuity of papal leadership" (10/12/09).

Schineller put forward the kinds of questions that few people want to talk about openly, particularly those close to the pope. What if the pope were to fall and "sustain brain damage, fall into a comatose state, suffer from advanced Alzheimer's or otherwise become enfeebled or impeded ? ?"

Schineller noted that it would be possible for the pope to remain comatose "for years." In that case, no new dioceses could be created and no bishops appointed. In other words, much of the work of the church would

grind to a halt.

"The shocking fact," Schineller observed, "is that currently there are no provisions in canon law to cover such exigencies, no way to replace the pope if he is impeded while living."

The present Code of Canon Law declares that in such a situation "nothing is to be innovated in the governance of the universal church; however, special laws enacted for these circumstances are to be observed" (canon 335).

The problem is that such special laws have neither been enacted nor promulgated. The situation today under the 82-year-old Benedict XVI is exactly the same as it was under his predecessor, John Paul II, who died in April 2005 at age 84, after several years of obviously deteriorating health

"Many hope," Schineller continued, "that Pope Benedict has prepared written instructions on what to do were he ever to become incompetent (instructions that also include advance medical directives). But it is not known for certain that he has done so."

And even if he has, there might still be unresolved canonical questions that would be subject to varied interpretations.

Schineller acknowledged in his own article that *America* had raised similar concerns in previous years, and cited Provost's article in particular.

However, he did not leave his readers without a suggestion, drawn from the experience of his own Jesuit Order. Should a superior general become incapacitated, four general assistants are elected and it devolves upon them to determine if a replacement is in order.

If so, a general congregation is called by the temporary vicar general, and a new head of the Order is elected.

There are surely other possible remedies, but some canonical solution is called for -- the sooner, the better.

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