

## Can an SSPX Priest Validly Hear Confessions?

Catholic apologist, John Salza, Esq., has formulated what might be considered a new wrinkle in the ongoing debate regarding the status of the SSPX. In this salvo between himself and James Akin of *Catholic Answers*, John shows from an in depth analysis of Canon Law how it might be possible for SSPX priests to hear confessions validly, at least until a specific and definitive judgment is made by the Holy See.

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**Anonymous:** John, I was researching the issue of whether or not the priests of the SSPX can hear confessions and found this write-up on Jimmy Akin's blog. Mr. Akin concludes that the SSPX priests do not have jurisdiction to hear confessions. Do you agree? Could you please comment on Mr. Akin's analysis?

**J. Salza:** Sure. Please be advised that I am providing you my opinions only. My opinions are subject to the judgment of the Roman Catholic Church, who alone has the authority to resolve with finality this very difficult issue. The question of jurisdiction of SSPX priests (which refers to the right to exercise their ministry) is a very important one affecting many souls. I pray that the Church will definitively resolve this issue for the good of these souls, if her canon law has not already done so.

**J. Akin:** The limits of the principle of *ecclesia supplet* ("the Church supplies") are spelled out in the Code of Canon Law as follows:

Can. 144

§1. In factual or legal common error and in positive and probable doubt of law or of fact, the Church supplies executive power of governance for both the external and internal forum.

§2. The same norm is applied to the faculties mentioned in cann. 882, 883, 966, and 1111, §1.

The immediately relevant part of this canon to the situation of confessions is §2, which applies the principles of §1 to the faculties for hearing confessions mentioned in Canon 966. In order for

those faculties to be supplied, the conditions mentioned in §1 must be satisfied (mutatis mutandis for the fact we are talking about sacramental faculties rather than the power of governance).

Per §1 (via §2), one of two situations must exist for the Church to supply the missing faculties in a particular case. Either:

1. There is a factual or legal common error regarding whether the faculties exist, or
2. There is a positive and probable doubt of law or of fact regarding whether the faculties exist.

**J. Salza:** I agree. But let's define some terms. First, let's deal with the first prong of Canon 144. "Common" refers to a community of believers. It is generally defined as a group of reasonable persons (i.e., average Catholics). "Error" refers to a mistake which, here, means an erroneous belief. So the question is whether a group of reasonable persons would erroneously believe that an SSPX priest had ordinary jurisdiction based on law or fact.

Now, let's deal with the second prong of Canon 144. "Doubt" is a state in which the mind is not able to make a decision between contradictory conclusions. The doubt is "positive" when there are probable reasons for one or both decisions. The doubt is "probable" when there is strength to the foundation for the decision. Let's keep these terms in mind as we proceed with our analysis.

**J. Akin:** In the case of whether an SSPX priest has faculties, there is no question of law but only a question of fact: Does the priest have faculties from the competent authority to hear the confessions of the faithful in the local area?

**J. Salza:** I agree that this is a question of factual common error and not legal common error, but disagree with the way in which Mr. Akin has framed the question.

In determining factual common error, the proper question is not whether the priest has faculties, but whether a group of reasonable persons would erroneously believe that an SSPX priest has faculties based on the facts. What facts would lead a group of reasonable persons to believe an SSPX priest has faculties? If they saw the priest celebrating Mass in a Catholic chapel, which publicly advertised its Mass times, and where hundreds of people regularly gathered on Sundays for Mass. It seems to me that a group of reasonable persons (average Catholics) who witnessed

these facts could erroneously believe that the SSPX priest had faculties. Moreover, it is not necessary that the people actually believe the priest has faculties; only that a group of reasonable persons could be induced to believe he had faculties.

As an aside, if we were addressing legal common error (which we are not), the question would really be whether a group of reasonable persons would erroneously believe an SSPX priest had faculties based on the law. The answer would be “No” because, as Mr. Akin correctly points out, Canon 969 gives the local ordinary alone the competency to confer faculties, and SSPX priests have not been granted faculties by their local ordinaries.

**J. Akin:** The only authority competent to grant the faculty of hearing the confessions of the faithful in the local area is a local ordinary:

Can. 969

§1. The local ordinary alone is competent to confer upon any presbyters whatsoever the faculty to hear the confessions of any of the faithful.

The diocesan bishop is one such ordinary, though a given diocese may have additional ordinaries capable of granting faculties.

**J. Salza:** I agree.

**J. Akin:** This focuses the question as follows: Is there (a) a common error or (b) a positive and probable doubt as to whether a local ordinary of the diocese has granted an SSPX priest the faculty of hearing the confessions of the faithful? A common error is a term of art referring to an error affecting a certain community whereby a reasonable and prudent person would give his assent to the error (see the green CLSA commentary on Can. 144 for further elaboration on this point).

**J. Salza:** Yes, we have already defined these terms. Mr. Akin is referring to pages 193-194 of the CLSA.

**J. Akin:** Even though the people attending an SSPX chapel form a community capable of having a common error, it does not appear that a common error exists on this point since it is implausible

on its face that a local ordinary in communion with the pope would grant faculties to an SSPX priest. This means that a reasonable and prudent person would not give his assent to the idea that the local ordinary has done so, and thus there does not appear to be a common error.

**J. Salza:** I have to disagree with this analysis. Mr. Akin says that an SSPX community is “capable of having a common error,” and then says that common error does not appear to exist. The fact that a community is capable of common error is precisely what triggers supplied jurisdiction. If a fact could induce Catholics to believe that a priest has faculties, the Church supplies jurisdiction under Canon 144 on the grounds of factual common error. Would a community of average Catholics be induced to believe that a priest has faculties if they saw that priest celebrating Mass and hearing confessions in a Catholic chapel? Particularly when the chapel is in the public square, advertises its Mass times, has hundreds of congregants and all the other indicia of a Catholic parish? (Remember, the community doesn’t have to actually believe it; only that they could be induced to believe it.) I believe the answer to this question is “Yes.” This is why the community of believers is “capable of having a common error.”

It is not much different than seeing a priest sitting in a chair on a remote beach vested with a stole and hearing confessions. A community of reasonable persons could be induced to believe that this priest has faculties. Of course, the Church supplies faculties only for cases where the person acting would have been capable of exercising the power (he must be a priest). Thus, if this same community of believers saw a teenage boy or a woman attempting to hear confessions, the Church would not supply faculties no matter what the community believed. Moreover, in such an outrageous case, a community of reasonable persons could not believe that the boy or woman had faculties in the first place, and thus there is no factual common error.

**J. Akin:** Is there a positive and probable doubt as to this question? It does not appear so. A doubt is a situation in which a person cannot make a decision between contradictory conclusions. In this case the doubt would involve a person being unable to make a decision about whether the local ordinary has granted the priest faculties.

**J. Salza:** I have to disagree with this analysis as well. Mr. Akin erroneously limits the doubt to whether a person is “unable to make a decision about whether the local ordinary has granted the priest faculties.” Canon 144 says the Church supplies faculties “in positive and probable doubt of law or fact.” We have already seen that there are arguments for factual common error. There may

also be doubt as to whether there is factual common error. Thus, there may be “doubt of law,” namely, the application of Canon 144’s factual common error exception to SSPX priests. The only question is whether this doubt is positive and probable.

**J. Akin:** For the faculties to be supplied via *ecclesia supplet*, the doubt would have to be positive and probable. A positive doubt is one in which there are arguments both for and against the idea in question. It does not appear, apart from very bizarre circumstances, that there would be any arguments supporting the idea that the local ordinary has supplied faculties to an SSPX priest, meaning that any such doubt on the part of the faithful would not be positive. Given the massive improbability of the local ordinary doing so, it does not appear that it would be a probable doubt, either. Thus in the absence of a doubt that is both positive and probable, and in the absence of a common error, the principle of *ecclesia supplet* would not be engaged and the Church would not supply the faculties to an SSPX priest.

**J. Salza:** Again, we are not limited to Mr. Akin’s question of whether “the local ordinary has supplied faculties to an SSPX priest.” There are no reasonable arguments supporting that conclusion. The question, rather, is whether there is “positive and probable doubt of law,” namely, the application of the law recognizing factual common error, for *ecclesia supplet* to be triggered. As applied here, there are arguments supporting the idea that a community of reasonable persons (average Catholics) would believe an SSPX priest had faculties, leading to factual common error. There may also be arguments supporting the idea that a community of reasonable persons (well-informed Catholics?) would not believe an SSPX priest had faculties so that there is no factual common error (however, it seems that these arguments would not be as strong since it is not what the community actually believes, but only what a community of reasonable persons would be induced to believe).

Thus, there is “positive doubt” concerning whether the law of factual common error applies to SSPX priests (“doubt of law” can deal with the law’s meaning, application, existence, extension, force or cessation). The doubt also appears to be probable because there are strong arguments in favor of the conclusion that a community of reasonable persons (average Catholics) could be induced to believe a priest celebrating Mass in an SSPX chapel has faculties. Thus, it seems to me that there is “positive and probable doubt of law” which leads the Church to supply jurisdiction to SSPX priests to hear confessions. This is consistent with the Church’s supreme law: The salvation of souls.

In summary, if a fact could induce Catholics to believe that a priest has faculties, the Church supplies jurisdiction under Canon 144 on the grounds of factual common error (first prong). If a positive and probable doubt exists as to the application of this law (of factual common error), the Church still supplies jurisdiction under Canon 144 (second prong). In my opinion, SSPX priests meet both the first and second prong, or, at least the second prong of Canon 144. This is sufficient for *ecclesia supplet* to apply.

**J. Akin:** There is also a further problem with the idea that the Church might supply faculties: namely, that the Church supplies missing faculties to its own ministers and not to priests in a state of schism. Thus it does not supply faculties to Eastern Orthodox priests. Those priests, never having been baptized or received into the Latin Church, are not subject to the Latin Church's canon law (Can. 11) and thus not required to have faculties per Can. 966. SSPX priests, however, typically have been baptized or received into the Latin Church and thus are required to have faculties per Can. 966.

**J. Salza:** Mr. Akin assumes SSPX priests are in “schism,” but the Magisterium has made no such declaration. Pope John Paul II declared that Archbishop Lefebvre performed a schismatic act by consecrating bishops without papal mandate, but did not declare all of the priests of the SSPX to be in schism. The actions of a superior are not imputed to the members of his religious order, either theologically or canonically. John Paul II’s *Ecclesia Dei* commission has also stated that Catholics can fulfill their Sunday obligation at Masses offered by SSPX priests. That SSPX priests are not in schism has been repeatedly affirmed on at least five separate occasions by Cardinal Castrillon Hoyos in public interviews. If SSPX priests were in schism, the Church would not allow Catholics to frequent their chapels since they would be allowing Catholics to worship outside of the Church. That SSPX priests are “suspended” further demonstrates that they are not in schism, since schismatics cannot be subject to canonical suspension because they are outside the Church and not subject to the Church’s canon law.

Further, Canon 1335 provides that where a *latae sententiae* censure has not been declared, the prohibition on celebrating the sacraments is suspended whenever a member of the faithful requests a sacrament or sacramental or an act of governance “for any just cause.” As applied here, John Paul II did not declare a *latae sententiae* excommunication against SSPX priests. Thus, assuming SSPX priests are suspended, they are nevertheless allowed to celebrate the sacraments

licitly if a member of the faithful so requests for any just cause. A desire to attend the Traditional Mass, which right was secured by Pope Saint Pius V and recognized by Pope John Paul II, is certainly a just cause. Sound, spiritual direction in the confessional for the welfare of one's soul is also a just cause. The salvation of souls is the supreme law of the Church.

Further, Canon 844, sec. 2 provides that the Christian faithful can even approach non-Catholic ministers for Penance, the Eucharist and Anointing of the Sick in whose churches these sacraments are valid if it is physically or morally impossible to approach a Catholic minister for the sacraments. If SSPX priests were really not Catholics (which is not true), Catholics could still approach them for the sacraments if it were physically or morally impossible to approach a Catholic priest. Unfortunately, in many Novus Ordo parishes, Catholics in good conscience believe that it is morally impossible to approach their priests for the sacraments, due to their questionable intentions in celebrating the sacraments (e.g., whether they intend to offer the Sacrifice; because they deny mortal sin, etc.), grave disregard for liturgical rubrics, abuses of the Eucharist, modernist theology, immodest dress, and anything else that endangers their souls and the souls of their children. The faithful have a right to be certain of the doctrine and the sacraments that they receive.

Further, it makes no sense to me that a Catholic can receive the sacraments from a non-Catholic minister but not from a Catholic (SSPX) priest. Canon 844 demonstrates that the Church wants the faithful to have the broadest access possible to the sacraments of Jesus Christ. Why? Because the supreme law of the Church is the salvation of souls. SSPX priests do what they do for that very reason.

We must also remember that canon law is not the only law of the Church that applies to situations like this. There are traditional, ecclesiastical and hierarchical laws, and even the general principles of law (virtue of equity, *epikeia*), that are fundamental and divine, even if not written down (see canon 19). All these laws are ordered to the supreme law: *salus animarum suprema lex*. Man has an obligation to save his soul, and thus has a right to receive the means of salvation. While the law of receiving jurisdiction from the hierarchy is a divine law, it is subordinated to the superior law of exercising the priestly ministry. When there is a conflict, the superior law must prevail over the inferior law, which is why *ecclesia supplet* exists. A man's right to receive the means of salvation should never be limited by positive law, for in such cases, "the letter killeth"

(2 Cor 3:6). This is why the Church can fulfill what the hierarchy does not do through supplied jurisdiction. Mother Church does not abandon her children, even when the hierarchy does.

Finally, I don't understand how the Church would recognize the validity of SSPX Masses but not confessions. The sacrament of confession is integrally linked to the sacrament of the Eucharist. You need one (confession) to generally receive the other (the Eucharist). I believe the Church's law on *ecclesia supplet* resolves the question. Nevertheless, let us pray for a definitive judgment from the Church on this matter.

**J. Akin:** They ain't got 'em.

Thus it is going to be hard to build a case for *ecclesia supplet* validating the confessions heard by SSPX priests.

**J. Salza:** As I have demonstrated, it is not hard to build a case for *ecclesia supplet* under the Church's divine and canon laws. That the Church allows Catholics to fulfill their Sunday obligation at SSPX chapels is also favorable to the position of supplied jurisdiction. I don't believe we can be as definitive as Mr. Akin is against supplied jurisdiction, especially since Rome has not definitively resolved it. The question is too complicated and many souls are affected. Based on the foregoing, in my opinion, the law favors supplied jurisdiction for SSPX priests.