

# RESIGNATION AS A JURIDIC ACT: THE QUESTION OF UNJUSTLY INFLICTED GRAVE FEAR IN CANON 188 CIC

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## **Abstract**

*Every office holder in the Church has rights which are well protected by the Code of Canon Law. In protecting the right of a person, the Church also protects the common good of the Church by ensuring equity in ecclesiastical governance. This paper sought to analyse the validity of resignation as a juridical act vis-à-vis grave fear, highlighting a point that a juridical act is only valid when it is performed with freedom and consciousness. However, the deficiency of the required freedom and consciousness is dependent on the degree to which grave fear is inflicted. The paper, thus, argued that a resignation from office could result from grave fear but the fear must never be unjust if the resignation is to be valid. But how do we determine whether grave fear is just or unjust? With a delineation of two main modes of unjust fear, quoad substantiam and quoad modum, we undertook a study of Can. 188 CIC by which we note that a threat that inflicts grave fear is just provided that it is inflicted for the exercise of a right or an obligation; to attain a just end, the salvation of souls.*

## **INTRODUCTION**

Resignation from ecclesiastical office is, without doubt, a juridical act. The Church itself is a juridical entity and acts which are placed within it have juridical consequences. The recent Code of the Canon Law of the Latin Church presents the canonical doctrine of juridical acts in a manner that is quite systematic. It places it in Book I of the

Code as a general norm for the entire Code so that it could be applied in understanding juridical conditions of persons in the Church, it could be applied in interpreting the validity of the sacraments when celebrated and, in our context, it could be applied to loss of ecclesiastical offices. The focus of this paper is on resignation from ecclesiastical office. It seeks to analyse the validity of resignation as a juridical act vis-à-vis grave fear. In other words, if a person resigns an office as a result of grave fear, is there a way in which the resignation could be said to be invalid, given that juridical acts which are placed as a result of grave fear are generally conceived in law to be valid rescindable? The rights and obligations of the Christian faithful is at stake here and, faithful to ecclesiastical communion as proposed by the Second Vatican Council, the Code highlights them sufficiently in Canons 208-231, bearing in mind the fundamental equality of *christifideles*<sup>1</sup> as seen in Canon 204. The paper attempted a concise analysis the concept of juridical act as found in Canon 124 indicating the element of grave fear as one of its defects. It, then, explored the canonical notion of resignation from ecclesiastical office highlighting its nature as a juridical act. The fundamental part of this paper is a canonical evaluation of how the element of grave fear can vitiate resignation from office. It argued that grave fear can be either just or unjust. It is just when it is aimed at the common good of the Church. Using Canon 1742 § 1 as an example, it concluded by holding that grave fear does not vitiate resignation from office when it is justly inflicted.

#### **JURIDICAL ACTS AND THE DEFECT OF GRAVE FEAR**

*Omnes de finitiones periculo sussunt*, says the Latin maxim. Precisely for this the Code does not define juridical acts. According to Thierault, it is difficult to define juridical acts in Canon Law but it is not impossible.<sup>2</sup> Thus some authors only provide descriptions<sup>3</sup> while others attempt a definition.<sup>4</sup>

#### **Juridical Act and Juridical Facts: A Distinction**

Juridical acts are different from other acts. Juridical acts are commonly distinguished from juridical facts as both could be easily misconstrued. A juridical fact is that which has a juridical

consequence; the law ascribes juridical effects to it such that questions of right and obligation may arise *ad normam legis*. However, juridical facts only serve as sources of rights and obligations they are not rights and obligations in themselves neither do they serve as an exercise of rights and obligations.<sup>5</sup> On the other hand, there are certain facts that are not beyond the will and choice of the subject or person.<sup>6</sup> These are made voluntarily according to the norms of the law. They are called juridical acts. Juridical acts are those acts that are performed with personal freedom and with a free intention to produce a juridical effect. In this sense, while the law itself is the source of juridical facts, the source of juridical acts is the human will; take away the human will and its acts lack juridical effects, it lacks validity as a human act. Thierault puts it clearly: “*actus humanus socialis legitime positus et declaratus, cui a lege ideo et eatenus effectus iuridicus determinatus agnoscitur, quia et quatenus effectu sille ab agente intenditur*”.<sup>7</sup>

Thus, a juridical act is an act of will externally manifested with certain juridical effect in view. The human person is central here as a subject of rights and obligations. The effects of such a freely placed act are recognized by the law because the law also recognizes the private autonomy of the human person.<sup>8</sup> For this same reason, a juridical act must be a human act as different from an act of man. An act of man does spring from the will of the person; it is mechanical, involuntary and reflexive. Some of these reflexive acts can be conscious but they transcend the control of man's will<sup>9</sup>. On the other hand, a human act is an act of man placed consciously and voluntarily<sup>10</sup>, *per rationem et voluntatem*. It is a deliberate and responsible act. If there is an absence of sufficient knowledge/ consciousness and a determined will an act cannot be said to be a human act.

Juridical act is also relational; it is *social*. It must relate with an external element. Thus a mere desire is not enough to place an act. A good example is marriage; it is not enough to desire to marry a person it must be freely expressed in a matrimonial consent by a person who is capable by law. It must also be legitimate, *positus ad normam iuris*, following the stipulations of law.<sup>11</sup>

**Validity of a Juridical Act in Canon 124 § 1**

Having described what a juridical act is, let us now take a look at the elements that make it valid. As noted above, Canon 124 § 1 only describes a juridical act and its validity: *Ad validitatem actus iuridici requiritur ut a persona habili sit positus, atque in eodem adsint quae actum ipsum essentialiter constituunt, nec non sollemnia et requisite iure ad validitatem actus imposita.*<sup>12</sup> The law thus proposes certain elements for a valid juridical act giving rise to an important distinction between a valid act, an invalid act and a non-existent act.

A juridical act is said to be valid when it is efficacious; that is, it produces a juridical effect when it is placed by a legally qualified person with a capacity to act. The law says that only a validly ordained priest (male) can validly celebrate the Mass. If a female Religious celebrates the Mass she is not qualified (un-ordained) and so lacks the capacity to act. Such Mass is invalid and non-existent because it lacks the essential and constitutive element of a valid priestly ordination reserved only for *viret baptisatus* (cf. Can. 1024)<sup>13</sup>. A juridical act is said to be null when the constitutive element is there but the procedures and formalities requested by law are absent.

## RESIGNATION FROM ECCLESIASTICAL OFFICE: A CONSIDERATION OF CANON 188 CIC

**Notion of Resignation from Ecclesiastical Office**

Chiappetta describes resignation from office as the cessation of office in a voluntary and free way<sup>14</sup> except when it is recommended by the law.<sup>15</sup> Here, also, the Code does not define resignation. For Garcia Martin, resignation is the free cessation or legitimate removal from an ecclesiastical office made by a competent authority and accepted by the same<sup>16</sup>. His presentation of resignation is very interesting to us here because, as we shall see later, resignation from office can also be done by legitimate removal. However, the decretalist Godefridus (de Trano) gives a famous description of resignation: *renunciatio est propria et iuris spontanea refutatio.*

According to Wiecek, this definition offers us two elements of resignation from ecclesiastical office; the object and the will.<sup>17</sup> The object of resignation is connected to the ecclesiastical office

*adnormam* can. 145 § 1 CIC understood as “any post which by divine or ecclesiastical disposition is established in a stable manner to further a spiritual purpose.” For example, the office of a parish priest is created *ipso iure* when a parish is created.<sup>18</sup> The object of the office is the parish while the subject of the office is the incumbent parish priest. In other words, the object of resignation is every office stably constituted for the spiritual good of the faithful while the subject is the holder of the office who resigns.

Let us now attempt an exegesis of Canon 188 CIC on resignation from ecclesiastical office bearing in mind that the Code recognizes the right of every office holder to freely, voluntarily and consciously resign from their office for a just cause *ex can.* 187 CIC. The wordings of Canon 188 CIC are highlighted below.

Canon 188 CIC (Latin)	Canon 188 CIC (English)
Renuntiatio ex metu gravi, iniuste incusso, dolo vel errore substantiali aut simoniace facta, ipso iure irrita est.	A resignation which is made as a result of grave fear unjustly inflicted, or of deceit, or of substantial error, or of simony, is invalid by virtue of the law itself.

We have already said that resignation is a juridical act. This implies that it is regulated by the general norms on juridical act found in Canons 124-128 CIC. Having said that, it is important to bear in mind that Can. 125 § 2 CIC says that a juridical act placed out of grave fear is *not invalid* but Canon 188 says that a resignation that is a result of grave fear is *invalid* by virtue of the law itself. How can this divergence be explained canonically?

The eminent canonist, Chiappetta explains that the will<sup>19</sup> of the office holder is very important; he must be free and responsible for his act of resignation with a capacity to will<sup>20</sup>. Grave fear affects the will of the person and inhibits his ability to freely and deliberately place an act as serious as resignation from office.

Also, based on Canon 125 § 2 CIC, an act of resignation would be valid but become rescindable; that is it can be challenged.

Canon 188 CIC does not speak of force inflicted externally because such act would be absolutely null, in existent. It rather speaks of moral force which acts within the person; it touches on the person's state of mind in the form of psychological pressure or grave threat which results in apprehension thereby pushing the person to do something they would ordinarily not do, as the only available means to free themselves from the threat.<sup>21</sup> Ancient Roman law defines this kind of fear, *metus* as trepidation of the mind caused by instant or future danger.<sup>22</sup> Placed side-by-side, therefore, it can be seen that Can. 188 CIC makes exception to Can. 125 § 2 CIC. It is, however, an exception which is in conformity with the *ipsissimaverba* of Can. 125 § 2 CIC: “unless the law itself provides otherwise.” Thus Can. 188 CIC is a fantastic example of a case where the law provides otherwise.<sup>23</sup>

Furthermore, the will or voluntariness must be manifested and remain in existence at the moment of the act of resignation. So if a gun is put to his head, coercing him to resign his office as Parish priest, if he writes the letter and signs it while the gun is still placed to his head, his resignation is invalid.

Thus, based on Can. 124 § 1 CIC and Canons 187 CIC and 188 CIC as analysed above, we can say that the requisite elements for a valid resignation include:

1. It must be according to the norm of law, *ad normam iuris*. For example where the law says the resignation must be accepted by the competent authority<sup>24</sup>
2. It must be based on a deliberate will on the part of the subject who resigns, he/she must be responsible for the act
3. The will to resign must be freely manifested
4. It must be for a just cause. The crux of this paper is a canonical evaluation of the concept of *just cause* in relation to resignation from office.

### **JUST CAUSE AND VALIDITY OF RESIGNATION**

At this point, it is imperative to note that Canon 188 CIC falls within the scope of loss of ecclesiastical offices. It would be noted also that resignation can also come about through legitimate removal as found in Can. 1742 § 1 CIC for example. It suffices to add that removal from

ecclesiastical office (cf. Can. 192) is not a penal act as in deprivation of office (cf. Can. 196); it is never for punishment. It is a pastoral and disciplinary act of a competent authority, aimed at the salvation of souls. It is different from transfer (Cf. Can.190). Canons 192-195 CIC and Canon 1740 CIC provide for canonical procedures for removal from ecclesiastical office.<sup>25</sup>

Our focus is on just cause. In what way can it be said that the cause or reason for resignation is just? If Canon 188 CIC says that the grave fear which leads a person to resign must be justly inflicted for the resignation to be valid, how does one measure or determine a justly inflicted grave fear? In fact, the process of removal of a parish priest by resignation, stipulated by Canon 1742 § 1 CIC, states that the bishop must “persuade him in a fatherly manner to resign his parish within fifteen days.” This paternal persuasion is required *ad validitatem*<sup>26</sup>. Should this persuasion include some modes perceived by the parish priest to be threats or unjustly inflicted grave fear, would we say the resignation is invalid, if the parish priest resigns? What if the persuasion includes some threat, can there be a form of just threat that does not diminish the sufficiency of personal freedom?

We say that a cause is just when the act is voluntary and is based on a specific and known cause or *ratio* and it is determined by the competent authority according to canonical norms<sup>27</sup>. A just cause could be those subjective elements such as the necessity and exigencies of the office holder and his peculiar subjective conditions<sup>28</sup> like sickness or ineptitude. It could also be objective such as those elements that concern the office itself, the needs of the Church, the salvation of souls or other external elements which do not depend on the office holder<sup>29</sup>. In addition, a just cause can also be the right to defend oneself, which has been well defended by Rotal jurisprudence,<sup>30</sup> and to protect one's good fame (cf. Cann. 220; 1745, n. 1). We also see just cause in the law giving the office holder time to decide<sup>31</sup> such that the resignation remains the free choice of the office holder.

There are two ways of assessing an unjust cause. The first is *quoadsubstantiam*. That is the threatened evil touches on the right of the person, the passive subject in an unjust way. The second is *quoadmodum* which is a type of unjust cause that takes place when

the threatened evil touches on the concrete circumstances in which the threat is made. Using these modes to determine a just and unjust cause, we may then re-evaluate the resignation process with Can.

1742 § 1 CIC as an example. A bishop, having followed the canonical process stipulated by the Code, can tell a parish priest to write a letter of resignation from office within fifteen days or face being removed. If the diocesan bishop accompanies this with a threat that violates the rights of the parish priest, the threatened fear is just all the same because it is just substantially related to the office which needs to be vacated and because it is within norms of the law *ex Can. 1742 § 1* but the manner (mode) of ensuring the resignation or placing the threat could be unjust.

Thus the canonical doctrine in Can. 188 CIC is that for a resignation to be free, valid and just, it must not be the result of an unjustly inflicted grave fear except such grave fear can be justified by the fact that the threatened evil is for a good cause. This view is well supported by a number of eminent canonists.<sup>32</sup> It can be seen, therefore, that resignation as a result of grave fear could be just if the threat is carried out in the exercise of right and obligation. The bishop who asks a parish priest to resign or be removed *ex Can. 1742 § 1* is exercising his right and duty as bishop of the diocese who exercises a power of jurisdiction and governance. The threat is also just because the removal is aimed at a just end which is the good of the faithful, *salus animarum*.

## CONCLUSION

We have, so far, analyzed the canonical concept of resignation keeping in mind that every ecclesiastical office has a spiritual finality. Our analysis of Canon 188 CIC was embarked upon with a justification of the fact that resignation is a juridical act; it is a human act that must be deliberately and freely placed for it to be valid. A further credence is the grounds that the norms which regulate cessation or loss of ecclesiastical offices are meant to protect the right of the office holder and to preserve the dignity of the office itself. Hinged on this, we hold that a resignation from office could result from grave fear but the fear must never be unjust if the resignation is to be valid. The fundamental question was then raised: *when is grave*

*fear unjust?* Our undertaking of the study of Can. 188 CIC, in relation to Can. 1742 § 1 CIC, revealed that a threat that inflicts grave fear is just provided that it is inflicted for the exercise of a right or an obligation: to attain a just end, the good of the Church and the salvation of souls.

### ENDNOTES

- 1 Cf. *Christus Dominus* on the pastoral office of bishops; *Sacrosanctum Concilium* on the Sacred Liturgy: A. Flannery (ed.), *Vatican II: Conciliar and Post-Conciliar Documents* (New York: Costello Publication Co., 1992).
- 2 M. Thierault, "Juridical Acts", *Exegetical Commentary on the Code of Canon Law prepared under the responsibility of the Martin de Azpilicueta Institute* (Pamplona: Faculty of Canon Law, University of Navarra), p. 797.
- 3 V. De Paolis, "L'atto giuridico", *Atto giuridico nel diritto canonico: Studi Giuridici LIX*, (Vatican City: Libreria Editrice Vaticana, 2002), pp. 23-42.
- 4 P.J. Pinto, *Commento al Codice di Diritto Canonico*, (Rome: Urbaniana University Press, 1985), p. 74; M. Hughes, "A New Title in the Code: On Juridical Acts", *Studia Canonica* 14 (1980), pp. 396-397.
- 5 For instance, age is a juridical fact. By it a person can claim access to certain rights such as marriage (14/16 years) or priestly ordination (25 years). But it does not depend on the will of the person, the subject. You do not choose when and where to be born and your being born in a certain place and at a given time has inevitable juridical effects independent of your choice and whim.
- 6 Canon Law also attempts a response to the philosophical question, *what is man?* Who is a human being? who is a person in law? See J.T. McHugh, "What is the Difference between a "Person" and a "Human Being" within the Law", *The Review of Politics* 54 (1992) 3, pp. 445-461; C. Paternak, *What makes us Human* (England: Oxford, 2007). See also Canon 96 CIC.
- 7 M. Thierault, "Juridical Acts", *Exegetical Commentary on the Code of Canon Law*, p. 797: "a social human act placed and declared in a legitimate manner and of which a determined juridical effect is recognised by the law in as much as the effect is intended by the agent".
- 8 V. De Paolis & A. D'Auria, *Le Norme Generali. Commento al Codice di Diritto Canonico*, 2nd Edition (Vatican City: Urbaniana University Press, 2014), p. 358.
- 9 For example, one may be aware of one's palpitations or heartbeat but

one may not be able to prevent the heart from beating. It is the same thing with sneezing; a person may be conscious that they want to sneeze but they are unable to prevent it.

- 10 J. Osterle, "Human Acts", *New Encyclopedia*, Vol. 7 (New York: McGraw-Hill Book Co., 1967), p. 208.
- 11 E. Roelker, *Invalidating Laws* (Patterson: St. Anthony Guild Press, 1955), p. 160.
- 12 Can. 124 § 1 CIC: For the validity of a juridical act, it is required that it be performed by a person who is legally capable, and it must contain those elements which constitute the essence of the act, as well as the formalities and requirements which the law prescribes for the validity of the act.
- 13 The same applies to a Mass celebrated by a deacon. It is non-existent. There was no Mass at all, it lacks juridical effect because he lacks the capacity which can only be obtained by a valid priestly ordination.
- 14 L. Chiappetta, *Il Codice di Diritto Canonico, Commento Giuridico-Pastorale*, Vol. I (Bologna: Edizione Dehoniane, 2011), n. 1219.
- 15 Francis, Apostolic Letter, *Imparare a Congedarsi, Governing Resignation, for Reasons of Age, of Holders of Certain Offices Subject to Papal Appointment*, 12/02/2018 (Rome: Libreria Editrice Vaticana, 2018). [https://www.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio-20180212\\_imparare-a-congedarsi.html](https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20180212_imparare-a-congedarsi.html); See also Canon 186, for example, which talks about automatic loss of office conferred for a determined time when the time stipulated has elapsed.
- 16 G.J. Garcia Martin, *Le Norme Generali del Codex Iuris Canonici* (Rome: Editiones Institutum Iuridicum Claretianum, 2002), p. 663.
- 17 J. Wiecek, *La Natura della Rinuncia all'Ufficio Ecclesiastico nella Normativa Canonica Vigente* (Rome: Pontificia Studiorum Universitas S. Thoma AQ in Urbe, 2011), pp. 89-90.
- 18 J.H. Provost, "Ecclesiastical Offices (cc. 145-196)", in J.P. Beal et al (eds.) *New Commentary on the Code of Canon Law*, (Bangalore: Theological Publications in India, 2010), p.197.
- 19 In our analysis of Godefredus we cited two key elements of resignation from office; the object of resignation and the will of the subject who resigns.
- 20 L. Chiappetta, *Il Codice di Diritto Canonico, Commento Giuridico-Pastorale*, Vol. I (Bologna: Edizione Dehoniane, 2011), n. 1222.
- 21 V. De Paolis & A. D'Auria, *Le Norme Generali. Commento al Codice di Diritto Canonico*, 2nd Edition (Vatican City: Urbaniana University Press, 2014), p. 377. A Rotal jurisprudence on marriage nullity

says, “...nam ratio nullitatis coniugii obmetum gravem initireponenda est non tam in reparatione gravis iniuriae, quam in defectu sufficientis libertatis electionis.” It then cites Thomas Aquinas: “Quare quod ex metu agitur est 'simpliciter voluntarium' quamvis secundum quid involuntarium (S. Thomas, *Suppl.* q. XLVII, art. 1).” This reiterates the fact that fear itself does not invalidate a juridical act like matrimonial consent or resignation because it does not take away free will, it does not remove the person's capacity to decide but it is involuntary because whatever the person decides to do, though accidental, they do because they are constrained to do so. Grave fear restricts the will; it renders personal freedom insufficient to place an act. See *Coram Boccafola* (21/01/1991) RRJan., as cited in V. Vondenberger (ed.), *Rotal Jurisprudence. Selected Translations* (Washington DC: Canon Law Society of America, 2011), p. 23.

- 22 See Ulpian, L. 1, D., IV, 2.
- 23 Another good example in the Code where the law provides otherwise is Canon 172 § 1, n. 1 on the invalidity of a vote cast through grave fear. If a person is forced to vote against his choice, their vote is invalid and would not count.
- 24 Resignation of a parish priest lawfully placed and freely manifested, for example, must be accepted by the bishop. If not accepted, the resignation is invalid (cf. can. 189 § 3). See also can. 332 § 2 which gives exception to can. 189 § 3 in the case of the resignation of the Roman Pontiff.
- 25 See Francis, Apostolic letter *Come una madre amorevole* (4/6/2016), in AAS 108 (2016), pp. 715-717.
- 26 An office created *ad beneplacitum*, like the office of the Bishop's Chancellor or of the Notary of the Curia does not require this procedure before the office holder is removed (cf. can. 485). The office of a parish priest, however is stably constituted and must follow this procedure (cf. cann. 522; 193 §§ 1-3).
- 27 Can. 1740 outlines fundamental reasons/causes (harmful or ineffective) for removal of a parish priest. The specific reasons/causes listed in can. 1741 are not exhaustive, they only serve to amplify can. 1740. In fact they are meant to be read in unity. See F. Coccopalmerio, “De Causis ad Motionem Parochorum Requisitis”, *Periodica* 75 (1986), p. 275; G.P. Montini, “La rimozione del parroco tra legislazione, prassi e giurisprudenza”, *Quaderni di Diritto Ecclesiale* 24 (2011) p. 113; T.J. Paprocki, “Method of Proceeding in Administrative Recourse and in the Removal or Transfer of Pastors (cc. 1732-1752)”, J.P. Beal et al (eds.), *New Commentary on the Code of Canon Law*, p. 1838.
- 28 L. Chiappetta, *Il Codice di Diritto Canonico, Commento Giuridico-*

*Pastorale*, Vol. I (Bologna: Edizione Dehoniane, 2011), n. 1220.

29 Ibid.

30 See Coram Burke, “Jurisprudence: Apostolic Tribunal of the Roman Rota, November 15, 1990 – Incidental Question: Nullity of a Sentence”, in *Studia Canonica* 25 (1991), p. 511; M. del Pozzo, “Rilievi costituzionalistici a proposito della nuova disciplina per la rimozione del Vescovo”, in *Ius Missionale* 11 (2017), p. 262.

31 For example fifteen days as in can. 1742 § 1.

32 R. A. Hill, “Commentary on Canon 188”, J. A. Corridenet al (eds), *The Code of Canon Law: A Text and Commentary* (New York: Paulist Press, 1985), p. 109: “in order that a resignation be truly free it cannot be the result of unjustly inflicted grave fear...Grave fear is caused by the threat of a serious evil, the threat being made to bring about the resignation. The grave fear, however, could also be caused by a justified threat of a serious evil, as in the case of threatening removal from office for a justifying cause if the person does not resign”. See also A. D'Auria, *Il timore grave nell'attuale legislazione canonica*, 2<sup>nd</sup> Edition (Vatican City: Urbaniana University Press, 2003), p. 103-104; P. Bealet al (eds.), *New Commentary on the Code of Canon Law*, p. 222.