

The Kennedy Funeral: Still Trying to Get Its Lessons Right

By Edward Peters, JD, JCD

Senator Edward Kennedy's funeral in August of 2009 was very poorly handled. The frequent abuse of liturgical texts, the blatant politicization of the intercessions, the confusion at Communion time, the appalling eulogies (all broadcast live on national media), are things that Catholics can look back on with little besides embarrassment. But there are, amid the mangled rites of the Kennedy funeral, some lessons to be learned—albeit mostly *via negativa*—and in that respect I think that Fr. Michael Orsi's retrospectives on the Kennedy funeral (*Homiletic and Pastoral Review*, November 2010) have something to offer. Orsi cares about liturgy and he makes some useful remarks on the pastoral consequences of disregarding liturgical directives.

But to reach those helpful remarks, one must first move through Orsi's canonical explanation of the decision to grant Kennedy a Catholic funeral at all. Despite dismissing as "entirely moot" the ecclesiastical debate about granting Kennedy a funeral, Orsi spends two paragraphs analyzing the canonical factors for and against a funeral for Kennedy before moving on to discuss the liturgy itself. But, in my view, the commentary that Orsi attempts there is problematic.

Like Orsi, I think that other bishops will sooner or later be called upon to make funeral decisions concerning prominent Catholic public figures who have spent most of their lives thumbing their noses at Church teaching. But if Orsi's analysis of Cardinal O'Malley's decision goes without response, I fear that other bishops, and the faithful at large, will misunderstand and wrongly apply the canonical criteria for granting or withholding Catholic funeral rites in difficult cases.

First, some small points.

The 1983 Code of Canon Law consists of sequentially numbered canons, 1, 2, 3, and so on, up to 1752. Many of these canons have numbered "paragraphs" or "sections" designated by the symbol "§." Most canons, if they have

paragraphs or sections at all, have only two or three "§" markers, and no canon sports more than six. Orsi's citation, then, to "canon § 1184" is a misstatement of what he surely intended to be "canon 1184." A mistake, yes, but not terribly misleading. But his citation to "canons §2284-85" is meaningless. Not only are there no paragraphs ("§") 2284-85 in the 1983 Code, there are no *canons* 2284-85 in the revised Code. Meanwhile, canons 2284 and 2285 of the 1917 Code (my next surmise as to what Orsi might have meant) have nothing to do with Catholic funerals and/or repentance before death as asserted by Orsi. Only if one eliminates the stray "§" marker, and changes the "2"s to "1"s, and eliminates the "-85" (which seems to refer to a canon dealing with a different, and irrelevant, funeral issue), is one left with a citation to "canon 1184," a norm that is relevant to Catholic funeral questions. But surely this kind of mistake in a central citation is better left uncommitted.

More substantive problems need to be addressed.

I. Orsi writes: "Cardinal Sean O'Malley, O.F.M., archbishop of Boston, chose to grant the privilege [*sic*: canon law regards funerals as a *right* of the faithful per c. 1176 § 1, not a 'privilege'] and there is no doubting that it was his right to do so, as canon law presumes that, as chief pastor of the diocese, *the bishop interprets the pertinent canons as tightly or as loosely as he sees best benefits his flock*" (my emphasis). This, I suggest, is a misrepresentation of the norms on canonical interpretation. A bishop may not interpret canon law "as tightly or as loosely as he sees best."

In several places, the 1983 Code sets out how canonical norms are to be interpreted by those charged with applying law. The primary directive in this regard is Canon 17: "Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator." Consultation with any commentary on Book I of the 1983 Code will show that the methodology

outlined in Canon 17 is of venerable lineage and of proven worth. Canonists know what each of those interpretative steps entails, and bishops who might not know can easily find out.

Furthermore, because, as noted above, funerals are regarded by the Church as a *right* of the faithful, Canon 18 (another provision that informs the interpretational discretion of bishops) requires that any restrictions on rights (such as restrictions on the right to a funeral as found in Canon 1184 § 1) be subjected to a “strict” (i.e., narrow) interpretation. In other words, the burden was not on the Kennedy clan to prove their uncle’s eligibility for a Catholic funeral, the burden was on the cardinal to determine, *in accord with canon law*, whether the “Lion of the Senate” was ineligible for a Catholic funeral. In short, Canons 17, 18, 1176, and 1184 (I could invoke others), individually, but even more so when read, as they should be, in combination, call for very nearly the opposite of canonical interpretations “as tightly or as loosely as a bishop sees fit.”

2. Orsi asserts that opponents of the Kennedy funeral described him as a “manifest sinner to whom a church funeral could not be granted without public scandal to the faithful” (in which claim, I think, they and Orsi were correct), but then adds that “while the letter Kennedy wrote to Pope Benedict at the end of his life admitted he had fallen short of being a good Catholic, there was absolutely no admission of explicit regret for his pro-choice stances.” But, even granting the accuracy of this description of Kennedy’s letter, that letter was irrelevant to the canonical issue then facing Cardinal O’Malley.

The canonical question before the cardinal was *not* whether Kennedy wrote a satisfactory letter to the pope; the question was whether Kennedy “gave some signs of repentance before death” sufficient for him to be accorded a Catholic funeral. That the senator’s letter failed to produce such signs I won’t contest, but there were other ways in which Kennedy could have manifested repentance at least to the minimal degree necessary under canon law. And that is what Kennedy did.

As can be seen from the arguments I set out in a lengthy article dealing with another famous funeral-denial case,¹ the signs that Kennedy is known to have given (such as his asking for a priest near the time of death) indisputably satisfied the admittedly very low canonical criteria for finding signs of repentance in a public sinner sufficient for granting a Catholic funeral even to one whose conduct was, in so many ways and

for so many decades, gravely and publicly at odds with important Church teachings.

This subtle but crucial distinction has been missed by nearly all commentators on the Kennedy funeral at the time, and by most commentators even now: canon law does not expect bishops to read souls, and therefore, contrary to Orsi’s rephrasing of the law, canon law has never required proof of *repentance* before death in order to grant a public sinner an ecclesiastical funeral; rather, canon law, per c. 1184 § 1, demands only *signs* of repentance—and precious few *signs* at that—in order to authorize a Catholic funeral in a case like Kennedy’s. Overlook the distinction between verifying “repentance” and verifying “*signs* of repentance,” and the Kennedy funeral decision can be accounted for only by holding that canon law may be interpreted “as tightly or as loosely as [a bishop] sees best.”

3. Orsi’s characterization of the position argued by (most) supporters of granting Kennedy a Catholic funeral misstates, I think, their argument. Most supporters of Kennedy’s funeral did *not* make the claim that Kennedy was no “notorious apostate or heretic” (he obviously was not), nor did they argue that he had not “ordered the cremation of his body” (he obviously had not), as if, by a process of the elimination of *disqualifications*, Kennedy could be granted a funeral. Rather, they argued that Kennedy inhabited the one canonical category within Canon 1184 § 1 that Orsi did not then quote in their behalf, namely, that Kennedy was not a “manifest sinner” and therefore, he retained the basic right to a Catholic funeral. At any rate, I think those who supported Kennedy’s funeral on these grounds were wrong on the facts, but one should be clear about what the Kennedy-faction was claiming, so that their claim can be rejected (with helpful implications for future cases), while the affirmative decision on the Kennedy funeral can still be defended on different, but sufficient, canonical grounds.

Finally, if my analysis above is correct, Orsi’s admonition to the faithful regarding Cardinal O’Malley’s funeral decision, namely, that “in charity the faithful must grant the cardinal the benefit of the doubt” is unnecessary. The Boston prelate needs no charity on this account (although I am sure he would welcome it!) for he made the canonically correct decision. But even if the cardinal had made the wrong decision, the faithful would have been well within their rights to express their disagreement with him and to call for greater vigilance the next time such a question arose (see can.

212 § 3). Either way, while charity should always suffuse the faithful's attitude toward their prelates, it is not a prerequisite to agreeing or disagreeing with the Kennedy funeral decision.

Conclusion

More than a year after Senator Kennedy's funeral rights were debated and rites were conducted, the memory of that mess is beginning to fade. From these events, though, I think that two lessons bear preserving: (1) The standards for receiving a Catholic funeral are not nonexistent, but they are very, very low. Whether that is a good thing or a bad thing, I do not know, but I do know that is how the law reads. (2) When Catholic funerals are granted to persons, especially to famous

persons who, along with their entourages, are used to having their own way, prelates who grant said permissions should know that the funeral rites themselves are liable to be manipulated, and perhaps blatantly, by the deceased's followers. Special care should be taken, therefore, to minimize the risk of liturgical abuse and to guard against the public dissemination of potential debacles. ✠

Edward Peters has doctoral degrees in canon and civil law. He is a Referendary of the Apostolic Signatura, and teaches at Sacred Heart Major Seminary in Detroit.

ENDNOTE

- 1 See Edward Peters, "Lest amateurs argue canon law: a reply to Patrick Gordon's brief against Bishop Thomas Daily," *Angelicum* 83 (2006): 121-142, available on-line at http://www.canonlaw.info/a_gordon.htm.

Confidential Consultations in the Selection of Bishops: Remarks on Law and Practice

By Edward Peters, JD, JCD

The proper evaluation of priestly candidates for the episcopacy is important for the well-being of the Catholic Church. Although history has seen a variety of procedures used for selecting bishops (including election by presbyterates and nomination by civil officials subject to ecclesiastical confirmation), today most bishops in the Roman Church are freely appointed by the Supreme Pontiff (Canons 377 §1 and 378 §2). Part of that papal appointment process involves making confidential inquiries among selected members of the Christian faithful about specific candidates for episcopal office.

Inquires concerning potential bishops are conducted under what is known as *pontifical* or *papal secrecy*. Second only to the seal of confession, pontifical secrecy is the highest level of confidentiality encountered in the Catholic Church. The exact scope of this confidentiality, however, and the implications of assuming its obli-

gations, are perhaps not widely known outside professional ecclesiastical circles. Most clergy, religious, and lay persons, upon learning that their special assistance in an ecclesiastical matter is being requested, but that such cooperation will be subject to the strictures of pontifical secrecy, do not know where to turn for an explanation of that juridic institute. It is to address their questions that this essay is offered. We begin with a brief overview of the modern episcopal selection process.

Any member of the Christian faithful could, in virtue of the basic right to make known one's opinions on matters impacting the good of the Church (Canon 212 §3), offer suggestions concerning possible bishops, and individual bishops have the right to propose names directly to the Apostolic See regarding priests whom they consider worthy to become bishops (Canon 377 §2). In practice, however, most candidates for the episcopacy in the Roman Church are first identified by the assembled bishops of a given province (Canon 377 §2). Those names are eventually