

Mind the Gap? Papal Bulls and Statutes that determine the continuation of the Order of Saint Lazarus of Jerusalem

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The Order of Saint Lazarus of Jerusalem was reorganized in the late 19th century after a period of some 60 years when it had no or little evidence of members remaining. This period was still canonically legitimate for its existence since an Order instituted by the Holy See does not become extinct until 100 years of inactivity, that period usually defined as beginning with the death of the last legitimately received member. In the case of the Order of Saint Lazarus, that period was determined by the death of the last living member admitted during the *ancient régime* (Marquis Antoine Charry des Gouttes: admitted 1788, died 1856), and thus the window for continuation or extinction of the Order would have closed in 1956.

*Can. 120 §1. A juridic person is perpetual by its nature; nevertheless, it is extinguished if it is legitimately suppressed by competent authority or has ceased to act for a hundred years. A private juridic person, furthermore, is extinguished if the association is dissolved according to the norm of its statutes or if, in the judgment of competent authority, the foundation has ceased to exist according to the norm of its statutes.*²

What is unclear, however, is whether the period between 1831 when the Royal House of France ceased to be the Protector of the Order, and 1910, when revised statutes were published included any of the legal and administrative mechanisms provided for the governance of the Order in the relevant Papal Bulls setting up the modern Order. While

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² TITLE VI. PHYSICAL AND JURIDIC PERSONS. *Code of Canon Law*. Can. 120 §1. Available at http://www.vatican.va/archive/ENG1104/___PD_.HTM.

from the canonical perspective a continuation of members was not a requirement for continuation, what legal authority remained that could be used to re-organize the Order? Was there legal continuity as well as canonical continuity?

The defining Bulls of the Order of Saint Lazarus under the French Crown are described in the Bull of Legate à Latere de Vendôme (under Clement IX, 1668) as being *Inter assiduas* of Pius IV, 1565; *Sicuti bonus agricola* of Pius V, 1567; *Pontifex Romanus* of Paul V, 1607; and *Militantium ordinum* of Paul V, 1608.³ In addition, there is the above mentioned Bull of Legate à Latere de Vendôme, 1668; the much later Bull *Militarium ordinum institutio* of Clement XIV, 1772; and the Statutes of the Order up to 1830.⁴

The relevant actors named in these Bulls, primarily in *Inter assiduas* and *Sicuti bonus agricola*, include the following: the Roman See and

³ *Bulle du Cardinal de Vendome, Legat a Latere en France*. Transcribed in P.E.G. de Sibert. *Histoire des Ordres Royaux, Hospitaliers-Militaires de Notre-Dame du Mont-Carmel, et de Saint-Lazare de Jerusalem*. Royal Press, Paris, 1772, Pièces Justificatives, Doc. 34/35, pp.lxxxiii-lxxxvii.

- Pius IV. *Inter assidua dominici*.... dated 4 May 1565. Transcribed in L. Cherubini and A.M. Cherubino. *Magnum Bullarium Romanum, a Pio Quarto usque ad Innocentium IX*. P. Borde, L. Arnaud & C.I. Rigaud, Lyon, 1673, vol.2, pp.136-150.
- Pius V. *Sicula bonis agricola*.... dated 7 February 1567. Transcribed in L. Cherubini and A.M. Cherubino. *Magnum Bullarium Romanum, a Pio Quarto usque ad Innocentium IX*. P. Borde, L. Arnaud & C.I. Rigaud, Lyon, 1673, vol.2, pp.204-212.
- Pius V. *Pontifex Romanus*..... dated March 1608. Transcribed in L. Cherubini and A.M. Cherubino. *Magnum Bullarium Romanum, a Pio Quarto usque ad Innocentium IX*. P. Borde, L. Arnaud & C.I. Rigaud, Lyon, 1655, vol.3, pp.228-229.
- Pius V. *Militantium ordinum* dated February 1608. Transcribed in L. Cherubini and A.M. Cherubino. *Magnum Bullarium Romanum, a Pio Quarto usque ad Innocentium IX*. P. Borde, L. Arnaud & C.I. Rigaud, Lyon, 1655, vol.3, pp.229-230.

⁴ Clement XIV. *Militarium ordinum institutio*.... dated 1772. Transcribed in *Lettre Patientes du Roi, concernant l'Ordre de Saint-Lazare données à Versailles le 18 Janvier 1773*.

- *Codes des Loix, Statutes et Réglements des Ordres Royaux, Militaires et Hospitaliers de S. Lazare de Jerusalem et de Notre-Dame du Mont-Carmel or Recueil des Bulles des Papes*. Paris, 1783, 303pp.

Pontiff; the (an) Apostolic See; the Grand Master and assembly (and soldiers) “existing at the time”; the Protector; the “Master, Prior, preceptors, soldiers, brothers, vassals, and servants” (*Sicuti*, §28); King Henri IV or the existing King of France at the time; and the Council of Trent, with the stipulation that many actions be “not contrary to the Council of Trent”. The context in the Bulls suggests that the Apostolic See refers to the See of Rome, founded by Saint Peter. However, it is interesting to note that the Patriarchate of Antioch is also an Apostolic See founded by Saint Peter.

Elections

On elections to the Grand Magistracy, *Sicuti* (§8) specifies the following:

...the assembly and military (If however they then have a firm seat established in some certain place, there, by the authority and permission of the aforementioned seat, before the vacation of this kind, and there reside) assembled at the same time in the same place may choose another Grand Master according to the establishments of this Religion and military, according to the published or to be published consent of their Protector, which is in no way contrary to the Council of Trent: this nevertheless that they ought to seek confirmation of this election, within three months from the day on which it was done, from this same seat...otherwise let this election be null.... [translation: Dr. SL Jones]

Here, the Protector must consent to the election, and the Apostolic Seat (the Papacy) must confirm the outcome within three months.

Reforming Habits and Statutes

The statutes are not static, and there are provisions for their reform in *Sicuti*, §9. These provisions include change of headquarters:

And that the same Master existing at the time and assembly are able to transfer the principal seat of this military to whatever place, even maritime, that seems best to them...

Further, there is a broad remit to change the statutes, the limitation here being that they must not be inconsistent with the findings of the Council of Trent (1545–1563). These new statutes are described as being “*of their Protector*”, suggesting that it is the Protector, and not the Grand Master and Assembly, who determines and administers the statutes.

And to institute and reform, or to found de novo, to publish, the rule, establishments and statutes of the aforementioned religion and military, according to the consent of their Protector and other brothers or definitors, and to correct and change these and those (as long as it is legal and honest and not contrary to this same Council [of Trent]) as often as they wish.

The key role of the Protector is explicated in *Pontifex Romanus* of Paul V, instituting the Order of Our Lady of Mount Carmel for King Henri IV of France and Navarre. The Order of Mount Carmel was immediately joined to that of the Order of Saint Lazarus in France by Henri IV, that union (creating the “United Orders of Saint Lazarus and Our Lady of Mount Carmel”, and confirmed by Papal Bull of Legate à Latere de Vendôme in 1668 and later by Clement XIV in *Militarium ordinum*. Paul V gives Henri IV control over the Order:

*...found and institute, in perpetuity, through Apostolic authority this Militia or Order under the same rule, the supreme or principal seat and assembly of which Militia should and must be assigned and decreed for this by the same King Henry in the very Kingdom of France or in another place or dominion owned by the said King Henry...
A Grand Master should be the Head and Sovereign of the same Militia or Order, with the assembly constituted by the same King Henry...*

Here, King Henri IV is the Protector who constitutes the Assembly (that is, names the Knights and thus controls the voting in the Assembly), and names the Grand Master. Although the King is named Protector of the Order and has control over the Statutes and the membership of the Assembly, the Sovereign Head of the Order is identified as the Grand

Master. The control of the Order, however, resides in the Protector: in *Pontifex Romanus*, 1607, the Bull (§3) states that:

Such that all provision and oversight of the Magistracy, even when it is vacant from its initial foundation and institution, and for all times to come in the future whenever it should happen in any way that it should be vacant, and through whatever person, of whatever quality, even when in the said seat, or otherwise at any time or whenever, should and must in perpetuity concern and pertain to the said Henry and the existing King of the French at the time.

It is clear here that the control of the Order resides in the office of the King of France, whoever should hold it – and not in the dynasty. It is an interesting question as to whether Napoleon III, as Emperor of the French, might have been considered to have been *de facto* the last holder of this office, although more traditionally, Louis Philippe I (who renounced protection of the Order in 1831) is considered the last King of the French. In any case, with the cessation of the office of monarch, protection to the Order was lost, sealing the prior renunciation of protection by Louis Philippe. The recent claims of the House of Orléans to have revived the Order are negated, firstly by the fact that there is not presently an office of King of France or of the French in which protectorship must reside (and not in claimants); and secondly that their claim to revival was well past the 1956 date for extinction of the Order defined by the Canon code. In any case, the rescue from extinction had already been affected and maintained by the Patriarch of Antioch through the Statutes of 1910. With the failure of the French monarchy's protection by both renunciation (1824 and 1831) and the suppression of the monarchy (1848 or 1870), one must go back to the previous Papal bulls for guidance on the legal path forward for the Order.

Vacancies

In *Pontifex Romanus* §4, it is clear that Henri IV as Protector or his successors in office have right of nomination of the Grand Master, subject to Papal confirmation:

Should the same magistracy fall vacant... whoever has been intended for it by the King... should and must within 3 months seek and demand a new provision of confirmation from the same See....

In practice, such confirmation was not always sought and from 1720, members of the French royal family were nominated directly by the French King to serve as Grand Masters.

Right to determine Foundations, Statutes and Ordinances

The Statutes of the Order could, however, be changed. In the same Bull, *Pontifex Romanus* §6 makes clear the process for affecting change:

We grant the right to determine the foundations, statutes and ordinances of this Militia or Order, and the things that concern its proper governance, which must be approved by the Apostolic See, and to change them when founded, according to the nature of the times and circumstances, if there is need, and to issue others afresh...

The initial foundations, statutes and ordinances must be approved by the Apostolic See, but note that after this initial approval, there is no requirement to seek further approval. After approval of the foundation statutes, they can be changed “*according to the nature of the times and circumstances, if there is need, and to issue others afresh...*” – an appropriate description of the situation of the Order post-1831.

Bulls subsequent to Pontifex Romanus

There is little direction to the Order in Bulls subsequent to *Pontifex Romanus* that might guide decisions post-1831.

Militantium ordinum, Paul V, 1608: *the Order cannot serve under any other leaders than King Henry without express permission of the Grand Master* (section XIII).

Bull of Legate à Latere de Vendôme, 1668 (Clement IX): *Uniting the Orders of Saint Lazarus and Our Lady of Mount Carmel – Brought together and united in perpetuity... both their institutes and rules subjoined...*

The requirement that the Order not serve under any other leader than King Henry appears to refer to military service, but is couched in general terms. The Bull of Clement IX uniting the Orders provides for the contents of Bulls of both Orders to be followed. There is no provision as to what may happen if those Bulls might suggest contradictory paths.

The last Papal Bull referring to the Order of Saint Lazarus is *Militarium ordinum instituto* of Clement XIV in 1772. This Bull provided that ecclesiastical benefices could not be held by the Order of Saint Lazarus, and that it should only be supported from lay sources. The uniting of the two Orders was clearly confirmed. In effect, this was a restatement of the provisions of *Pontifex Romanus* §4, and hence no administrative changes were made:

“...that the gift of the said instituted Militia should be given by the said King Henry from his merely lay resources, but not from those of the Church...”.

The Statutes of the Order from its uniting to its repudiation by the French Throne could offer additional administrative insights, but in fact these simply contain the text of relevant Papal Bulls from *Inter assiduas* which are described as definitive. The Statutes refer to changed purposes of the Order (including providing pensions to the military), emphasis on property of the Order, other pensions, financing, and legal suits and descriptions of their outcomes and judgements. There is no change in the statutes with regard to government or elections/appointments.

Changes in the Order following the French Revolution

The French Revolution of 1789 brought about major changes, including the suppression of the royal Orders. The Grand Master the Count of Provence succeeded as Louis XVIII in title in 1795 and in fact, in 1814. No Grand Master was appointed during this period; however, a Lieutenant, supported by a Council of Officers, was appointed at the restoration of the monarchy in 1814. The Order is documented as being

awarded a number of times by Louis XVIII during his exile up to 1814. It has been argued that Louis XVIII did not follow the procedures for admission and that such admissions were not legitimate. However, *Pontifex Romanus* makes it clear that the Assembly (i.e., the Knights) should be constituted by King Henri or his successors and there is no specified procedure for admission defined beyond a declaration of the Catholic faith (which would have excluded Protestant or Russian Orthodox knights) and the fact that knights could not have been married more than twice.

In 1824, there was an announcement that the Order was to be “*left to become extinct*” which, being a Canonical Order, would have occurred 100 years after the death of the last member. The death of Louis XVIII followed shortly after in 1824. No changes occurred in the subsequent reign of Charles X and, although there were no new documented admissions to the Order, the King was still listed as the Protector in the *Almanach Royal* published in the period. Loss of Royal protection occurred in 1831 with the election of Louis Philippe (I) d’Orléans as King in 1830 and the declaration that the Legion of Honour was to remain the recognised Royal Order.

Droits particuliers garantis par l’état

60. *Les militaires en activité de service, les officiers et soldats en retraite, les veuves, les officiers et soldats pensionnés conserveront leurs grades, honneurs et pensions.*
61. *La dette publique est garantie. Toute espèce d’engagement pris par l’état avec ses créanciers est inviolable.*
62. *La noblesse ancienne reprend ses titres. La nouvelle conserve les siens. Le roi fait des nobles à volonté; mais il ne leur accorde que des rangs et des honneurs sans aucune exemption des charges et des devoirs de la société.*
63. *La Legion d’Honneur est maintenue. Le roi déterminera les réglemens intérieurs et la décoration.* ⁵

⁵ *Charte Constitutionnelle 1830*. Lithograph printed by J.P. Schmidt. Engelmann et Compagnie Faubourg, Montmartre, Paris. Available at <http://gallica.bnf.fr/ark:/12148/btv154001004k>.

The situation in 1841

By 1840, there were at least six members of the Order alive and listed as such (not counting admissions in exile). There was no Protector and no Grand Master or his Lieutenant; so, authority rested with these survivors who constituted the Assembly.

There is no mention in the Bulls on how a Protector is appointed or constituted. The 1607 Bull *Pontifex Romanus* identified the Protector as King Henri IV, or his successors in office, but did not specify who would assume the role should the office be abolished. The role was assumed to fall under the aegis of the Patriarch of Jerusalem (in 1262, Pope Urban IV released the Order from episcopal control, putting it under the sole authority of the Patriarch of Jerusalem), or the Holy See (in 1318 Pope John XXII granted the Order of St Lazarus exemption from local Ecclesiastical authority making the Order dependent only on the Apostolic See). The uncertainty had come to the fore in 1493, when a procuration was given by the Chapter of the Order to two Knights entrusting them to seek confirmation for the election of Grand Master Francois d'Amboise from either the Pope in Rome or the Patriarch of Jerusalem. Precedent thus provides an argument favouring the Patriarch of Jerusalem as a legitimate Protector.

The role of a Protector is key to the Order's management. In defining Papal Bulls, the Protector consents to the appointment of a Grand Master (*Sicuti bonus agricola*) and the Protector determines the nominations to and size of the Assembly (*Pontifex Romanus*). It was logical and legitimate for the remaining Knights after 1831, with the authority of the Assembly, to invite to assume the role as Protector the holder of the office that provided a previous Protector, i.e. the Patriarch of Jerusalem. There could be no question, based on precedent, of the legitimacy of the office of Patriarch as Protector.

In 1941, there was only one possible candidate: The Greek Melkite Patriarch of Antioch, Jerusalem, Alexandria and All the East, recognized by Pope Clement XIV in 1772 as the Patriarch of Jerusalem and in full

communion with the Roman Catholic Church. There was at the time in 1841 no formally appointed Latin Patriarch of Jerusalem – this post was re-established by Pope Pius IX in 1847. Tradition records that Patriarch Maximus III Mazloum (1833-1855) was invited to become Protector while visiting France where he had established several Melkite churches: he was in Paris from March 15 to July 17, 1841 and had made multiple visits to France. In the *Declaration of Kevelaer* (2012), Patriarch Gregorios III Laham confirms the continuous protection of the Melkite Patriarch since 1841. It is a well-established law that where original documents have been lost or destroyed, the original grantor may reconfirm the agreement. Patriarch Gregorios confirmed that the Spiritual Protection of the Order granted by Maximos III Mazloum “...was continued by his successors, and especially confirmed by Patriarch Maximos IV Sayegh ... and Patriarch Cyril VIII Geha had blessed the modern re-organization of the Order.”⁶

The Legal Chain of Continuity

Any discussion of the status of the Order of Saint Lazarus post-1830 must be based on the Bulls of the Order and any relevant statutes which set up its legal existence and show the continuation of that authority through to the reorganization of 1910. In 1841, the only legitimate authority remaining, following the renunciation of the Order and Protectorship by the French Royal House in 1831, according to the Papal Bulls, was the Assembly which had the power of electing a Grand Master. Since the Patriarch of Jerusalem had been appointed protector by the Holy See in the 13th century, it was a legitimate option for the Assembly (now limited to about six knights) to invite a Protector acceptable by precedent to assume the role. The assumption by the Patriarch of the role of Protector of the Order of Saint Lazarus occurred in the window before canonical extinction and in full accordance with the Founding Bulls which allowed the Protector to change the Statutes “according to the nature of the times and circumstances, if there is need, and to issue others afresh”. The reorganization of 1910 was also fully in

⁶ M.W. Ross and C. Savona-Ventura. Letter to the Editor. In *The Double Tressure*, 2015, 38, pp.67-68.

accord with the Bulls, Statutes and precedents of the Order of Saint Lazarus with the authority being given by the Assembly (the remaining legitimate authority of the Order) to a new Protector holding the office.

The question must be raised as to whether relinquishing the Order to the Papacy was an option. It clearly was, but it was not an option that was apparently followed either by the French Crown or by the Order itself. The Papacy during the window period when the Order could be reorganized appears to have either indirectly denied a right to assuming Protectorship (especially after Pope Saint Pius X reorganized the Orders of the Holy See in 1905)⁷ or incorrectly assumed it had become extinct (as per comment in the *Osservatore Romano* in 1935⁸ - it could not have been extinct until 1956 under the provisions of Canon Law). The Holy See never took any formal action to abolish the Order, and no *Contrarius Actus* regarding the Order of Saint Lazarus appeared in *Acta Apostolicae Sedis*, as would be required to abolish it.⁹

The Papal Bulls defining and regulating the Order of Saint Lazarus provide for a number of actors, of which the Protector, the Grand Master, the Assembly, and the Papacy are the key ones. In 1841, only the Assembly (in a diminished number) remained as the sole extant authority of the Order itself. According to Canon Law, this assembly retained the rights to manage the Order's affairs.

Canon 120 §2: *"If even one of the members of a collegial juridic person survives, and the aggregate of persons has not ceased to exist according to its statutes, that member has the exercise of all the rights of the aggregate."*

There is no procedure defined for appointing or inviting a Protector in the Bulls of Pius IV and Pius V or subsequently. Historically, in the

⁷ Pius X. *De Equestribus Pontificis Ordinibus S. Silvestri, Militiae aurate et Militiae Iesu Christi*.....dated 7 February 1905.

⁸ A proposito dell'Ordine di S. Lazzaro. *L'Osservatore Romano*, 15-16 April 1935, 89, p.2.

⁹ C. Savona-Ventura and M.W. Ross. The Heraldry and Development of the Order of Saint Lazarus. In *The Double Tressure*, 2013, 36, pp.2-27.

Papal Court, Protectors might be appointed or invited. It was not uncommon for Orders or States to invite and appoint (and recompense) someone at the Papal Court to “protect” their interests. The invitation of a Protector to assume responsibility, in line with precedent, is not inconsistent with the defining Bulls applicable to the Order. Alternatively, the Pope could appoint or invite a Protector himself. The Assembly, as the remaining authority, could and did legitimately do this.

In summary: the legal continuity of the Order from the renunciation of the Protectorship in 1831 by Louis Philippe to the reorganization of Statutes of the Order of Saint Lazarus of 1910, and its subsequent development, is consistent with its founding Bulls and with Canon Law.