



Fœderatio Internationalis *Una Voce*

Positio N. 13

HOLY DAYS OF OBLIGATION

NOVEMBER 2012

From the General Introduction

These papers, commissioned by the International Federation *Una Voce*, are offered to stimulate and inform debate about the 1962 Missal among Catholics ‘attached to the ancient Latin liturgical traditions’, and others interested in the liturgical renewal of the Church. They are not to be taken to imply personal or moral criticism of those today or in the past who have adopted practices or advocated reforms which are subjected to criticism. In composing these papers we adopt the working assumption that our fellow Catholics act in good will, but that nevertheless a vigorous and well-informed debate is absolutely necessary if those who act in good will are to do so in light of a proper understanding of the issues.

The authors of the papers are not named, as the papers are not the product of any one person, and also because we prefer them to be judged on the basis of their content, not their authorship.

The International Federation *Una Voce* humbly submits the opinions contained in these papers to the judgement of the Church.

Holy Days of Obligation: Abstract

The Code of Canon Law lists ten feasts as Holy Days of Obligation, giving Episcopal Conferences, with the approval of the Holy See, the right to suppress the obligation to attend Mass on some of them. The practice of celebrating Epiphany, Ascension and Corpus Christi on Sunday, instead of on their traditional dates, has become widespread, and of other Holy Days theoretically observed as ‘of obligation’ in each country, many are either moved to Sunday, or the obligation to attend Mass on that date suppressed, when they fall on a Saturday or Monday. In the celebration of the Extraordinary Form the 1962 Calendar is used, and the feasts are celebrated on their traditional dates, though in many cases without an obligation to attend Mass. This paper defends the practice of the Extraordinary Form, on the grounds of the great historical, cultural and theological significance of the feasts. It also argues against the minimisation of the obligation to attend Mass on days other than Sundays. The great feasts should be marked by the special emphasis and honour which is their due, and the obligation is a great advantage for those wishing them to be celebrated in Catholic schools, and for those wishing to attend Mass on those days in non-Catholic environments. There is, finally, a serious danger that the very notion of Holy Days of Obligation other than Sundays will cease to be understood by the Faithful, if the number of such days dwindles in the typical year to only two or three.

Comments can be sent to

positio@fiuv.org

FIUV Position Paper: Holy Days of Obligation

1. Under the 1983 Code of Canon Law (Canon 1246) ten Holy Days of Obligation are listed, in addition to Sundays.¹ The Code goes on to say that, with the approval of the Holy See, Conferences of Bishops may ‘suppress some of the holy days of obligation’ (that is, remove the obligation to attend Mass on those days), ‘or transfer them to a Sunday’. The typical result is:
 - a. Some of these feasts are celebrated without an obligation to attend Mass.
 - b. Epiphany, Ascension, and Corpus Christi are celebrated on the nearest Sunday.²
 - c. The remaining Holy Days of Obligation are themselves moved to Sundays,³ or the obligation to attend Mass is removed,⁴ when they fall on a Saturday or a Monday.The main exceptions are those cases in which the traditional dates of feasts are marked by public holidays: the Nativity of Our Lord, most obviously, and certain other feasts in Catholic countries or regions.⁵ Notwithstanding this, the effect of each point (a) to (c) is to reduce the number of non-Sundays in a typical year which require attendance at Mass.
2. In celebrations of the Extraordinary Form the 1962 Calendar is used, but the days of obligatory attendance at Mass are set by each Bishops’ Conference. The dates of the ten Holy Days are in fact the same in the two calendars.⁶
3. On this topic, not only does the practice of the Extraordinary Form differ from that of the Ordinary Form, but changes to Canon Law have altered the legal framework within which the Extraordinary Form exists, as they have in relation to the Eucharistic Fast.⁷ Accordingly, in this paper we wish not merely to point out the value of the practice of the Extraordinary Form, but also to suggest respectfully that the practice of removing the obligation to attend Mass on so many of the canonical Holy Days be discontinued for the whole Latin Rite.

¹ Can. 1246 §1. ‘Sunday, on which by apostolic tradition the paschal mystery is celebrated, must be observed in the universal Church as the primordial holy day of obligation. The following days must also be observed: the Nativity of our Lord Jesus Christ, the Epiphany, the Ascension, the Body and Blood of Christ, Holy Mary the Mother of God, her Immaculate Conception, her Assumption, Saint Joseph, Saint Peter and Saint Paul the Apostles, and All Saints.’

§2. ‘With the prior approval of the Apostolic See, however, the conference of bishops can suppress some of the holy days of obligation or transfer them to a Sunday.’

(‘§ 1. Dies dominica in qua mysterium paschale celebratur, ex apostolica traditione, in universa Ecclesia uti primordialis dies festus de praecepto servanda est. Itemque servari debent dies Nativitatis Domini Nostri Iesu Christi, Epiphaniae, Ascensionis et sanctissimi Corporis et Sanguinis Christi, Sanctae Genetricis Mariae, eiusdem Immaculatae Conceptionis et Assumptionis, sancti Ioseph, sanctorum Petri et Pauli Apostolorum, omnium denique Sanctorum.’)

§ 2. Episcoporum conferentia tamen potest, praevia Apostolicae Sedis approbatione, quosdam ex diebus festis de praecepto abolere vel ad diem dominicam transferre.’)

² Under the *Universal Norms on the Liturgical Year and the General Roman Calendar* 7 these three feasts must be moved to Sunday if they are ‘not observed as Holydays of Obligation’.

³ As, for example, in England and Wales.

⁴ As, for example, in the United States of America.

⁵ Many examples will be noted in the course of this paper.

⁶ Notwithstanding that the Octave of the Nativity of Our Lord (1st January) is renamed the Feast of Holy Mary Mother of God in the 1970 Calendar. (The Octave of the Nativity in the Extraordinary Form has an Office of Our Lady. The connection between the themes of the Motherhood of Our Lady and the Circumcision, which was the name of the feast prior to 1962, and which influenced the change in 1970, is argued by Bl. Ildefonso Schuster ‘The Sacramentary (Liber Sacramentorum): Historical and Liturgical Notes on the Roman Missal’ (English edition: London: Burns Oates and Washbourne, 1924) Vol. I p396.)

⁷ See Positio 10: The Eucharistic Fast

The Significance of the Dates

4. The first consideration in favour of celebrating the feasts on their traditional dates, as is done in the Extraordinary Form, is that these dates have great significance, historically, culturally, and above all theologically. Most obviously, it is appropriate for the Ascension to be celebrated forty days after Easter, since Scripture tells us that Our Lord Ascended forty days after His Resurrection.⁸ The liturgical calendar does not always follow exactly the sequence of events in Scripture, but in this case the forty days—symbolic of a period of waiting and preparation, and mirroring the forty days of Lent—have long been observed as a joyful period after Easter. Moreover, Ascension can be viewed as the beginning of a Novena of preparation for the coming of the Holy Spirit at Pentecost. The symbolic meaning of the period after, as well as before, the feast of the Ascension is lost if the feast is moved to a Sunday. It is a public holiday in France, being included in the Concordat of 1801.
5. The celebration of Epiphany after ‘Twelfth Night’ following Christmas marks, in union with the Eastern Churches, the most ancient day of the celebration of the Nativity of Our Lord, kept in Gaul long before its adoption in Rome,⁹ and the Twelve Days of Christmas are deeply embedded in European culture. It is a public holiday in Spain, Poland, and parts of Austria and Germany.
6. Corpus Christi was instituted following private revelations to St Juliana of Liège;¹⁰ the use of a Thursday recalls the events of Holy Thursday, to which the feast is closely related. The feast was established on the first Thursday after Trinity Sunday, first locally, and then universally by Pope Urban IV in 1264 and Pope Clement V at the Council of Vienne in 1311;¹¹ the propers and Office of the feast were composed by St Thomas Aquinas.¹² This was in fact the first creation of a feast of the Universal Church by a Pope.¹³ The celebration of public processions on the day itself is a feature of a number of countries where it is marked with a public holiday;¹⁴ elsewhere these take place on the following Sunday.

⁸ Acts 1.1-3: ‘The former treatise I made, O Theophilus, of all things which Jesus began to do and to teach, until the day on which, giving commandments by the Holy Ghost to the apostles whom he had chosen, he was taken up. To whom also he shewed himself alive after his passion, by many proofs, for forty days appearing to them, and speaking of the kingdom of God.’

⁹ Epiphany, ‘the Birthday of the Saviour’, was attended by the Emperor Julian (‘the Apostate’) at Vienne in the year 360: see Zonaras, *Epitoma Historiarum* 13.11.6 (ed. Theodor Büttner-Wobst, tomus III pp 54-55, in the series *Corpus Scriptorum Historiae Byzantinae*, Bonn 1897). In the translation and commentary by Thomas M. Banchich and Eugene N. Lane, ‘The History of Zonaras’ (London, Routledge, 2009) p170, the commentary gives the parallel in Ammianus: Ammianus Marcellinus *Res Gestae* 21.2.5. Epiphany was adopted in Rome, in addition to Christmas, by at least the reign of Pope Leo the Great (d.461). Christmas, which had been celebrated in Rome since at least 336, became the principal celebration of the Nativity of Our Lord throughout the West due to Roman example.

¹⁰ St Juliana was the subject of Pope Benedict XVI’s General Audience of 17th November 2010.

¹¹ Pope Urban IV composed the Bull *Transiturus de hoc mundo* (1264), but died before the Bull could be distributed; it was reissued by Pope Clement V, with a brief introduction of his own, in 1311.

¹² Doubts about the historicity of Aquinas’ involvement have been set aside by recent scholarship: see Uwe Michael Lang *The Voice of the Church at Prayer: Reflections on liturgy and language* (San Francisco: Ignatius, 2012) p149 and note 33.

¹³ The surprisingly complicated history of the adoption of the feast is recounted by Lauren Pristas ‘The calendar and Corpus Christi’ in *The Genius of the Roman Rite: Historical, theological, and pastoral perspectives on Catholic liturgy* ed. Fr Uwe Michael Lang (Chicago, IL: Hillenbrand Books, 2010) pp159-178, pp170-172

¹⁴ In parts of Spain and Austria.

7. Similar considerations can be adduced for the other Holy Days, whose obligatory celebration is subject to removal when they fall on Monday or Saturday: see Appendix B.
8. Looking at the calendar as a whole, the timing of great feasts, whether they are fixed to the Easter cycle or to a particular date, can quickly become embedded in the consciousness of the Faithful, and indeed in mass-produced diaries, as landmarks of the year. As noted with the Feast of the Ascension, the distance of time between feasts, as well as their order, is important.
9. The ecumenical dimension should also be noted, since the traditional dates are shared in a great many cases by non-Catholic ecclesial communities, such as the Anglican Communion and in Lutheran communities, and by the Oriental Churches.¹⁵

Calendrical disruption

10. If, under Canon 1246, a feast is moved from one date to another, it creates a disruption to the rhythm of liturgical life on both dates. The original date either becomes a feria,¹⁶ which seems inappropriate, or the feast is celebrated without the obligation to attend Mass.¹⁷ In the latter case the feast loses the honour which is its due, and which the Church wishes to accord it, not only in terms of the obligation to attend Mass, but in terms of the special efforts which would otherwise be made to celebrate it with greater solemnity.
11. On the new date, the Sunday, the original liturgy of the day is displaced, and the sequence of Sundays is interrupted. It is worth noting the long-term policy of trimming the number of feasts and Octaves which would displace the Mass of a Sunday, particularly by Pope St Pius X and Pope Pius XII, and indeed in the liturgical reforms following the Second Vatican Council. The very ancient Sunday cycle of the Extraordinary Form¹⁸ relates in a systematic and progressive way to the liturgical seasons, and the greater appreciation of its richness was one of the Liturgical Movement's most notable achievements.¹⁹ Moving feasts onto Sundays is, from this point of view, a retrograde step.
12. In certain contexts the celebration of an important feast on the nearest Sunday can be beneficial, when the Faithful may find it difficult to attend Mass, or a more solemn

¹⁵ The celebration of the Ascension and Epiphany, on the traditional dates, is common to Anglicans, Lutherans, and the Oriental Churches (although some Lutherans, such as in Norway, have in recent times moved the celebration of Ascension to the following Sunday). The Feast of Corpus Christi can at least optionally be celebrated on its traditional date in the modern Anglican 'Book of Common Worship' (published in 2000). For the other feasts, see Appendix B.

¹⁶ As when feasts are moved to the nearest Sunday in the Ordinary Form.

¹⁷ As in the Extraordinary Form, or in the Ordinary Form when the obligation to attend Mass on a feast is suppressed, either always or because it falls on a Saturday or Monday.

¹⁸ The Sunday Gospels of the 1962 Missal largely correspond to the subjects of Pope St Gregory the Great's forty homilies on the Gospels, preached at Rome between 590 and 604. The collection indicates the dates of each sermon.

¹⁹ Pius Parsch gives an example, which we do not necessarily endorse, of the attitude of members of the Liturgical Movement: 'Pope Benedict XV placed the feast of the Holy Family on the Sunday within the octave [sc. of Epiphany], necessitating the transfer of the older and more meaningful Mass of the Sunday to a weekday. These various infringements on liturgical order and propriety may still be remedied as scholars and ecclesiastics become more familiar with and sympathetic to matters liturgical.' *The Church's Year of Grace* (English Edition: Collegeville, Minnesota, 1962) Vol. I p199.

celebration of Mass, or other appropriate devotions such as Corpus Christi processions, on the traditional day, but this is already possible at the discretion of the pastor under the rules of the 1962 Calendar.²⁰ This allows practice to follow local needs precisely—a sparsely populated rural parish may be in a different situation from a seminary, for example—and at the same time serves to emphasise that the traditional date has not been abandoned. Furthermore, where there is more than one Mass on a Sunday, all but one would be Masses of the Sunday.

The Importance of the Obligation

13. The duty to attend Mass on a Holy Day of Obligation is not absolute, and those for whom attendance would involve grave inconvenience are excused. Nevertheless, a formal obligation has important advantages.
14. First, it gives parish priests and school chaplains the opportunity to celebrate Mass in even only nominally Catholic schools. Since in day schools, and even in many boarding schools, pupils spend Sundays with their families, these celebrations are a precious opportunity for the school to worship together. In the case of pupils coming from non-practising families, it may be their only opportunity to experience the Church's liturgy celebrated with solemnity, or even at all.
15. Secondly, in many places it will give Catholic employees, students, and prisoners an important advantage in asking for special provision to be made to enable them to attend Mass, since arguments based on official religious obligations carry more weight than optional devotions: see Appendix C.
16. Thirdly, the number of Holy Days of Obligation is today so low in some places that there is a danger that the very notion of an obligation to attend Mass on a weekday is being lost.²¹ The attempt to make the obligation less onerous can paradoxically make the remaining obligation seem both arbitrary and harder to remember, and so harder to keep.²²
17. Finally, the obligation to keep a feast does not undermine the devotion with which a Catholic assists at Mass, but adds to it a conscious act of obedience, emphasising one's membership of and unity with the Church, engaging in an act of worship alongside Catholics all over the diocese, country, and indeed the world.

²⁰ An important feast can be celebrated as an 'External Solemnity' on a Sunday which is free, in the sense that no other more important feast falls on that day, and that Sunday is not itself a feast of greater importance. Corpus Christi processions have usually taken place on the Sunday following the Feast, except when the feast is a public holiday.

²¹ For example, in 2009 the feast of SS Peter & Paul (29th June) fell on a Monday; the feast of the Assumption (15th August) fell on a Saturday, and the feast of All Saints (1st November) fell on a Sunday. Since the Epiphany, Ascension, and Corpus Christi, are typically moved to Sundays whenever they fall, the result is that in some countries, such as England and Wales, the Faithful were obliged to attend Mass on only one day in the year other than on Sundays, namely the Nativity of Our Lord (25th December). Anecdotal evidence suggests that, in England and Wales, attendance at the remaining Holy Days of Obligation has fallen since Epiphany, the Ascension, and Corpus Christi were moved to Sundays in 2006, and Holy Days of Obligation are no longer always announced as such in parish newsletters.

²² A parallel case, with the Eucharistic Fast, is discussed in Positio 10: The Eucharistic Fast, see paragraph 16.

Conclusion

18. The reduction of the number of days of obligation is part of a widespread trend over many decades, of responding to falling Mass attendance and other difficulties by trying to make the practice of the Faith easier. While an understandable reaction, we believe this to be fundamentally misguided. The Church does not command the respect, or stimulate the zeal, of her children by asking less and less of them.²³ In the case of the Holy Days of obligation, the Church has imposed the obligation to attend Mass on certain days to emphasise the importance of some truth of the Faith, an event in life of Our Lord, or of some of her saints. When the obligation is removed the Church's exhortation to the Faithful to embrace the spiritual significance of these things is inevitably proclaimed with less urgency.
19. The example of St Peter's in Rome is of no small significance here, in maintaining the celebration of Holy Days on their traditional dates. Whereas there is certainly room for variation among local calendars, it is fitting within the Latin Rite that Catholics be able to celebrate these great feasts in union with the Universal Pastor, the Holy Father in St Peter's.

²³ As we noted in the paper on Positio 10, 'The Eucharistic Fast', it has been observed in sociological research that less demanding religions do not necessarily attract or retain more followers: see PP10 footnote 33, which refers and quotes Mark van Vugt and Anjana Ahuja 'Selected: Why some people lead, why others follow, and why it matters' (London: High Profile Books, 2010) p85.

Appendix A: Clarification from the PCED on Holy Days and the 1962 Calendar

Following the submission of a dubium by the Latin Mass Society, Monsignor Camille Perl, Vice President of the Pontifical Commission *Ecclesia Dei*, replied as follows, in a letter dated 20th October 2008, Protocol N. 107/97.

‘1. The legitimate use of the liturgical books in use in 1962 includes the right to the use of the calendar intrinsic to those liturgical books.

‘2. While in accordance with Canon 1246 §2 of the *Code of Canon Law* the Episcopal Conference can legitimately transfer Holydays of obligation with the approbation of the Holy See, it is also legitimate to celebrate the Mass and Office of those feasts on the days prescribed in the calendar of the liturgical books in use in 1962 with the clear understanding that, in accordance with the legitimate decision of the Episcopal Conference, there is no obligation to attend Mass on those days.

‘3. Thus, in accordance with nn. 356-361 of the *Rubricae Generales Missalis Romani* of 1962, it is appropriate to celebrate the external solemnity of Holy Days on the Sunday to which they have been transferred by the Episcopal Conference, as has been customary in many other countries hitherto.’

Appendix B: Six Ancient Holy Days

In addition to the three Holy Days commonly transferred to Sunday (Epiphany, Corpus Christi, and the Ascension), discussed in the body of the paper, and the Nativity of Our Lord, which is never transferred, there are six other feasts listed by Canon 1246 as Holy Days of Obligation, which are commonly either moved to Sunday, or celebrated without an obligation, if they fall on Saturday or Monday, in those countries where they are otherwise observed as Holy Days of Obligation, except in those happy cases where they are marked by public holidays. (Which feasts are of obligation varies for historical reasons between countries.)

The rationale for these practices is to avoid Holy Days of Obligation falling on consecutive days. It is hard, however, to see that the practical difficulties which this situation might imply are serious enough to warrant either the suppression of the Sunday liturgy, or the suppression of the obligation to attend Mass for an important feast the day before or after.²⁴ In any case, the practice of removing the obligation to attend Mass on Holy Days which fall on a Saturday or Monday seems preferable to the practice of moving the celebration of the feast entirely to Sunday, for the reasons already outlined, although this still considerably reduces the number of times there is an obligation to attend Mass other than on a Sunday. What we wish to stress is that the significance of the traditional dates is obscured by moving them even by a single day, particularly when they are linked to other feasts, or are celebrated in other countries, or by the Holy Father in St Peter’s. Again, in nearly every case the feasts are celebrated on the traditional date in the Anglican Communion and among many, if not all, Lutherans; in many cases it is also celebrated on that date among the Oriental Churches. This gives the use of the traditional date considerable ecumenical importance.

²⁴ A side issue is whether, since under Canon 1248 of the 1983 Code Masses on the evening before a Holy Day of Obligation fulfil the obligation to attend Mass on the following day, the Faithful could fulfil the obligation to attend Mass on two consecutive days by attending Mass on the evening of the first of the two. Canon 1248 does not appear to anticipate this problem, and authoritative clarification would be welcome.

The six Holy Days are as follows.

The Octave Day of Christmas (renamed **the Feast of Holy Mary the Mother of God** in the 1970 Calendar),²⁵ 1st January

Clearly an Octave cannot be celebrated on the seventh or ninth day, and moving it by a single day takes it off the secular New Year's Day. It is celebrated as the Feast of the Circumcision by the historic Anglican *Book of Common Prayer*,²⁶ and as 'The Naming and Circumcision of Jesus' in the modern Anglican *Common Worship*; it is also celebrated as the 'Circumcision' or the 'Name of Jesus' by some Lutherans.²⁷

The Feast of the Immaculate Conception, 8th December

This is exactly nine calendar months before the Feast of the Birthday of Mary, 8th September, and has been celebrated (formerly, as the Feast of the Conception of Our Lady) on this date in the West since the 11th century, when it entered the Western calendar by Eastern example in Norman Southern Italy. It spread to Normandy and England in the 12th century, and from there to the rest of Europe. It was made universal by the Council of Basel in 1439; a indulgence was granted in 1477 to those who adopted the feast and its Octave by Pope Sixtus IV, and it was made a day of obligation by Pope Clement XI in 1708. Pope Pius IX changed the name to 'the Immaculate Conception' in 1854. The connection with the Birthday of Our Lady is obscured if it is moved to 7th or 9th. The Feast of the 'Conception of the Blessed Virgin Mary' is kept on 8th December in the Anglican Communion.²⁸

The Feast of the Assumption of Our Lady, 15th August

This has been celebrated on that day since 6th century in the East, whence it spread to the West, probably at the end of the 7th century, under various names.²⁹ It is a public holiday in France,³⁰ Austria, many other European countries, and a number of countries in Latin America and Africa. It is also observed in the Anglican Communion,³¹ and by some Lutherans.³²

The Feast of St Joseph (Spouse of the Blessed Virgin Mary), 19th March

This is seven days before the Feast of the Annunciation (25th March); this connection is obscured if it is moved to the 18th or 20th. The custom of celebrating St Joseph's feast on this day dates back to the 10th century; it was adopted by Rome in 1479 and was made a Holy Day of Obligation in 1621. It is observed in the Anglican Communion,³³ and among some Lutherans.³⁴

The Feast of SS Peter & Paul, 29th June

²⁵ See note 4 above.

²⁶ The *Book of Common Prayer* remains in optional use among Anglicans. The 1662 Edition is the official one; a 1928 revision is also sometimes used, but its calendar is unchanged as far as the ten Holy Days are concerned.

²⁷ It is the 'Circumcision' in, for example, the Norwegian Lutheran church, and 'The Name of Jesus' in the Evangelical Lutheran Church of America.

²⁸ In the *Book of Common Prayer* and in *Common Worship*.

²⁹ Such as the 'Dormitio', 'Pausatio', or 'Natale' (as in heavenly nativity).

³⁰ It is one of the four feasts established as public holidays in the Concordat of 1801.

³¹ Not in the *Book of Common Prayer*, but in *Common Worship*, under the name 'Feast of the Blessed Virgin Mary'.

³² By the Evangelical Lutheran Church of America, it is celebrated as 'Mary, Mother of Our Lord'.

³³ Again, in *Common Worship*, though not in the *Book of Common Prayer*.

³⁴ For example, in the USA the Evangelical Lutheran Church celebrates 'Joseph, Guardian of Jesus' on the traditional day.

This has particular significance for the Orthodox Churches, who celebrate it on this day, and a number of times it was the occasion for Bl. Pope John Paul II to officiate at services with the Patriarch of Constantinople. It is, according to tradition,³⁵ the day of the translation of the relics of these Apostles at Rome in the year 258, and was formerly celebrated in Rome with a splendour to rival Easter. In the 1962 Calendar it is preceded by a Vigil and followed by the Commemoration of St Paul. It is celebrated on this date in the Anglican Communion³⁶ and by many Lutherans.³⁷

The Feast of All Saints, 1st November

The celebration of a feast of All Saints on 1st November is attested from around the year 800. The commemoration of the Faithful Departed on the following day was initiated by Abbot Odilo of Cluny (d.1049). In 2010 1st November fell on a Monday, and so in many places All Saints was celebrated, in the Ordinary Form, on 31st October. Not only did this obscure the connection with All Souls' Day, but it meant that it was celebrated on the popularly recognised date of 'Halloween' (All Hallows' Eve). This is particularly unfortunate given the way Halloween has been widely adopted by neo-pagans. The triumph of the Saints over the spirits of Halloween was thus entirely obscured. All Saints is celebrated on 1st November in the Anglican Communion³⁸ and by many Lutheran communities.³⁹ It was one of the four feasts made public holidays in the French Concordat of 1801.

Appendix C: Holy Days and Rights Legislation

The right of religious freedom enshrined in international law, treaties, and national constitutions, typically creates a non-absolute right of religious believers to follow the teachings of their religion, most obviously in relation to worship. Since for practical purposes this right has often to be balanced against the convenience of others, it is natural for courts and others to give greater weight to the religious observances which are most important to the believer, and to look to official religious bodies for guidance as which observances are really important. We will illustrate the point briefly with regard to two important jurisdictions: the United States of America, and England and Wales, subject as it is to the European Convention on Human Rights and the European Court of Human Rights.

In the Constitution of the United States of America, the First Amendment is as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

³⁵ See Schuster op. cit., Volume V, p290. He adds that, far from wishing to celebrate it at a more convenient time, Pope St Leo the Great negotiated a suspension of the Vandals' fourteen-day sack of Rome in 455, to make its proper celebration possible. The currency of this story itself bears testimony to the veneration accorded to the feast.

³⁶ As 'St Peter the Apostle' in the *Book of Common Prayer*, and 'St Peter and St Paul' in *Common Worship*.

³⁷ It is celebrated as 'Peter and Paul, Apostles' by the Evangelical Lutheran Church of America. It is celebrated on a Sunday in the Norwegian Lutheran church.

³⁸ In both the *Book of Common Prayer* and *Common Worship*.

³⁹ Thus, in the Lutheran Church of America, though they can optionally celebrate it on the nearest Sunday, as is done by the Lutherans of Norway.

Since 1947 this obligation has been extended to the States, as well as the Federal Government.⁴⁰ A relevant precedent was set in 1963, that a Seventh Day Adventist should not be deprived of unemployment benefit on account of refusing to work on the Sabbath (Saturday).⁴¹ Under a Federal statute,⁴² the Federal Government must justify actions which ‘unduly burden acts of religion’ by a ‘compelling interest’, even if the action in question does not target religious practice.

In the European Convention on Human Rights, Article 9 reads as follows:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.
- This applies not only to government bodies but private persons, such as employers. In applying this article, courts distinguish obligatory and non-obligatory ‘manifestations’ of a religion.

Thus, the English Courts have ruled that Sikhs have the right to wear the ‘Kara’, a bracelet,⁴³ and female Muslims a Hijab,⁴⁴ at school. In the latter case the Courts ruled explicitly that the Hijab can be considered as a ‘requirement’ of the Muslim faith. By contrast, a Christian who wished to wear a cross with her uniform lost her case against her employer.⁴⁵ The Courts based their decision, in part, on the fact that ‘there is no mandatory requirement of the Christian Faith that a Christian should wear a Crucifix.’⁴⁶ Again, in finding against a Marriage Registrar who refused to register same sex Civil Partnerships, the Court of Appeal based its decision in part on their finding that ‘her view of marriage, ...was not a core part of her religion.’⁴⁷ Though the factual basis of these findings can be questioned, the fact remains that Courts do take into account whether any particular practice of religion is a ‘requirement’ of the religion or is merely a personal religious practice.

For both the United States and England and Wales, and other jurisdictions with similar legal principles, it follows both from these legal considerations, and also from the more general culture which they foster, that attempts by the Church to make life easier for Catholics by minimising their obligations, or by making them more flexible, can have the paradoxical result that Catholics will find it harder to observe the practices in question. Furthermore, since the strongest obligations have the most chance of making a

⁴⁰ The precedent was set by the case *Everson v. Board of Education* in 1947.

⁴¹ *Sherbert v. Verner*, 1963

⁴² The Religious Freedom Restoration Act, 1993

⁴³ The dispute between a Sikh schoolgirl, Sarika Singh, and Aberdare Girls’ School in South Wales: *Watkins-Singh, R (on the application of) v Aberdare Girls’ High School & An or [2008] EWHC 1865(Admin)* (29 July 2008)

⁴⁴ *Begum v Denbigh High School [2006] UKHL 15*

⁴⁵ Nadia Eweida, who was sacked by British Airways for wearing a cross on her uniform in 2006, lost her Employment Tribunal and subsequent Appeal case, where she alleged Religious Discrimination and breach of Human Rights: *Eweida v British Airways Plc [2010] EWCA Civ 80* (12 February 2010). This decision was overturned by the European Court of Human Rights in 2013: *Eweida and Others v. The United Kingdom - HEJUD [2013] ECHR 37* (15 January 2013).

⁴⁶ *Chaplin v Devon & Exeter NHS Trust, ET Case No: 1702886/2009*, and *Eweida v British Airways [2010] EWCA Civ 80*

⁴⁷ *Ladele v London Borough of Islington [2009] EWCA Civ 1357*

difference to the practices of large employers, schools, universities, and prisons, the less demanding the Church becomes, the less impact she can expect to have on public culture. For bishops' conferences to decide that a Holy Day of Obligation is no longer a day of obligation has secular legal implications for the Civil rights of Catholics, as well as arguably reducing the spiritual benefits of Holy Days, and their important role in stimulating and defending a distinctive and strong Catholic Culture.