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According to the Doctrine of St. Thomas and St. Alphonsus

by Gennaro Bucceroni, S.J.

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Institutiones Theologiae Moralis

Imprimatur

Fr. Albertus Lepidi, O.P., Master of the Sacred Apostolic Palace.

Imprimatur

Francis Cassetta, Patriarch of Antioch, Vicesgerent.

According to the doctrine of St. Thomas and St. Alphonsus

By Januarius Bucceroni, of the Society of Jesus

Volume II

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Approval of the Work

Since certain theologians of the Society have reviewed and approved the work entitled *Institutiones Theologiae Moralis*, etc., of Father Januarius Bucceroni, S.J., we grant faculty that it be printed.

Rome, Jan. 7, 1897.

Francis Carini, S.J.

Prefect of the Roman Province

Abbreviations

See the explanation of abbreviations on page 2 of Volume I.

The German Code in this volume is indicated by the initial letters C. B. (*Codex Borussicus*).

On the Particular Obligations of Laypersons

I. On Judges

1. **What is a judge?** As regards his nominal definition, a judge is the same as one declaring law. As regards the real definition, a judge is a public person, constituted by legitimate authority, so that according to the laws he may vindicate justice by rendering judgment or sentence between two litigating parties, through authentic declaration and application of the laws. St. Thomas, II-II, q. 60, a. 1, 6; q. 67, a. 3.

2. **What qualities are required in a judge?** Knowledge and prudence are required in a judge, by which he may know how to discharge his office rightly. The first reason is that each person, generally speaking, is held to know those things which pertain to his own office and without knowledge of which he cannot exercise it rightly. Besides, speaking in particular about a judge, it belongs to a judge to define and determine what is just. But this cannot be done without knowledge of natural and positive law. The second reason is that it belongs to a judge to apply the dictum of law to a particular matter; and consequently, in order that his judgment be right, it must be pronounced "according to right reason of prudence." St. Thomas, II-II, q. 60, a. 2 and 1, ad 1; Lugo, De Iust. et Iur., d. 31, s. 1.

3. **You will resolve:** 1. No ordinary or mediocre knowledge and prudence is required in a judge, so that he can weigh intricate causes and investigate by his consideration all the circumstances both of law and of fact.

4. One seeking or undertaking the office of judge, and the same is true of physician, surgeon, etc., for which he is unworthy, so that notable damage to the neighbor will probably follow from it, sins mortally.

5. A judge lacking the necessary knowledge ought not to be absolved unless renunciation of office has been made, or unless he has a firm purpose of renouncing it, or at least of acquiring that knowledge by diligent study, and meanwhile abstains from judging, or certainly uses the counsels and work of one more learned. Otherwise he would expose the neighbor to danger of damage. But he must altogether renounce if there is no hope that by studying he will ever become fit. L. 195; l. 1, n. 170.

6. **How must a judge exercise his office?** A judge is held to fulfill his office rightly with incorruptible integrity and no acceptance of persons. The reason is that one undertaking the office of judge is obliged to this from quasi-contract with society. Therefore one acting otherwise will be guilty of violated justice, both legal and also commutative. Rule 12, De Reg. Iur. in VI; St. Thomas, II-II, q. 63, a. 4.

7. **What must a judge furnish in order to fulfill his office rightly?** He must furnish two things. The first is to judge causes and expedite them quickly. For the judge is held from office to render to each one his right. But right is rather injured if he either omits to judge a cause, or defers sentence without a just and proportionate cause. Hence he sins mortally against his office by omitting judgment of a cause, or by delaying it very notably without sufficient excusing cause; and besides he is held to compensate damages to the injured party which have

followed from the inequitable omission and delay of judgment, because he is their unjust cause. C. Iurgantium 2, De Sent. et re iudic.; Trent, sess. 24, c. 20 de Ref.; sess. 25, c. 10 de Ref.; L. 196.

The second is to pronounce legitimate judgment. For the judge is the interpreter of justice and living justice. Judgment, moreover, is the definition or determination of the just, or of right. And Deut. 16:18 says: You shall appoint judges and masters in all your gates, that they may judge the people with just judgment. Rule 26, De Reg. Iur. in VI; St. Thomas, II-II, q. 60, a. 1, 2.

6. **What is required for pronouncing legitimate judgment?** Three things are required. The first is jurisdiction, without which, speaking of itself, one sins mortally, and the sentence is null, unless there is a colored title and the error is common. But by canon law someone obtains the external forum by reason of domicile, thing, contract, and delict. C. Licet 20, De For. comp.; C. Cum quidam § 1, De Except. in VI; C. Novit, De Iudic.; C. 35, Quicumque, caus. 11, q. 1; C. 1, caus. 3, q. 7; L. Barbatius, Dig. De Offic. praetor.; St. Thomas, II-II, q. 60, a. 6; q. 67, a. 1; Lugo d. 37, s. 2, 3; Sanchez, De Matr., l. 3, d. 22.

The second is right process, for example, that the defendant be cited and heard, etc.; unless perhaps sometimes it is expedient, when delicts are public and atrocious and there is danger in delay, suddenly to punish those caught in the very crime. For as he proceeds by public authority, so also the judge proceeds by public knowledge. L. 193; St. Thomas, II-II, q. 67, a. 3; Lugo d. 37, s. 6, 7; C. In causis 19, De Sent. et re iud.; CC. Si legitimus 1, Evidentia 9, De Accusationibus; Clem. 2, De Sent. et re iud.

The third is that he proceed from inclination and intention of justice, according to laws and the right norm of prudence. For if he does not proceed from the inclination of justice and according to laws and prudence, judgment is unjust and depraved. C. Sententia 1, De Sent. et re iud.; St. Thomas, II-II, q. 60, a. 2; L. 194; Trent, sess. 13, c. 1ff. de Ref.; sess. 24, c. 20 de Ref.; sess. 25, c. 6 de Ref.

7. **Note:** "It is illicit for clerics, even those having lay power, to condemn guilty persons to the penalty of death, from C. Continentia 2, De Cler. percuss. Yet in this the Pope can dispense. And bishops themselves, or similar persons, having temporal dominion of some place, can lawfully commit their power to laypersons for causes of blood." L. 1, 3, n. 378; l. 7, n. 566; St. Thomas, II-II, q. 64, a. 4.

8. **How must right process be instituted?** In a civil cause, process must be instituted at the petition of the plaintiff.

In a criminal cause, according to Roman law, and also according to more recent law as regards the very substance of the matter, process can be instituted in three ways: 1. by way of accusation, when there is some accuser who promises that he will prove the crimes objected; 2. by way of denunciation, when the one reporting the crime does not wish to take up the burden of proving; 3. by way of inquisition, which is threefold. The first is general, namely when it is asked in general whether laws are observed, whether there are transgressors. The second is special, when inquisition is instituted about a certain crime and about a certain person as its author. The third is mixed, when

either the person alone or the crime alone is special, for example, whether Titius is guilty, or who killed Caius. L. 197; St. Thomas, Quodl. 11, a. 13.

By whatever way process is instituted, there is always some accuser, whether a private or public person, whether physical or moral. For judgment is an act of justice, which is not toward oneself, as are other virtues by which a person is ordered in himself, but is toward another, ordering a person to another. St. Thomas, II-II, q. 67, a. 3.

By canon law, prior admonition of the defendant is often required. Trent, sess. 25, c. 14 de Ref.; L. Qui crimen, C. De Iis qui accusare non possunt; L. ult., C. De Accusat. et inscript.; Sanchez, Cons., l. 6, c. 2, proem.; Lessius, l. 2, c. 29, n. 106; Lugo d. 27, n. 75; E. M.

9. **What about general inquisition?** A judge, without any given special occasion, from his office alone can institute general inquisition; yet in this his power does not extend to eliciting hidden delicts about which there is no report, or which turn to no one's damage. The reason for the former is that this is necessary for the republic, and injury is done to no one. And although the crimes of certain persons are uncovered, this happens per accidens, beyond the intention, and the common good prevails over this inconvenience. The reason for the latter is that otherwise the neighbor's reputation would be injured directly and per se, and speaking of itself, neither the judge nor society itself has this right. Then very great inconveniences of scandals, quarrels, etc., would follow. Therefore, for the common good of society itself, always speaking of itself, it is more useful that delicts remain hidden than that they be made public, so that scandal may be removed and others not be stirred by the example of others to perpetrate similar crimes. Except, however, cases of imminent danger of common or private damage, in which the judge can inquire even about secret delicts. C. Perniciosa 1, De Off. iud. ord.; L. 198, 199; Lugo d. 37, s. 6; Lessius, De Iust. et Iur., l. 2, c. 29, dub. 13; St. Thomas, Quodl. 11, a. 13; II-II, q. 33, a. 7.
10. **What about special inquisition?** "In order that a judge make special inquisition, infamy, or something equivalent, which gives just cause, must at least regularly precede. The reason is both because otherwise he would defame without cause, and because the judge ought to proceed from public knowledge, which he does not have except through accusation, or confession of the defendant, or evidence of the fact, or through infamy; for this two witnesses do not suffice who swear that they saw the crime committed, because it is still hidden, but it is required that rumor be scattered through the greater part of the community, that is, of city, neighborhood, or monastery, and not have arisen from malicious speakers, although in this matter it is safe to follow the common practice of good men and republics." L. 201.

"Regularly"; for again there are excepted cases, namely if danger of common damage, or grave damage of another person threatens, or if it concerns graver crimes, homicides, thefts, and other things disturbing the republic, and some suspicion is present arising from indications not slight, lest unpunished delicts furnish occasion to wicked persons of disturbing the republic by their crimes and of injuring the innocent. Therefore then the judge must use great prudence, and have account of persons, and until he sees whether the matter can be proved, take information in such a way that reputation is injured as little as possible. Hence, if he sees that it cannot be proved, he must desist. Lessius, l. 2, c. 29, dub. 15.

But lest the defendant meanwhile be able to corrupt witnesses or flee himself, the judge can order that he be enclosed in prison. But this cannot be done without grave delict and grave indications. St. Thomas, II-II, q. 65, a. 3; Quodl. 11, a. 13; Lugo l. c.; CC. Accedens 23, Qualiter et quando 24, Cum oporteat 19, Inquisitioni 21 § 1-2, De Accusationibus; C. I. Proced. poen., l. 1, tit. 1, c. 2; tit. 2, c. 1-4.

11. **What about mixed inquisition?** Mixed inquisition also is lawful; namely, when the crime is manifest and the author is unknown, it is lawful for the judge to ask in general who committed it, but not in particular, for example, whether Peter did it, unless some infamy and manifest indications have preceded. The former part is clear both from the practice of all timorous judges and from contrary inconveniences; for crimes and delicts would easily be multiplied. But the latter part is clear from the fact that this would be to defame the neighbor without legitimate cause. L. 199, 200.

Hence the same holy doctor, 201, says "it must be noted that prelates cannot inquire against religious in doubt whether sufficient indications are present for inquisition, because in doubt their reputation possesses, which by inquisition would then be stained. Understand, however, unless danger of common damage threatens, for then the right of the Religion prevails," or even of private damage. This, as is clear, is general and not only proper to Religion. Lugo l. c.

12. **Note:** If it concerns inquisition that is not judicial, for penalty, but paternal, for amendment of the guilty person, the faculty in this matter is indeed broader, as is clear from common practice itself. For bishops and regular superiors in Visitation, which ordinarily they make only paternally, are accustomed to investigate even in particular about clerics and religious, how they conduct themselves, how they themselves are content with others and others with them, whether they observe the laws, etc. But even this paternal inquisition, if it is not made about all by custom, but about one or another in particular, cannot be done unless some particular reason is present and due caution is preserved, lest someone be defamed from it. Otherwise inquisition of this kind becomes altogether vicious and reprehensible, because it degenerates into detraction, "and because it generates scandals and furnishes occasion to hatreds and dissensions. For people bear it badly that their deeds be scrutinized by others, and by its nature such inquisition inflicts injury on the neighbor, whose honor and estimation which all desire to have best about themselves it opposes." Diana, t. 7, tr. 4, res. 25, n. 3.
13. **Can a judge condemn a defendant whom he knows to be guilty by private knowledge only, or an innocent person who is juridically proved guilty?** Response to the first: negatively. For the judge judges as a public person, and therefore must follow public knowledge and proceed according to the things alleged and proved, especially in favor of the defendant. St. Thomas, II-II, q. 67, a. 2; a. 3, ad 2; L. 207. But speaking not about an inferior judge, but about the prince himself, and about civil causes and removal from offices, etc., Lugo observes, d. 37, s. 5, n. 54, "perhaps the prince has greater power for this, so that from private knowledge he can sometimes condemn a defendant not convicted; for since the republic has greater ownership of these things, and can dispose of these in order to the public good, it can more easily happen that it is expedient for the public good to take away goods or office from someone because of the testimony of the prince alone." But an inferior judge cannot do the

same; "for he cannot dispense in the law of a superior, especially in a matter of such moment." Lugo l. c., n. 50.

To the second: "One whom the judge privately knows to be innocent, if he has been juridically proved guilty, he is held to free in every way if he can, for example, by impeding the accusation, drawing out the judgment, opening the prison if he can do so without greater evil, or remitting the cause to a superior." L. 208; St. Thomas, II-II, q. 64, a. 6, ad 3; q. 67, a. 2 c.

But if the judge by so acting can accomplish nothing toward freeing the innocent person, then three opinions are present, all probable. The first opinion, of the Angelic Doctor, teaches that a judge can in any cause always pronounce sentence according to the things alleged and proved. The reason is that a judge does not judge as a private person, but as a public one. Therefore in judging he must follow not private knowledge, but public knowledge. "He ought to follow these [proofs introduced] in judging." II-II, q. 67, a. 2 c. "A judge, if he knows someone to be innocent who is convicted by false witnesses, does not sin by rendering sentence according to the allegations, because he does not kill the innocent person, but those who assert him to be guilty." II-II, q. 64, a. 6, ad 3.

The second opinion, very probable to St. Alphonsus, denies that in any cause a judge can render sentence against him whom he certainly knows to be innocent. The reason is "because to condemn an innocent person is intrinsically evil, just as it would be to compel a woman to live with one whom he privately knows is not her husband." L. 208.

The third opinion of Lessius and Lugo distinguishes between criminal causes, in which it concerns the penalty of life or mutilation, and civil or criminal causes in which it concerns a pecuniary penalty, or exile, or privation of offices. In the former it denies that it is lawful for a judge to condemn an innocent person. In the latter, it concedes that this is lawful. The reason for the former part is that it is per se evil to kill or order someone killed without authority. But the judge has no authority over the life of an innocent person, since society itself lacks such authority. The reason for the latter is that "the republic has authority of disposing of the fortunes of its citizens and transferring them from one to another, as will have been expedient for the public good, as is clear from the laws of usucaption. But here there seems to be a just cause, both lest the form of public judgments be overturned with scandal of the people, and because no way is available for averting the inconvenience of this person. Therefore it can establish that the judge in such a case follow the public form of judgments, even if from this it happens that he must despoil of fortunes him whom he privately knows to be innocent or to have a good cause." Lessius, l. 2, c. 29, dub. 10, n. 84; Lugo d. 37, s. 4, n. 42ff.; C. Inquisitionis suae, De Sent. exc.; Ithur. Cas. 34; L. 1, 6, n. 999, 1002; E. M.

14. **Does the sentence of a judge oblige in conscience; and to what is a judge held who has rendered an unjust sentence?** Response to the first: affirmatively, if it is certainly just. The reason is that the legitimate precept of a superior obliges in conscience. But the sentence of a judge is compared in law to the precept of a superior commanding or prohibiting something in some particular case. "The sentence of a judge is like a certain particular law in some particular fact." St. Thomas, II-II, q. 67, a. 1 c. From this the author deduces that "just as a general law must have coercive force, so also the sentence of a judge must have coercive force." Similarly, as a general law must have the force of obliging, so also the sentence of a judge must have the force of obliging.

Negatively, if it is certainly unjust. For as someone is not held to obey him who does not have authority of commanding, so more is someone not held to obey him who abuses authority by commanding unjust things. C. Inter ceteras 9, De Sent. et re iud.; St. Thomas, II-II, q. 60, a. 6 c., ad 4. Therefore someone can secretly compensate himself, unless the other has justly prescribed. It is said negatively, that is, not to oblige in conscience, "because in the external forum, where not so much the truth of the fact as juridic proof is regarded, the sentence pronounced is to be observed, to avoid scandals and inconveniences (if indeed they are present and cannot otherwise be avoided); nor, when the term within which it was lawful to appeal has elapsed, is action granted to him, the law so establishing, both as penalty of sloth and on account of the public good, so that there be an end of lawsuits." L. 215.

Affirmatively, if it is doubtfully just. The reason is that presumption favors the superior or judge, and in practice the inconveniences would be very grave; and there would never be an end of lawsuits. Besides, one must obey a superior legitimately commanding. But in the case of the aforesaid doubt and probability, the superior or judge still commands legitimately. Moreover, he certainly possesses the right of urging execution, of which he cannot be despoiled unless by the opposite certainty of injustice.

But from the sentence of an inferior judge it is lawful to appeal to a superior judge, even if the sentence is only probably unjust; and once appeal has been interposed, the sentence given ceases meanwhile. The reason is that that inferior sentence of itself is neither absolute nor simply definitive, but only if it is accepted as such and no appeal is interposed. But after the sentence has passed into a judged matter, it is now absolute and definitive, and one must stand by it even in the forum of conscience in doubt whether it is just. C. Cum super 17, De Sent. et re iud.; Lugo d. 37, s. 15, n. 185ff.; St. Thomas, II-II, q. 69, a. 3; Quodl. 4, q. 8, a. 14.

To the second: If the judge has rendered an unjust sentence from inculpable error, he is held to revoke it if he can without grave inconvenience. The reason for the assertion is that he is held from office to impede the evil of the neighbor; "otherwise, if, when he can, he does not impede his error, what previously was not imputed because of inculpable inadvertence will now be imputed to him as though preserving it." Lugo d. 37, n. 3. Yet he is not held to sustain grave inconvenience, since justice was not formally injured, nor in the quasi-contract of undertaking office or function is someone judged to be obliged even as regards inculpable errors with notable inconvenience to himself. Rule 23, De Reg. Iur. in VI.

If by deceit, or culpable great inexperience, he has rendered an unjust sentence, he must revoke it, if he can, even with grave inconvenience to himself; and he is held to repair all damages coming from it to the injured party. For he is the unjust, efficacious, culpable cause of such damage, and therefore is held to reparation. L. 195, 214; C. Tum ex litteris 5, De In integr. restit.

15. **Is a judge gravely negligent or unjust in executing a cause and pronouncing sentence held to restore not only to the injured party, but also to the treasury, for example if without cause he remitted a pecuniary fine which by law he ought to impose on the defendant?** Busembaum and others probably affirm. The reason is that he is the unjust cause of the damage which the treasury suffers. But others also probably deny, if the defendant has not yet been condemned to the fine. "The reason is that before sentence no right to the penalty

is acquired for the treasury; hence if the judge unjustly absolves the defendant, he sins against legal justice, not commutative justice." L. 196, 237. Except if from unjust remission of the penalty damage would come to a private person or to the republic; for by force of his office he is held to impede that damage. St. Thomas, II-II, q. 67, a. 4, ad 3; L. l. c. and n. 237; Lugo d. 37, s. 8, n. 97. Cf. 61.

16. **Must a judge judge according to written laws?** Response: affirmatively. "Augustine says: In these temporal laws, although people judge about them when they institute them, nevertheless when they have been instituted and confirmed, it will not be lawful for judges to judge about them, but according to them. Judgment is nothing other than a certain definition or determination of what is just. But something becomes just in two ways. In one way from the very nature of the thing, which is called natural right; in another way from a certain agreement among people, which is called positive right. But laws are written for the declaration of each right, yet in different ways. For the writing of law indeed contains natural right, but does not institute it; for it does not have force from law, but from nature. But the writing of law both contains and institutes positive right, giving it the strength of authority. And therefore it is necessary that judgment be made according to the writing of law; otherwise judgment would fall short either of the naturally just or of the positively just." St. Thomas, II-II, q. 60, a. 5; Inst. l. 4, t. 17; L. Rem non novam, C. De Iudiciis; C. 1, De Sent. et re iudic.

17. **You will resolve:** An inferior judge ordinarily cannot relax or diminish a penalty, even if the plaintiff or accuser consents, unless sometimes epikeia would dictate that something else is necessary for the good of the republic, or unless the judge justly interprets the will of the superior, or unless another just cause is present in which the end of the law is to be attended to rather than the bark of words. The supreme judge himself cannot do this without just cause; hence acting otherwise he would sin gravely, because he would render delinquents bolder and thus concur in sin. St. Thomas, II-II, q. 66, a. 6, ad 2; q. 67, a. 4; q. 60, a. 5, ad 2; IV, d. 46, q. 1, a. 2, q. 2; Lugo d. 37, s. 8.

18. **What must a judge do when the law is not clear, but obscure, and opposed probable opinions are present on each side?** In criminal matters favor must be given to the defendant, both as regards the existence of the crime and as regards the infliction of penalties. The reason is that according to the rules of law: In doubt no one is presumed evil unless he is proved; When the rights of the parties are obscure, favor is to be given to the defendant rather than to the plaintiff; Hatreds are to be restricted and favors should be enlarged; In obscure matters the minimum is to be followed; In penalties the more benign interpretation is to be made; It is more satisfactory that the crime of the guilty be left unpunished than that an innocent person be condemned. De Reg. Iur. in VI; L. Absentem, De Poenis; St. Thomas, II-II, q. 60, a. 4; Elbel, De Actib. human., 197ff.

In civil causes, probability of fact and probability of law must be distinguished. A doubt of fact is: whether a person was master of himself when he made a testament; whether Titius committed such a delict, falsified writings, etc. In such doubt sentence is to be rendered according to the rules of natural and positive law: In doubt a fact is not presumed, but must be demonstrated; In doubt the fact, or what was rightly done, which by law had to be done, is presumed; In doubt one must stand for the validity of the act; In doubt one must stand for him for whom presumption stands; Once evil,

one is always presumed evil; Ignorance of fact, not of law, excuses; In obscure matters we inspect what is more like the truth, or what for the most part is accustomed to happen, etc. De Reg. Iur. in VI.

A doubt of law exists when it is doubted what the law prescribes in such a case, whether the law extends or does not extend to it, etc.; and probable opinions are on each side. In such a doubt of law, either no one possesses the thing, or someone is possessor of the thing. In the first case, when no one possesses the thing, if it is doubtful to which party the law more favors, or if, without doubt, the law favors the parties equally, there is a twofold opinion. The first opinion holds that the thing is to be divided. The reason is that the judge is not the owner of things, but the declarer of right in a particular case, and consequently distributor of things not according to his pleasure, but according to the rights of the parties; and therefore, if the rights are equal, he must divide the thing equally between them. The other opinion holds that "the judge indeed does better by procuring to reduce the parties to concord, yet absolutely can choose one of those equally probable opinions, because the judge from the duty of his office is held only to investigate truth diligently, so that according to it he may judge; but in our case he very probably judges that this is the truth, and that this person has right: therefore he can judge for him with that equal probability." Lugo d. 37, s. 10, n. 115. And indeed, since each party then has, according to a probable opinion, an entire right to the thing, the judge will be able to conform himself well to one of those opinions and inflicts no injury on the other party. Cf. C. Duobus fin., De Sent. et re iud. Nor is it valid to object that the judge, by judging that the truth is for one party, exposes himself to the danger of departing from the true and depriving the other party of his right. For the judge cannot avoid this danger. For the danger is equal if he judges for the other party. But if he divides the thing, "then the danger will be more certain; for then it will be not only probable, but most certain, that the true owner is deprived of his thing as regards half the part. Therefore it is better to undergo that probable danger with a probable judgment about the justice of him for whom sentence is rendered, than most certainly to deprive the owner of his thing as regards half the part." Lugo l. c., n. 118.

But if, in the same case where no one possesses the thing, the truly more probable opinion in the question of law favors one party, and the less probable opinion favors the other party, the common opinion holds that the judge ought to render sentence for that party for whom the more probable opinion stands. The reason is first drawn from proposition 2 condemned by Innocent XI: "I probably think that a judge can judge according to an opinion even less probable." But from this condemned proposition it follows only that the judge cannot render sentence for the less probable opinion, not at all that he must render sentence for the more probable opinion and cannot divide the thing between the parties according to the proportion of probability. The reason is secondly drawn from the fact that the judge is constituted by the republic so that he may define the matter according to the merits of the cause and according to the opinion which seems more conformable to the law; otherwise he would be an acceptor of persons. But neither does this reason truly prove the assertion. For if he must judge according to the merits of the cause, he must divide the thing according to the proportion of greater or lesser probability. But that he is constituted by Society to render sentence for the more probable opinion by ascribing the entire right to it is indeed asserted, but is not clear. Only this can be asserted, and is clear of itself: namely, if the thing cannot be divided according to the proportion of greater or lesser probability, but is ascribed whole to one party, because this is, for example, the practice of tribunals, it should certainly be attributed to the one who has greater probability. But this

practice of tribunals could be made honorable from a twofold head: 1. if it concerns a much greater probability, because then moral certainty is almost had, which is often difficult to distinguish from great probability; 2. if, while the judge ascribes the whole thing to one, he frees the other from all expenses of judgment and from damages to be repaired, because then an equitable compensation is had. Therefore the better reason seems to be that which was just adduced for the case of equal probability, namely because there is less danger of injustice, and the judge, as interpreter of justice, is held to choose at least the less dangerous opinion when a certain one cannot be had.

In the other case, when someone possesses the thing, with equal probability of law standing on each side, the thing is to be adjudicated to the legitimate possessor; for by reason of possession his right prevails absolutely. This is confirmed from Rule 65 of Law in VI: "In equal delict or cause, the condition of the possessor is stronger." But if unequal probability is had, the first opinion holds that the judge is held to adjudicate the thing to him who has greater probability for himself, although he is not the possessor. For first, possession of itself does not bestow the right of ownership, but only of detention of the thing until someone is legitimately despoiled; but the right of ownership is greater for the other party. The dispute is about ownership itself, not about simple detention of the thing, which is extrinsic to it. Therefore just as in the case of greater probability, with no one possessing, the greater probability prevails, so also it prevails in the case of possession. Besides, Rule 65 of Law in VI is evidently valid in an equal cause, not in an unequal cause. The other opinion holds that the judge cannot despoil the possessor. The reason is that legitimate possession, with attention to human morals, speaking of itself, argues a morally certain right, even of ownership itself; for people are not accustomed to be negligent in guarding their own things. And on this reason is founded the law of prescription, which is had by possession itself of the thing. "Legitimate possession"; for it would be otherwise if the possession itself were not certain, or not certainly legitimate. Moreover, legitimate possession, besides the fact itself of possession, requires two things: title and good faith. Title is donation, inheritance, purchase, and similar things through which ownership of some thing is customarily acquired. This title ought to be at least reasonably presumed. But good faith is a judgment by which someone, because of a similar title, prudently believes the thing is his own. "And therefore judges commonly adjudicate things to those having the more probable right, because in the external forum the good faith of the possessor can with difficulty be proved." L. 210; l. 1, n. 47; Lugo d. 37, s. 10; Ithur. Cas. 34; Viva on proposition 2 condemned by Innocent XI; E. M.

19. **Can a judge render sentence when the law itself is certainly unjust and inequitable?** If it concerns a civil law contrary only to ecclesiastical laws in which the Supreme Pontiff can dispense, as, for example, the law of ecclesiastical immunity, the judge can and must, if judgment must be rendered, seek the due faculty from the Holy See, or from the bishop of the place, according to the various laws and various cases occurring. He will easily obtain this faculty, since it is greatly expedient for the good of society that there be honorable judges in it. The reason for seeking the faculty is the usurpation of the rights of the Church which otherwise would be had, and public scandal to be guarded against.

If it concerns a civil law contrary to divine and natural laws, then either the judge must prescribe something directly against this right, or he must only apply some penalty.

The first is evidently not lawful, and thus he ought rather to leave his office than to oblige by military force a concubine to remain at home with her lover. For just as it is inequitable to execute an inequitable thing, so it is inequitable to command its execution. St. Thomas, II-II, q. 60, a. 5.

The other seems to some also altogether illicit, because it is intrinsically evil to condemn an innocent person, namely when the law itself whose transgression is punished is evidently unjust. But to others it seems that he can be excused. For to decree some temporal penalty is not always evil of itself; and there is a very grave reason on the part of the judge, lest he be forced to renounce office, and on the part of consenting society, for which it is better that judges be good than evil, always with scandal removed, either from approved custom and practice of the timorous, or from due faculty previously sought. And thus he can decree a fine on account of an omitted formality of civil marriage, which the Church tolerates in this sense, always with scandal removed, as was said.

But although it concerns only a penalty to be decreed, one must distinguish between penalty and penalty. For if it concerns the penalty of death, for example mutilation, etc., since neither the person himself can yield his right, nor society by its own authority sanction such a penalty, it is altogether inequitable to impose it. "For there positive law has place where, as regards natural law, it makes no difference whether it is done thus or otherwise." St. Thomas, l. c. But if it concerns some pecuniary penalty, or another similar penalty, since each person in this matter can yield his right, and society can consent, the judge certainly can impose some slight penalty of this kind, lest he be forced to renounce his office with grave damage to himself and to society itself. Consent is then reasonably presumed. Yet this also seems to have to be limited to the case in which it does not concern a law directly against nature, although it is rather harsh and not sufficiently just. For since the sentence of a judge is not any declaration whatever, but an authoritative one, authoritatively to confirm a law against nature, even by determining a pecuniary and slight penalty, is against nature. It is against nature to condemn to death a Christian who refuses to adore idols; it is against nature to condemn him to a penalty and fine of only five lire because he refused to kneel before an idol. Certainly of such a judgment it cannot be said that it is "the definition or determination of the just or of right," nor can it be said of the judge that he is "interpreter of justice" or "living justice." St. Thomas, II-II, q. 60, a. 1; q. 67, a. 3; E. M.

20. **Can a judge lawfully accept gifts?** It is wicked for a judge to accept gifts of grave moment, which indeed in some way seem at least indirectly to be exacted, or in which some danger of corruption can be seen. But it does not seem possible to reprove accepting only slight little gifts, altogether spontaneously offered, in which there is no danger of corruption and which are not even indirectly exacted.

The reason for the first part is that it is wicked to accept these gifts for a just sentence; for this must be pronounced from office. It is likewise wicked to accept them for an unjust sentence, because this must not be pronounced. This is besides positively prohibited by canon law, C. Statutum 11, De Rescriptis in VI, § Insuper. It is also prohibited by civil law, by which all corruption of magistrates through gifts and promises is punished with grave penalties, both in those corrupted and in those corrupting. L. 18, Dig. De Offic. praesid.; C. I. poen. 171-173.

The reason for the second part is that since these are offered from mere urbanity, they would be refused as though uncivilly. This is confirmed by canon and Roman law in the cited places, for it is

said that perhaps "something edible or drinkable, offered from mere liberality, which can be consumed in a few days," can be received. C. Cum ab omni 10, De Vit. et honest. cler.; Lugo d. 37, s. 11; St. Thomas, II-II, q. 71, a. 4, ad 3.

21. **If a judge has accepted gifts against the prohibition made, is he held to restitution?** If the judge accepted gifts from litigants as a gift, he probably is not held to restitution before sentence. For "the aforesaid laws and others either are understood only for the external forum, or about restitution as penalty of crime, for which a sentence is always required, even if not inflictive of penalty, at least declaratory of crime." L. 216.

But if he accepted from pact for rendering a just sentence, that is, for furnishing that which he already owed from justice, he is held to restitution. The reason is that whatever is already owed from office, and therefore from justice, cannot be the matter of a contract. Much more is he held to restore those things which he extorted by force, threats, or unjust vexation.

Likewise, if he accepted from pact for rendering an unjust sentence, he is certainly held to restitution before he renders a sentence of this kind; but once sentence has been rendered, he can retain it, since the sin has now been committed, and there is no sin in retaining the thing accepted. But since what had been promised and was not owed has been furnished, the innominate contract is then verified: I give so that you may do. And thus also "because of fornication, a woman can retain for herself what was given to her." St. Thomas, II-II, q. 62, a. 5, ad 2; Lugo l. c.

22. **Can a judge accept money at least for expediting someone's cause before another?** "Laymann says that, considering natural law, he does not dare to condemn this, because that new obligation which he undertakes is worthy of a price. But the Salmanticenses more truly contradict, n. 66, because the judge is held from justice to expedite quickly the causes of those who have equal right to expedition, unless he undertook extraordinary labor to which he was not held by force of his office." L. 196. Lugo also absolutely rejects this, d. 37, n. 136, for "as often as he is held from justice to do something disjunctively gratis, he cannot accept anything for choosing this part."

23. **When litigants have equally probable opinions for themselves, can the judge accept money for rendering sentence in favor of one rather than the other, according to the opinion related above? Cf. 18.** Response: negatively; for this is proposition 26 condemned by Alexander VII. The reason is that "he would accept a price for a thing not worthy of price; for from justice he was bound to pronounce sentence for one of them. But determination to that part, although it makes the sentence more useful to me, nevertheless does not add labor or anything on the part of the judge worthy of price. Just as, if someone from justice ought to give a dowry to one of two virgins, he could not ask something from her for choosing her. But the reason a priori is that it is repugnant to be bound from justice to give the whole thing to one of two, and yet to be able to seek a price for it; for then it would not be given whole to one of the two, although from justice he is held to give it whole. Therefore he cannot, justice preserved, subtract anything; otherwise he could accept half of the thing to be given as price, which would be manifestly against justice." Lugo d. 37, n. 119.

II. On Arbiters

24. **What are arbiters?** Those are called arbiters who are spontaneously chosen or admitted by each opposed party, after the manner of judges, to settle some lawsuit. The pact by which the faculty of composing the lawsuit is attributed to them is called a compromise. By this pact the adverse parties, by mutual consent, promise that they will execute whatever will be established by the arbiters. But from the sentence of arbiters, according to C. I., it is lawful to appeal, otherwise than in common law, St. Thomas, II-II, q. 69, a. 3, ad 2. Moreover, the compromise can be made either by public act or by private writing, according to C. I.; otherwise it is null. Dig. l. 4, tit. 8; Decret. l. 1, tit. 43; C. I. Proc. civ., preliminary title, c. 2.

25. **What is the office of arbiters?** Arbiters, whoever they are, once admitted by diverse parties, properly enjoy the office of judges and bear all their functions, no differently than if they had been designated by public authority. The reason is that someone can submit himself to the judgment of another, although he is not his superior. If this is done by two litigants so that the lawsuit may be settled, an arbiter is had; and therefore, although not from public authority, nevertheless from private pact he is constituted judge. But private pacts, like public laws, oblige in conscience. St. Thomas, II-II, q. 67, a. 1, ad 2.

26. **You will resolve:** Since arbiters fulfill the offices of judges, they have almost the same rights and the same obligations. Therefore: 1. they can instruct the cause brought to them, defer the matter to another more opportune time, hear witnesses, and finally, once sentence has been given, settle the lawsuit absolutely.

27. They ought not to undertake a lawsuit for judging which they do not have sufficient learning; otherwise they sin against commutative justice, and contract the obligation of restitution if by erring they actually inflict damage.

28. Arbiters are held to judge according to the laws of the region, unless the parties have imparted to them the faculty of composing the matter from equity and good. For then, according to natural equity, they ought to promote the convenience of each party.

29. They must especially beware of acceptance of persons, namely lest, drawn away by hatred, aversion, or excessive affection, they render sentence against the rules of equity.

30. **Note:** In order that the sentence of arbiters be valid in the external forum, it is necessary to fulfill the conditions added in the codes of various nations. C. I. civ. 1742, 1764ff.; Proc. civ. 8ff.; C. G. civ. 1989, 2044ff.; Proc. civ. 1003ff.

III. On Jurors

28. **What are jurors?** Jurors, so called because of the oath which they furnish about rightly exercising the office entrusted to them, are men selected from the foremost citizens for performing some part proper to judges. They are employed only in criminal causes, and their office is to pronounce judgment concerning the existence of the fact and the culpability of the accused; afterward the judges decree the penalty according to law. C. I. Proc. poen. 493ff.

29. **What are the obligations of jurors?** Jurors contract the same obligations as judges themselves, yet staying within the limits of their office. The reason is that to a great extent they exercise the office of judges. Yet they must not furnish all things to which judges are held, but only pronounce on the existence of the fact and the culpability of the accused. C. I. Proc. poen. 493ff.

30. **Can a juror give a vote against the accused who is indeed juridically convicted, but whose innocence he certainly knows by private knowledge?** Response: negatively. The reason is that he must pronounce only concerning the existence of the fact according to his own intimate conviction, nor is he held in any way to give the legal reason for his own sentence. C. I. Proc. poen. 495, 498. Yet a juror cannot affirm someone guilty whom he knows to be such only by private knowledge, but who has by no means been juridically proved guilty. For the defendant, as long as he is not juridically proved such, has the right to be absolved; but the juror bears the person of judge, not witness.

31. **Is it lawful for jurors to render sentence in a judgment in which the tribunal has no authority over the defendant, namely if, for example, it concerns an ecclesiastical person?** If his intervention would be altogether useless, for example, when the greater part or almost all of the jurors is prepared to condemn the defendant, he can abstain from intervening in such judgment. The reason is that on one side no one is held to do a useless thing; and on the other side absence is a certain protest against abuse of justice.

In the same hypothesis he must besides abstain. The reason is that his presence would be useless, and his absence necessary, lest he cooperate in usurpation of justice, and so that he may protest against that abuse of justice.

If the juror cannot adduce any cause so that he may abstain from judgment, and he is punished by civil law, he can indeed, even in the same hypothesis, intervene in the judgment, seeking the due faculty, or if this cannot be done, favoring the defendant as far as he can. The reason is that since he comes compelled by necessity and has previously sought the faculty, or, in impossibility, tries to favor the defendant as much as he can, all scandal is removed and sufficient protest is had against abuse of justice. Besides, in these circumstances he can reasonably presume the consent of ecclesiastical authority.

If his intervention would be altogether useful for absolving an innocent person, for example, because it is clear that the greater part of the jurors favors justice, it seems that the natural law of charity obliges him to intervene in the judgment, so that he may succor the neighbor gravely needing help. But to impede scandal or wonder, it suffices to seek the due faculty, or, if this cannot be done, to declare his intention, if it is not clear from elsewhere, that he comes not as judge, but as patron and advocate of the innocent person.

The same resolution seems also to be given in the same case if there were an express law or censure against those who undertake the office of juror. The reason is that since laws and censures generally are for edification, and in particular laws and censures of this kind are for protecting ecclesiastical persons and the dignity of their state, they do not seem in such a case to wish to impede protection of the safety of those same persons. Therefore then they cease contrarily.

IV. On Advocates, Procurators, and Reporters

32. **What are an advocate, procurator, and reporter?** An advocate is one who furnishes his help to litigants by counsel and by undertaking defense before a judge.

A procurator is one who pursues a cause in judgment by mandate and in the name of the litigant.

Finally, a referendary or reporter is one to whom the acts of litigants are committed for discussion, so that afterward he may report their foundations, reduced as it were into a summary, to the judges. St. Thomas, II-II, q. 71, a. 1, 2.

33. **What are the obligations of advocates in defending causes?** Advocates are held first of all to have competent knowledge of laws, of the form of judgments, and of the manner of preparing instruments. Then they must examine the cause diligently, manifest its justice or injustice and the certainty or probability of winning or losing it, guard against damaging delays, preserve fidelity, and finally defend the cause, and only a just one, without lies, frauds, and other unjust means. The reason is that from legal justice toward society, and from commutative justice toward the client, they are obliged to defend his rights and guard against his damage; but toward the opposite party, they are obliged not to become cooperators of injustice. Therefore those acting otherwise are held for damages. C. Si culpa ult., De Iniur.; St. Thomas, II-II, q. 71, a. 3.

34. **You will resolve:** 1. Advocates sin against justice toward the client if, when they are not sufficiently prepared and suitable, they undertake causes to be defended; if they disclose the foundations or secrets of the cause to the adverse party, or if they serve each party; if because they seem to themselves to bring peremptory arguments, they neglect other arguments not to be despised, because perhaps the judges would be moved by those neglected motives; if they do not prepare themselves sufficiently for pleading the cause, etc.

35. The same advocates sin against justice toward the adverse party if they cite false or abrogated laws, or bend them into a foreign sense, employ deceit or lies from which judges or jurors are drawn away into an unjust sentence or vote; likewise if they impose false crimes or vices on the adverse party, etc. L. 226; St. Thomas, II-II, q. 71, a. 3.

36. **Note:** St. Thomas, l. c., ad 3, teaches that "it is lawful for an advocate defending a just cause prudently to hide those things by which his process could be impeded," because this would not be to deceive the adversary, but to allow him to deceive himself.

37. **Is it lawful for an advocate to defend an unjust cause?** In civil matter an advocate cannot lawfully sustain a certainly unjust cause. A fortiori in criminal matter he cannot undertake the parts of an evidently unjust accuser. The reason is that, as St. Thomas says, II-II, q. 71, a. 3, "it is illicit for someone to cooperate in doing evil, whether by counseling, or by helping, or by consenting in any way whatever; because one counseling and assisting is in some way doing. And the Apostle says, Rom. 1:32, that they are worthy of death, not only those who do sin, but also those who consent to those doing it. Hence also it was said above (q. 62, a. 7) that all such persons are held to restitution. But it is manifest that an advocate furnishes help and counsel to him whose cause he patronizes. Hence, if he knowingly defends an unjust cause,

without doubt he sins gravely and is held to restitution of that damage which the other party incurs against justice through his help. But if he ignorantly defends an unjust cause, thinking it to be just, he is excused according to the mode in which ignorance can be excused." L. 14, C. De Iudiciis.

38. **You will resolve:** 1. An advocate who, with a cause already undertaken, notices that it is unjust, must at once warn his client about the injustice of the cause and desert it. Otherwise he will be held for all damages coming to each party. Yet if the client is in bad faith, he is held first to restore, as the one mandating. But if he does not restore, then in the second place the advocate is held to restore, namely as executor. "Yet he ought not to betray it, namely so that he helps the other party, or reveals the secrets of his own cause to the other party." St. Thomas, l. c., ad 2. The first is against fidelity; the second is against the strict obligation of secrecy. They except unless the other party would therefore have to suffer grave and unjust detriment. Cf. La-Croix, l. 3, p. 2, n. 1231; Lugo d. 37, n. 183.

39. A procurator general sins against justice if from negligence, haste or prejudice, hatred or acceptance of persons, etc., he drags an innocent person into detention, judgment, and undergoing an unjust sentence. Likewise if he sustained the accusation after in the course of the cause he recognized innocence, or gravely doubted about it; and therefore he is held for all damages following for the accused.

40. **Can advocates defend causes, even less probable ones, both of defendants and plaintiffs?** Response: affirmatively in civil causes, because as such matters are litigious, there can reasonably be hope that truth may shine out. Besides, since the judge can divide the thing according to the proportion of greater or lesser probability, it is lawful for advocates to urge the probable reasons of clients, so that he may decide according to just allegations and proofs. Cf. 18. Yet the client must be warned of the doubtful outcome, lest perhaps he incur the expenses of the lawsuit uselessly.

But in criminal causes, the defendant can always be defended, even if his culpability were clear. The reason is that an advocate defending the defendant inflicts injury on no one, and from his office protects the right of the defendant, lest he be condemned before the crime has been fully proved juridically, and at least so that the prince may be impelled to mercy.

"In a doubtful criminal cause it is not lawful to support the parts of the plaintiff, who in such a case sins gravely against the defendant; therefore so also does the advocate. Nor when the plaintiff acting against a possessor knows that he can prove nothing, but that the matter will always remain doubtful, because then the possessor, for whom the judge will finally have to judge, is unjustly vexed." L. 220. Hence, if he patronizes the defendant, it suffices that the exception be just in the exterior forum; but if the plaintiff, the cause must be just also in the forum of conscience.

39. **Whether and how does an advocate sin who defends a just cause by unjust means, for example if he substitutes a new promissory note in place of a prior lost one, etc.?** He sins against fidelity and truth. For it is an officious lie.

Of itself he does not sin against justice if the right of the client is certain. For no injustice appears as regards the substance of the cause. "Certain"; for if that right is doubtful, and by the promissory note

is rendered certain, because a promissory note is supposed which never existed, he would certainly sin against justice. For since all probability is overcome by certainty, the right of the adverse party would be injured. But per accidens he can sin against justice if damage comes from it either to the adverse party or to his own client.

He can sometimes sin gravely against charity toward himself if he exposes himself to the proximate danger of very grave penalties because the falsity is discovered. St. Thomas, II-II, q. 71, a. 4, ad 3.

40. **To what is an advocate held by reason of honorarium or stipend?** Lawfully and justly an advocate, as also a physician and others, can exact an honorarium or stipend for his work. "Augustine says that an advocate lawfully sells just patronage, and a jurist true counsel. It must be said that the things which one is not held to exhibit to another, he can justly receive recompense for exhibiting them. But it is manifest that an advocate is not always held to furnish patronage or to give counsel to the causes of others. And therefore, if he sells his patronage or counsel, he does not act against justice. And the same reason holds about a physician furnishing help for healing, and about all other persons of this kind, provided however that they accept moderately, with consideration of the condition of persons, matters, and labor, and the custom of the country. But if through impropriety they extort something immoderately, they sin against justice. Hence Augustine says to Macedonius that things extorted by immoderate impropriety are customarily reclaimed, but things given through tolerable custom are not customarily reclaimed." St. Thomas, II-II, q. 71, a. 4 c.

Moreover, generally speaking, he can accept nothing beyond the just honorarium which is determined either by law, custom, judgment of prudent persons, or convention of the parties, with account had of the matter, labor, and skill of the advocate.

If he has an annual stipend, he can receive it, although lawsuits do not occur in that year. For it is as it were an aleatory contract, whether lawsuits are several or none.

If during the time of the lawsuit he is ill for a long time, unless he substitutes another, he must renounce the part of the stipend which was constituted by pact.

If after agreement was made about the stipend, the client abandons the cause begun, the advocate can exact the whole if it does not stand through him that he does not pursue the lawsuit, no differently than one hiring out his work for some wage can exact it if it stands through the hirer that the work is not completed. Except, however, if a just cause intervened for abandoning the lawsuit, since this condition is always understood in the agreement.

By positive law he cannot, while the cause is treated, establish a wage, nor establish as wage a quota part, for example the third part, of the goods about which the lawsuit is being conducted. But if he sought a just wage, he is not obliged to restitution. Indeed, since dispositions of positive law of this kind are not in force, neither advocate nor client would be troubled.

Although he spontaneously offers himself for treating the lawsuit of a relative or friend, nevertheless he can exact just retribution. Yet if from charity he is held to help the poor, he is especially held toward those joined to him, according to 1 Tim. 5:8: If anyone does not have care of his own, and especially of those of his household, he has denied the faith.

As regards the poor in particular, he is held to help gratuitously, even with grave inconvenience to himself, those who are in extreme necessity. Likewise, those who exist in grave necessity he is held to patronize gratis, and indeed under mortal sin, though not with notable inconvenience to himself. Finally, even in common necessity he is held from charity to protect the causes of the poor, though not with grave inconvenience; namely, it suffices that he bestow some work on them when he is free from others. L. 58, De Pact.; Lugo d. 41, n. 12; L. H. A., tr. 13, n. 69, 70; St. Thomas, II-II, q. 71, a. 1, 4.

41. **What are the qualities and obligations of a procurator?** As in an advocate, so also in a procurator, besides knowledge, due diligence in treating affairs is required, with fidelity and justice, which must also be observed in exacting the honorarium. The reason is that just as the office of procurator is almost equated to the office of advocate, so also the obligations.

42. **You will resolve:** Procurators of parties sin against justice if they prolong causes, if they obtain delays unduly, if they do not procure in first place the cause previously accepted, if they lead parties to an inequitable composition, etc.

43. **Can a procurator, if he has an advocate or notary who serves him gratis, retain for himself the just stipend owed to them?** Response: negatively, if he serves for the benefit of the client; affirmatively, if for the benefit of the procurator himself. The first reason is clear, because he has no just title for acquiring that stipend. The second reason is also clear, because morally it is the same to do something through oneself or through another; if he did by himself a useful thing, he could indeed retain the just stipend, therefore also if he does it through friends. L. 239.

44. **What are the qualities and obligations of reporters?** Reporters must first know rightly the things which pertain to their proper office; then they must employ necessary diligence so that they satisfy the same things. Otherwise the damages going to come will deservedly be imputed to them, since they undertook such an office voluntarily while inexperienced, or exercised it negligently.

45. **You will resolve:** "A reporter sins: 1. if from defect of study or through carelessness he reports badly, or omits something substantial; 2. if he is partial and tries to explain the justice of one party rather than that of the other; 3. if he manifests the sentence to either party before it is published, whence grave inconveniences can follow, for example, the judge can be refused, etc." L. 228.

V. On Notaries, Scribes, and Apparitors

46. **What are a notary, scribe, and apparitor?** A notary or tabellion is one who is constituted by legitimate authority for preparing and preserving public acts or instruments which have force both in judgment and outside judgment.

A scribe or secretary is one who from office reports in writing testimonies, sentences of judges, and all other things which are done in tribunals.

An apparitor is one who from office carries summonses and mandates of justice, and completes executions decreed by the judge.

47. **What are the qualities and obligations of a notary?** A notary must be experienced, diligent, faithful, tenacious of justice. But especially he must know well those things which are required for proof of contracts in the external forum. Cf. C. I. 1312ff. The reason is that his office necessarily requires this. And especially for him "inexperience is counted as fault." Rule 132, De Reg. Iur.; Trent, sess. 22, c. 10 de Ref.

48. **You will resolve:** Notaries are unjust especially in the following cases:

49. If they are ignorant of things pertaining to their office and therefore do not prepare instruments rightly; if with detriment to the contracting parties or others, from negligence, they omit necessary solemnities, for example, to employ suitable witnesses, add signatures, indicate day, month, year, etc.

50. If they prepare a false, usurious, or unjust instrument; if to the damage of another contracting party or a third party they feign in the instrument things which are not; if they add false notations of day, or change true ones, even if they do not intend damage; likewise if they counsel such things; if they prepare acts which exceed their office, or if outside the territory assigned to them they exercise their ministry; for then their acts are ipso facto invalid.

51. If they do not faithfully describe the wills of the contracting parties, or by ambiguous drafting furnish place for lawsuits and injustices; if they do not warn the parties about clauses which can harm them, or about difficulties which can arise from them. For they are held to these things from quasi-contract with the parties.

52. If they falsely write that the sum was paid before them, or had already been paid before, with damage to another party or a third party; likewise if they easily write such things, gravely suspecting that they are being deceived by the contracting parties; for then they cooperate in their sin.

53. If they negligently guard acts and instruments with danger of damage to the parties; if they defer expedition of instruments in order to extort money; if they commit something to an amanuensis with danger of error.

54. If they change something in the protocol whence some right is violated or impeded; if they admit false witnesses; if they do not exhibit to their client some necessary testimony, or hide it, or deny a transcript.

55. If they communicate acts to others than the parties; if by their fault they lose protocols; if they violate oaths or secrets; if to the words or deeds of the parties, or to the testimonies of witnesses, they add or subtract anything; if they do not transcribe all things sincerely as they stand.

56. If they neglect to watch over their ministers, and on this account instruments are badly prepared; for notaries are held to answer for all ministers whom they employ; if they sign instruments prepared either by other notaries or by their own ministers before they have

diligently reviewed them and had perfect knowledge of the things contained in them; likewise if, where several notaries are required, they declared the absent as present.

57. If they exact a stipend beyond the just amount, or if they seek beyond the tariff or approved custom, or if they amplify writings, or write with a larger or more extended character, so that the number of pages is notably increased; if they prolong affairs to be treated for the sake of increasing salary.

In all these and similar things notaries are held of themselves under grave obligation and to restitution as unjust damage-causers or cooperators. L. 230, 231.

49. **Is a notary held to restitution toward the treasury if, in preparing an instrument of sale or inventory, at the request of the parties, or even by his own suggestion, he does not inscribe the true price of the thing, but another lesser price, so that the tax may be diminished?** There is controversy. Some affirm, because thus he cooperates in defrauding taxes, which is inequitable and unjust on the part of a public official. Others deny, provided at least the lowest price is reported in the authentic writing. Finally, others excuse him totally. The reason is: 1. custom, even of the timorous; 2. because, if the parties are not held by concealing the true price, neither is the notary held from cooperation; for he, although a public official, is not constituted as an officer over revenues for exacting taxes, but for preparing instruments.

Yet he can sin gravely against charity toward himself. For penal codes decree grave penalties against public officials who act fraudulently. Likewise he can easily sin against truth by lying.

50. **Does a law establishing a tariff for honoraria or stipends to be received oblige in conscience?** This question has place for all those to whom a wage is owed for some office which they perform in judgments. Now Navarrus and others affirm, since it is a just law. But Lugo and others deny, because since the notary and other ministers of justice must live from the stipends of their own office, and in the course of time the prices of things and expenses increase according to custom concerning food and clothing, while those ancient laws remain always the same in the course of time; therefore they themselves do not unjustly exact something above the tariff, especially if the circumstances of labor and skill are attended to. "And the Salmanticenses say this opinion of Lugo seems more conformable to equity in these times." Indeed they add that a tabellion can receive an extraordinary stipend if he furnishes extraordinary labor. L. 231. Cf. l. 3, n. 180, 181.

51. **Does a notary sin who prepares instruments on Sunday or a feast day?** From now general custom, they can prepare any instruments whatever, provided they do not look to contentious jurisdiction, that is, forensic affairs. Thus they can prepare instruments of contract, testaments of the sick, matrimonial agreements, processes of elections to public office, and other similar things. But writings pertaining to the contentious forum they can by no means prepare on feast days. This is prohibited not only by canonical law, but by civil law itself. But if a notary prepared such acts on a feast day and feigned a different assignment of day, he would sin against ecclesiastical and civil law and would write a false instrument. Yet nothing prevents the

whole context of the writing from being drafted on a feast day, to which afterward on a legitimate day signatures and other solemnities are added.

52. **What are the qualities and obligations of secretaries?** The secretary also must be skilled in his office, faithful, and diligent. The reason is that this is necessarily required by his office.

53. **You will resolve:** A scribe can commit various injustices, especially: 1. if he does not employ due diligence for reporting exactly in writing all things heard and established or decided; for omission in matters of this kind can easily become grave.

54. If he does not use serious and constant attention for reporting into authentic books all things pronounced and done in the tribunal; for very easily defect of attention in a scribe can induce grave fault and the obligation of restitution, unless it is altogether involuntary. For who does not see how great damages can follow from even slight defect on the part of secretaries?

55. If from malice he omits something in writing, or if he adulterates or badly guards public tablets committed to him; if he does not add, or does not take sufficient care that there be added, due formalities and signatures; if he does not transcribe testimonies faithfully, whether by exaggerating, diminishing, or inverting.

56. If in distributing lawsuits he obeys favor rather than order; if for increasing salary he makes acts to be distributed larger, for example, by writing on two pages things which could have been reported on one.

57. If he betrays a secret committed to him; if he manifests a sentence not yet published; if without prescription of the judge he shows completed processes to the parties.

58. If he hands over the acts of the judge to the parties before they have been signed according to legal forms. For then he exhibits an incomplete and false instrument, the expedition of which is held of no value. L. 229.

59. **What are the qualities and obligations of an apparitor?** The apparitor also must be sufficiently instructed about all things which pertain to his office. He must furnish fidelity and charity in executing the mandates of the tribunal. The reason for the first is that it falls especially upon him not to omit any necessary formalities in his acts; otherwise he would often injure justice and would be held to repair damages coming from it. The reason for the other is that he must beware equally both of negligence and of severity and vexation toward those whom public justice pursues.

60. **You will resolve:** Apparitors conduct themselves unjustly especially:

61. If they allow themselves to be corrupted by price or favor to the prejudice of the client, for example, by prolonging or neglecting denunciations of sentences, or by doing other things whence they are the cause why the creditor cannot receive payment. Likewise by favoring certain debtors bound jointly and severally, so that they do not include them in executions.

62. If they do not grant the time fixed beforehand for preparing juridic acts; if they falsely ascribe the day; if they affirm what is false in verbal acts; if at the prescribed time they do not prepare juridic acts committed to them.

63. If, while searching houses, they act too harshly in order to extort some gift; if they inflict unjust force or another injury; if they state what is false in their acts.

64. If they exceed the mandate of the judge or the statutes of law in seizing things or goods of private persons; if they do not preserve a just price in the sale of things seized, etc.; if they retain part of this price for themselves, etc.

65. **Are apparitors held to restitution if they accepted a stipend above the tariff determined by law under the title of donation?** Response: negatively, if it concerns a tariff determined by ancient laws remaining the same. Cf. 50. But otherwise, affirmatively of itself. The reason is that such a donation generally cannot be called spontaneous. Hence if the excess of price is something grave, they can be obliged under mortal sin to restore it. "Generally"; for in many circumstances a donation can and must be had as altogether spontaneous. "Can"; for not every less spontaneous donation is to be judged to lack that consent which suffices for transferring ownership. For not rarely, even to the unwilling, occasions present themselves which involve a certain necessity of giving, and nevertheless no one thinks that a burden of restoring must be imposed on the donees.

66. **Can an apparitor exact multiple salary if he carries diverse summonses at one and the same time?** From natural law considered in itself alone, it seems to be affirmed, because he furnishes the same utility to each person requiring him as if he undertook the journey and work for one alone. Thus St. Liguori, H. A., tr. 13, n. 68, etc. By civil law this is prohibited. Yet usage has prevailed, with the Government knowing and seeing, that advocates and procurators so compose the matter that for individual summonses the apparitors have almost the same price. Lugo d. 37, n. 138.

67. **Must lictors and apparitors execute sentence if it is unjust?** Response: affirmatively, if they only think the sentence is unjust. For they themselves are not judges, and acting otherwise they would usurp for themselves the office of judge. Besides, this would be to the gravest detriment of the public good.

Negatively, indeed they cannot, if the sentence is evidently unjust and to execute it is intrinsically evil, such as to kill an innocent person or one not proved guilty.

There is controversy if, although the sentence is unjust, nevertheless to execute it is not intrinsically evil, such as to extort goods from one condemned, so that they are made public. It seems to have to be denied, because as a judge cannot condemn an innocent person, nor one not proved guilty, so neither is it lawful for an apparitor to execute his unjust sentence. But D'Annibale affirms, ed. 3, p. 2, n. 592, because the damage of the republic prevails. This indeed holds when the sentence, although materially unjust on the part of the matter, is nevertheless at least formally just on the part of the judge, because he preserved judicial form and right process.

The Angelic Doctor has these things about the present question, II-II, q. 64, a. 6, ad 3: "The minister of a judge condemning an innocent person, if the sentence contains intolerable error, ought not to obey; otherwise executioners who killed martyrs would be excused. But if it does not contain manifest injustice, he does not sin by executing the precept, because he himself does not have to

discuss the sentence of the superior; nor does he himself kill the innocent person, but the judge, to whom he exhibits ministry." C. Pastoralis § Quia vero, De Off. et pot. iud. deleg.

VI. On Accusers

59. **What is an accuser?** An accuser is one who in criminal causes brings a crime before a judge, asks vindication from him for the common good, and at the same time takes on the obligation of proving the crime alleged. But in civil causes one who, as the injured party, compels an adversary before a judge is not called an accuser, but a plaintiff.

An accuser differs from a denouncer, who brings a crime before a superior or judge, yet does not take on the obligation of proving it.

Moreover, denunciation is twofold: one is juridic, the other evangelical. The former is a report made to a superior as to a judge, so that, once the cause is known, he may proceed by judgment; and its scope is the punishment of the delinquent and the good of others, especially the common good, which flows from the punishment of the wicked, and also the good of the denouncer himself. The latter is a report made to a superior as to a father, and its scope is not punishment but amendment of the neighbor, or the good of the one denounced, through the paternal admonition of the superior, from which, because of his authority, a more certain amendment is hoped.

Juridic denunciation can be made judicially, with the due forms observed, and extrajudicially, by simply manifesting the matter to the superior and committing to his prudence what ought to be done. It belongs to the same virtue to which the vindication of the judge pertains, namely legal justice. L. 285; St. Thomas, II-II, q. 68, a. 1, 2, c. ad 8; Supplement, q. 62, a. 3, ad 6.

60. **Who are prohibited from accusing?** By natural law, regularly speaking, the infamous, those stained by major crimes, are prohibited from accusing; for their testimony can have no authority. Enemies also are prohibited, because accusation is reasonably presumed to proceed from an affection of revenge. Children are prohibited from accusing parents, and a wife from accusing her husband; for this is repugnant to piety, unless there is question of an impending common harm, L. 236, or of one's own or another's harm which cannot otherwise be avoided.

By canon law the following are barred from the office of accuser:

1. Clerics in a secular judgment, especially in a cause of blood. Yet make exception if they accuse the guilty party so as to forestall damage to themselves, or so that it may be repaired to them; then a cleric and a religious can accuse an evildoer even before a lay judge. This is lawful not only in one's own cause, but also in the cause of one's own Church, of relatives to the fourth degree, or even of domestics. Likewise, if otherwise a common evil or the evil of others cannot be prevented, they must denounce the delict, even if it is deserving of death. Nevertheless, to avoid danger of irregularity, the cleric and religious must first make a protestation before the judge that he is not acting for vengeance, nor for a penalty of blood, but rather only for the defense of himself or his own, and for the triumph of justice. If this protestation is omitted, even through inculpable forgetfulness, irregularity is still incurred; for forgetfulness excuses

from fault, not from this irregularity, which was introduced by reason of clerical mildness. C. *Praelatis* 2, de Hom. in 6; L. 1, 7, n. 468.

2. Laymen cannot accuse clerics, unless the cleric is a dilapidator of the goods of the Church, or a heretic, simoniac, sacrilegious person, etc.; or unless the layman prosecutes his own cause or that of his own, or unless damages are to be inflicted on others in the future, so that they cannot otherwise be prevented. L. 1, 7, n. 468. Likewise clerics cannot accuse religious, who can be accused only by religious of the same Order. L. 238.
3. Heretics not tolerated, and excommunicated persons with respect to the faithful. L. ibid.
4. "Children are commonly prohibited from accusing parents, subjects prelates, servants masters; likewise public sinners, as is gathered from various Decrees. Yet all these can denounce when the crime is pernicious to the republic. For one's own injury anyone can accuse. And as to this, an injury is considered one's own when it pertains to oneself or to one's own." Lugo, disp. 38, nn. 7, 10; St. Thomas, II-II, q. 68, a. 1, ad 1, 2; q. 70, a. 1, ad 3; a. 3.

By Roman law, pupils, those below puberty, women, magistrates, the infamous, and those closely joined are prohibited from accusing, that is, children with respect to parents, brothers with respect to brothers, a wife with respect to a husband, and conversely.

By the Italian Code of Criminal Procedure, arts. 41, 42, 98, 422ff., denunciation of a crime can be made by anyone to the Procurator General, the royal Procurator, or another official of the judicial police. But accusation in judgment is sustained by the Procurator General. The same is had from the German Code of Criminal Procedure, arts. 22, 29, 30, 271, 284, 315.

61. **When is someone held to accuse or denounce?** Someone is held to accuse or denounce, whether judicially or at least extrajudicially, even without previous fraternal correction:
62. When there is question of avoiding common harm. Crimes against the common good are heresy, rebellion, falsification of money, homicides and thefts committed by assassins or highway robbers, bribery of votes in elections to public chairs or offices of magistrates, the sin of a religious bringing harm to religion, etc. "If the crime," says the Angelic Doctor, II-II, q. 68, a. 1, c., "is such that it tends to the detriment of the republic, a man is held to accusation, provided that he can sufficiently prove it, which pertains to the office of the accuser; for example, when someone's sin tends to the bodily or spiritual corruption of the multitude." Lugo, disp. 38, nn. 2, 14; L. 236.
63. If grave harm threatens an innocent person. For charity obliges us to prevent our neighbor's harm. But by hypothesis this can be done either by accusing or by denouncing. Therefore there will be a grave obligation of making accusation, or at least denunciation. L. 236. Note, however, "that there is not always an obligation of preventing the harm of an innocent person by denunciation of him who inflicts the harm, if this latter person would have to suffer equal harm; because, since he too is a neighbor, there is no source from which an obligation arises to harm him so greatly for the sake of another. Not always, I say; for there is an obligation if the innocent person is very closely joined to you, for example, if he is your father or your son, or if it would redound to common harm, or if the one causing harm is bound of himself to undergo that harm in order to free the innocent person." La-Croix, l. 2, n. 219.

64. If someone receives a stipend from the republic or from private masters for this, as fiscals, guards of houses or fields, officers over customs duties, etc.; and these are held even with grave inconvenience to themselves. For they are obligated from quasi-contract and from justice, not from mere charity. Otherwise they are held to restitution of damages which come upon the republic or upon masters because of omission of accusation or denunciation. L. 236. Indeed such men are often held by office even to seize the guilty and hand them over, once seized, to the magistrate for punishment.

But whether these are also held to restore the value of the penalty or fine if they do not denounce, some, from St. Alphonsus 237, "affirm as very probable, because, by omitting denunciation to which they were held by reason of office, they are the cause that the treasury or master does not exact the penalty to which he had a right. But others quite probably deny it, because a penal law does not intend that the treasury or masters be enriched by fines, but that they themselves be preserved unharmed and transgressors punished. Indirectly and by accident, however, the law furnishes a right that fines be exacted from it, but after sentence; for before it neither the treasury nor masters have any right to the penalty. Hence, although fiscals by not denouncing sin against legal justice, they do not sin against commutative justice with respect to the fine; and therefore they are held only to repair the damage of customs duties which merchants ought to have paid." Cf. 15.

4. "Someone is sometimes held to denounce, indeed even to accuse, a delinquent, if this is necessary for avoiding or repairing the damage of his own family, which otherwise would remain dishonored or destitute of support." L. 237. For this is owed not only from charity but from piety.
5. There is an obligation of denouncing from the precept or edicts of prelates and superiors. Not only ecclesiastical prelates, but also secular princes, under various penalties, can command that those who know such and such a delict manifest it immediately. Thus pontifical constitutions command the denunciation of heretics, or those suspected of heresy, those soliciting in confession, hidden leaders of sects, and pernicious books. Yet where heresies rage with impunity, this obligation of denouncing heretics does not press very strongly, unless the destruction of others is feared and could be prevented by denunciation. L. 1, 6, n. 993; l. 7, nn. 214-217; Lugo, disp. 38, n. 17ff.

This is without previous fraternal correction, "unless perhaps someone firmly judged that he could immediately prevent evils of this sort by secret admonition." St. Thomas, II-II, q. 33, a. 7; IV Sent., dist. 10, a. 3, q. 1, ad 4; Sanchez, *Cons. Mor.*, l. 6, c. 2, dub. 14. But no warning needs to be sent beforehand whenever it is prudently feared that the guilty person, once warned, would sin more secretly and with greater destruction of the civil or Christian republic. Italian Code of Criminal Procedure, arts. 98, 101, 162, 172, 179, 286, 288; German Code of Criminal Procedure, arts. 29, 30, 317, 321.

62. **When is someone not held to accuse or denounce?** You are not held, even supposing a superior's precept, to accuse or denounce a crime:
63. If the delinquent has been amended, without danger of relapse, and full satisfaction has been made to the injured party, and no danger threatens others, and the crime is not notorious. The

reason is that otherwise the neighbor's infamy would follow without cause. L. 239, 244; Lugo, disp. 38, n. 23; St. Thomas, Quodl. 4, a. 12; Quodl. 11, a. 13.

64. If you know the crime under natural secrecy, as a counselor, advocate, physician, etc.; unless, however, the one who entrusted the secret unjustly vexed an innocent person or the republic and refused to desist. L. 239, 248; St. Thomas, II-II, q. 70, a. 1, ad 2; q. 68, a. 1, ad 3; Quodl. 1, a. 15.

65. If from it there threatens grave danger to your life, honor, or goods, unless the crime redounds to common harm that must be averted. The reason is that neither charity nor a positive precept obliges with so great an inconvenience. L. 236, 239, 248; Lugo, disp. 14, n. 117; disp. 38, n. 36; Sanchez, *Cons. Mor.*, l. 6, c. 2, dub. 22, n. 2.

66. If you would also be compelled to prove it, and could not. "But if it is not such a sin as redounds to the multitude, or even if he cannot furnish sufficient proof, he is not held to bring accusation; because no one is held to what he cannot accomplish in due manner." St. Thomas, II-II, q. 68, a. 1, c.; L. 239.

67. If the delict is altogether occult and in no way tends to common harm or to the private harm of anyone, but harms only the delinquent; for his right to reputation would be injured. L. 248; St. Thomas, Quodl. 4, a. 12.

68. "It must be said that a man ought not proceed to accusation except concerning a matter wholly certain to him, in which ignorance of fact has no place." St. Thomas, II-II, q. 68, a. 8, ad 1.

69. Whenever the delinquents are sufficiently known to the superior and no fruit is hoped from denunciation, denunciation can lawfully be omitted. The reason is that no one is held to do a useless thing. Likewise denunciation can be omitted when the delict is indeed against the common good, but not so gravely harmful that it obliges to accusation; and when an injury has been inflicted upon you or yours which you are not held to prosecute. Lugo, *De Iust. et Iur.*, disp. 38, n. 5; Sanchez, *Cons. Mor.*, l. 6, c. 2, dub. 17, n. 2; St. Thomas, q. 3, *De Virtut.*, a. 2, ad 7.

No one is held to denounce himself, since by no law is there such an obligation; nor is he held to denounce companions of his crime, since this would be the same as denouncing himself. But if someone is legitimately questioned by a judge about a crime, he is held to denounce both himself and his companions. L. 254, 238; Italian Code of Criminal Procedure, arts. 288, 290.

8. Someone can lawfully accuse and denounce whenever some delict is public, even though by reason of itself it brings damage neither to society nor to another private person, but harms only the delinquent. The reason is that in such a case no right of the delinquent to his own reputation is injured; and denunciation is always of itself useful for the common good by reason of the scandal present in that publicity of the delict. And if "scandal of many arises, then the sin harms not only him, but many." Therefore the superior can then command that the sin be manifested; and then, when a just precept of the superior intervenes, one not only can but also must disclose the crime and obey the superior. St. Thomas, Quodl. 4, a. 12.

Someone can also denounce an occult delict if it is probably foreseen that the delinquent will bring harm to others, or that his crime will soon become public. And therefore it is lawful to denounce a

thief, murderer, etc., even if his delict is occult. St. Thomas, ibid. The same must be said if denunciation is necessary in order that you recover your thing, although you can yield your right. Italian Code of Criminal Procedure, arts. 288, 290; St. Thomas, II-II, q. 33, a. 7; Roncaglia, tr. 6, q. 4, de eleemos. spirit., reg. in praxi, obs. III; L. 245; l. 6, n. 1000.

63. **Whether, if someone knows the sin of his neighbor, he sins mortally by reporting it immediately to his prelate?** The law of charity must be attended to, so that in the particular case it may be seen whether it is better to omit denunciation, or rather to make it; indeed, whether, although from another source denunciation is lawful, charity nevertheless forbids it. St. Thomas, Quodl. 11, a. 13; Suarez, *De Carit.*, disp. 8, sect. 6, n. 7; Lugo, disp. 14, n. 117ff.

VII. On Witnesses

64. **What are witnesses?** Witnesses in general are suitable persons employed for establishing the credibility of some matter. The principal kinds are: testamentary witnesses, who are employed in a testament; instrumental witnesses, who are employed in an instrument; and judicial witnesses, who are employed in judgment. Witnesses are called co-witnesses if they depose concordantly about the same fact; singular witnesses, if they do not agree in testimony, because they testify about different facts. St. Thomas, II-II, q. 70, a. 2, ad 2.

65. **What is the obligation of testifying?** No one is held from commutative justice to offer himself spontaneously for testifying, unless the discussion is about those who are held by office to accuse. The first reason is that not every citizen has a contract with society to testify. The second reason is that those men, by reason of the office assumed, enter into a quasi-contract with society. Hence a witness who hides himself so that he may not be cited by the judge, or who after citation flees, or who, appearing, conceals the truth by silence, saying that he does not know it though in fact he does know it, can indeed sin, and gravely in a grave matter, against charity, legal justice, and obedience, as will be clear from what is to be said; nevertheless he by no means sins against commutative justice, and therefore is by no means held to restitution. L. 270.

Someone can be held to testify from charity, from legal justice, and from obedience. The first reason is that, if there is question of the good of a private person, someone is held from charity toward the neighbor to prevent grave injustice, if by his testimony he can easily free an innocent person. The second reason is that, if there is question of the common good, since any part whatever is held to look to the safety of the whole, there is an obligation from legal justice of accusing and denouncing a crime pernicious to the republic, if public harm cannot be prevented by another way. Moreover, a crime pernicious to the republic is one which directly and immediately is against the common good, such as heresy, betrayal of the city, etc. The third reason is that, if there is a precept of the superior or judge, someone is held to obey the superior legitimately commanding, unless there is a reason sufficiently excusing. L. 264; St. Thomas, II-II, q. 70, a. 1.

Hence a witness legitimately cited is held to present himself before the judges, to take the oath prescribed by law, to speak the whole truth and nothing except the truth, and then to respond simply according to conscience to the questions proposed. Therefore a witness bearing false testimony, since

he is perjured, acting against justice, and lying, sins mortally. St. Thomas, II-II, q. 70, a. 4; Italian Code of Criminal Procedure, arts. 172, 292, 295, 305, 312; German Code of Criminal Instruction, arts. 317, 319, 321.

66. **Testimony about what matter must be given?** No one is understood as a witness except of that fact which he himself knows. Therefore he must present only those things which he himself perceived by his senses, for this is to know, L. 268, not what he himself thinks or believes, nor what he has received from others, unless he is asked by name about these things. St. Thomas, II-II, q. 70, a. 2, ad 2; a. 4, ad 1.

67. **When does a judge not question legitimately?** A judge does not question legitimately, so that someone is not held to manifest the truth:

68. When the judge is not legitimate, as is clear of itself. L. 273; St. Thomas, II-II, q. 70, a. 1.

69. When he does not observe judicial form, as if he questions without previous accusation, at least virtual accusation, etc. The reason is that he has no other power of questioning except according to the prescriptions of law. But virtual accusation is had when there is notoriety of the crime, or such indications of the crime that it cannot probably be denied. L. 199, 266, 267, 272, 273; St. Thomas, II-II, q. 70, a. 1.

70. When the delict in fact did not occur; or is altogether occult; or there is not yet semi-full proof of the delict, and no common or private harm to another threatens from silence about the delict. The reason is that otherwise he would defame the guilty person without any right; for a judge in instructing a judgment can proceed only from public knowledge of the delict. L. 199, 201, 273; St. Thomas, II-II, q. 70, a. 1.

Semi-full proof is present when, says St. Alphonsus 266, "there is one witness from sight, or from his own hearing, or if there is notoriety or infamy of the crime, or evident indications, or if an accuser offers himself to prove the delict by several witnesses. Otherwise, even if several witnesses were present concerning some crime, none of them would be held to reveal the crime. For all these are equivalent to semi-full proof; and when it intervenes, the delict is no longer called secret, and therefore the judge then has the right that the witness manifest the truth. But in order that the witness then be held to respond, it is required that the infamy, or semi-full proof, or indications, as above, have already been proved and be manifested to the witness by the judge; unless it is clear that the judge is upright and he asserts that he questions legitimately." St. Thomas, Quodl. 4, a. 12; II-II, q. 33, a. 7; Italian Code of Criminal Procedure, arts. 85, 286, 288; German Code of Criminal Instruction, art. 322; German Penal Code, art. 378.

68. **What are the reasons sufficiently excusing from testifying, even if the judge questions legitimately?** They are the following:

69. If you know the matter from confession.

70. If you received it under natural secrecy, as a counselor, advocate, physician, etc., provided, however, that it is not necessary for averting a great evil of the republic or of the neighbor. For then it is lawful to disclose such a secret, even if you swore that you would tell no one, because

such an oath does not oblige, since by natural law you are held to the contrary. St. Thomas, II-II, q. 68, a. 1, ad 3; q. 70, a. 1, ad 2.

71. If from the testimony notable harm threatens you or yours; unless, however, public harm or another's private harm prevails. Hence commonly you are not held to testify against a blood relative. L. 268; l. 3, n. 334; Struggl, de 4 Praec., q. 2, n. 3; de Virt. Relig., q. 3, n. 16ff. By law itself blood relatives, and those who are held to secrecy by office, are not strictly held to testify.

72. If you received it from men not sufficiently worthy of faith; for then you can conduct yourself as if you knew nothing.

73. If you understood the fact through injury, for example by opening letters, forcing another to revelation, etc.

74. If the other person did not sin in the fact, either because of ignorance, or because he received something by occult compensation of a debt, on account of which he is being investigated as if he were a thief. The reason is that the mind of the judge is to inquire about a delict. The same holds for the defendant. L. 248, 268, 273; Italian Code of Criminal Procedure, arts. 286, 288; German Code of Criminal Instruction, art. 322; German Penal Code, art. 378.

75. **Is the perjurer held to reparation of damages?** One who knowingly testified falsely, through which he was the efficacious cause of damage to another, is held to the prevention or reparation of all damages which are caused. Likewise he is held to revoke his testimony with equal damage to himself, and even with danger of life, if the defendant is in danger of life and it is thought that by revoking he would accomplish something. The reason is that in equal damage account must rather be had of the innocent person.

"Knowingly," because if from ignorance, inadvertence, or inculpable forgetfulness he testified falsely, although he is held to prevent damage if he can, nevertheless he is not held to restitution even if the defendant is condemned. The reason is that he is held neither from a thing received nor from delict. The same would more probably have to be said even if he had sinned venially.

"Efficacious cause," because if, on the part of the thing, that false testimony accomplished nothing, for example because the whole cause of the damage had already been given through false testimonies of others, so that the judge was moved in nothing by this testimony, he will be held to nothing. L. 269.

70. **Is a witness held to reveal an altogether occult crime which he alone knows?** Response: negatively, speaking of itself and prescinding from other circumstances, if there is truly question of an altogether occult or secret crime. The reason is that a judge cannot inquire against the defendant unless some infamy at least, or public rumor, or other indications have preceded. Therefore a witness is not held to manifest an altogether occult crime which he alone knows.

But the fact that modern laws necessarily require only one witness proves nothing to the contrary; for laws of this kind always suppose that the matter has been made known, that public rumor has been spread, etc. Often they also suppose other circumstances: a crime harmful to society, continued danger for the future, etc.

The opinion of the Angelic Doctor is very clear in this matter, II-II, q. 70, a. 1: "If the testimony of some subject is required by the authority of a superior, there is no doubt that he is held to bear testimony in those matters in which, according to the order of law, testimony is received from him, for example in manifest matters and in those about which infamy has preceded. But if testimony is required from him in other matters, for example in occult matters and those about which infamy has not preceded, he is not held to testify." Roncaglia, tr. 15, q. 1, c. 1, qu. III, resp. III; St. Thomas, Quodl. 4, a. 12; II-II, q. 33, a. 7; Italian Code of Criminal Procedure, arts. 60, 84, 85, 98, 101, 172, 179, 288.

VIII. On Defendants

71. **What is a defendant?** In civil matters he is called a defendant from the thing which is sought and owed; in criminal matters, he is the one who has committed a crime.

72. **Is the defendant held to confess his crime?** The judge is held to manifest to the defendant the state of the cause, what the indications are, how the delict is proved, etc., so that it may be clear to the defendant whether he is being questioned legitimately; because otherwise the defendant is not held to respond and to despoil himself of honor, or of other goods which he possesses in good faith. L. 273; St. Thomas, II-II, q. 69, a. 2; Quodl. 5, a. 16.

If the defendant is not questioned legitimately, he is not held to confess his crime, but can elude the judge either by ambiguous words or even by denying, with some restriction and in a good sense, so that lying is absent. The reason is that then the judge does not have the right of questioning or of imposing obligation upon the defendant. It is otherwise, however, if he is questioned legitimately, and therefore in an inquisitorial process, provided that the delict has been proved at least semi-fully and that the accused knows this from such processual matters. L. 272; St. Thomas, II-II, q. 69, a. 1.

Hence ordinarily defendants at present are not held to manifest their crime, because interrogations are made before juridic proof. Besides, according to modern Codes no one can be compelled to bear testimony against himself in a criminal matter. Moreover, this certainly is not owed in an accusatory process, which is presently observed, with the public magistrate accusing. And although the crime is sufficiently proved, as long as the jurors have not rendered sentence, the defendant can always hope that his denial of the crime will have force upon the minds of the jurors.

Nor is he held if he doubts whether the judge questions legitimately, because he is not held to obey with grave damage to himself unless it is clear that the superior can command. The reason is that the defendant possesses his life and reputation; hence in doubt he has the right of preserving them until it is clear that the interrogation is legitimate. L. 273. Cf. 67.

73. **Note:** That response, "I am not guilty," is not a lie; for by the consent of all it signifies that the defendant does not wish to confess the crime. L. 1, 3, n. 156.

74. **Is the defendant held to confess a crime to one legitimately questioning, with fear of a great penalty?** St. Thomas affirms, II-II, q. 69, a. 1, ad 2, and St. Alphonsus calls this opinion the more common and more probable. But the opinion is sufficiently probable which "denies that the defendant is held to reveal his crime. It is otherwise in causes in which there is question of an ecclesiastical penalty, which is medicinal." L. 274; l. 4, n. 156.

Make exception also, provided grave public harm or another's private harm does not threaten from the silence. L. 274. Here it must be noticed that damage of the republic, if there is question of danger of death to be undergone, must be understood not as any damage whatever, but as very great damage. For, as Lugo says, "human law can only very rarely and on account of the greatest damage to the republic obligate a subject with danger of life; but in the present case that danger is most certain."

The reason for this second opinion is that he is not compelled by natural law to confess, nor can he be compelled by human law to betray himself and, as it were, hand the sword to the adversary by which he may be killed. Nor in fact is there such a law.

The reason for the former opinion, on the contrary, is "because when someone is questioned by a judge according to the order of law, he does not betray himself, but is betrayed by another, while the necessity of responding is imposed upon him by one whom he is held to obey." St. Thomas, loc. cit. Cf. 67.

75. **Note:** "The rule that the defendant is not held to confess an occult truth to a questioning judge without semi-full proof runs only in criminal causes, not in civil causes," as Lessius and Lugo teach. L. 1, 3, n. 888; St. Thomas, II-II, q. 69, a. 2; Quodl. 5, a. 16.

76. **Must the defendant confess, after sentence has been rendered, the crime which before he unjustly denied?** Response: negatively, because once the judgment is finished, the obligation of the defendant is finished. Indeed it is probable that he is not held to this even before sentence, although it is still in the power of the judge, until he is questioned again. The reason is that legal justice obliges only when the judge questions, unless the judge prescribes a time for responding, namely if he commands, for example, that the defendant speak the truth within a month, and the month still continues. L. 274.

77. **Does one sin gravely who, to avoid grave torments, lies by imposing upon himself a false crime through which he is to be punished by death?** Response: probably it is not mortal. The reason is that no one is held to preserve life with so great a torment, which would seem harder than death itself. L. 274, 275.

78. **Note:** "If from that confession of a false crime grave harm follows to others, for example, the good of the republic, or the reputation of religion or of a family, would be notably harmed, or some would therefore fall into heresy, any torments whatever should rather be endured." Nevertheless, if from that false confession of crime there would follow only the infamy of another, he would not be held after the fact "to revoke himself in order to repair another's infamy by exposing himself anew to sustaining those grave torments, because no one is held to restore reputation with so much graver harm to himself." L. 276, 275.

79. **To weaken the credibility of witnesses, is it lawful, whether for the plaintiff or for the defendant, to disclose their occult crimes? And does he sin gravely if he imposes false crimes upon them?** Response to the first: negatively, if this is useless for defense. The reason is that it can be lawful only from the right of defense.

Affirmatively, if it is necessary and useful for defense and they testify falsely against him. The reason is that the right of defending one's own reputation prevails over another's right to reputation.

If it is indeed necessary and useful for defense, but they testify truly against him, some affirm and others deny. The reason for affirming is that each person has the right to show that witnesses acting against him are less suitable. No one is held to preserve the reputation of his neighbor with grave damage to himself. St. Thomas, II-II, q. 73, a. 2. The reason for denying is that the defendant would not be using a just defense, since the witness necessarily has to bear testimony, unless he is voluntary. Cf. Lugo, disp. 40, n. 23; Lessius, l. 2, disp. 31, c. 1. St. Alphonsus, 272, affirms that this is lawful, "provided that this is absolutely necessary for the defense of his innocence; likewise provided that otherwise the defendant would suffer not slight but grave harm, although greater harm comes to the accuser or witness."

Response to the second: affirmatively, and this is clear from proposition 44 condemned by Innocent XI. The reason is that to speak such lies in judgment is against the common good, since it is to pervert the whole order of justice; and therefore each person must prefer that common good to private good, even to his own life. L. ibid.; St. Thomas, II-II, q. 69, a. 2; Lugo, disp. 40, n. 26.

80. **Can an innocent person under investigation defend himself against those who wish to apprehend him?** A practical case can exist especially in time of anarchy or tyranny, and the response is commonly affirmative, since it is just self-defense, if the mandate of seizing him is truly unjust, and consequently there is no danger of delusion; and if danger of scandal or public disturbance is absent. The same is commonly also affirmed if the sentence is unjust, whether formally or rather only materially, provided again that the injustice is manifest and that danger of delusion and scandal is absent. Thus St. Thomas, II-II, q. 69, a. 4; St. Alphonsus, 279, 281; Kenrick, *Theol. Mor.*, Mechlin, 1890, tr. 3, n. 112; Frassinetti, *Comp.*, etc., 6th ed., note 98; D'Annibale, 3rd ed., p. 2, n. 601. Cf. Lugo, disp. 40, n. 38ff.

81. **Is it lawful to kill false accusers and witnesses, and also a judge from whom an unjust sentence threatens, if there is no other way of avoiding the harm?** Response: negatively. This is proposition 18 condemned by Alexander VII. The reason for this condemned proposition is that it is too general. In it there is question of any unjust sentence whatever, which does not always bring harm that can deservedly be compared with the death of a false accuser, witness, or judge. Nor is a distinction made between one injustice and another: because the person is innocent; because legitimate process was not observed; or because of both. There is question of any judgment whatever, whether legitimate or usurped, in time of tyranny, anarchy, etc. There is question of a sentence to be given, not one already given. Finally, judgment is left to anyone at all to decide that there is no other means. Hence, because of danger of delusion and because of scandal, or because of either one, it is never lawful to kill the aforesaid persons. L. 279.

82. **Can a defendant who has truly committed a delict flee from prison?** Response: affirmatively, if the defendant has not yet been condemned to a penalty by sentence, because no one before sentence is held to pay the penalty.

Affirmatively also, even if the defendant has already been condemned by sentence to death or to another grave penalty, provided that prison has not been assigned to him as punishment but for custody. "The reason is that the sentence does not condemn the defendant to not fleeing, but only to not resisting the ministers when they execute the sentence." L. 280.

But if prison has already been assigned by sentence as punishment, Busembaum and others affirm; and indeed the defendant is not so much condemned to remain there spontaneously as to be detained. St. Thomas, II-II, q. 69, a. 4, ad 2. But more commonly they deny that it is lawful for the defendant to flee even from perpetual prison, because in the execution of a just sentence the defendant is certainly held to obey. Yet several make exception if the penalty were very hard, because it seems beyond human strength for someone to be obligated not to free himself, when he can, without any force and resistance against the ministers of justice. L. 279-282.

83. **You will resolve:** "Regularly it is lawful for the defendant to flee, even if the prison guard will suffer grave damage from it, because he uses his own right and does injury to no one, unless charity should persuade otherwise because of the outweighing damage of the guard. Much more is it lawful to flee lest he be seized; or even to shake himself free from the minister apprehending him, but not to inflict force upon him by wounding, striking, etc. It is also lawful, at least in the forum of conscience, to deceive the guards by handing over, for example, food and drink so that they fall asleep, or by arranging that they be absent; likewise to break bonds and prisons, because, when the end is lawful, the means also are lawful. And although other prisoners escape at the same time through the broken wall, he will not be held for the damage, because he is only its cause by accident, since he uses his own right." L. 281-282; L. 1, 3, n. 380; Struggl, tr. 3, q. 2, n. 45.

Nevertheless it is not lawful for the defendant to corrupt the guard with money, because he would cooperate in that man's sin, namely in prevarication against his own office. L. 282.

84. **Is it lawful for others to advise flight to a defendant, to expedite it, or to furnish instruments by which the defendant himself may expedite it, excepting guards, apparitors, etc.?** If this will be pernicious to another, it is not even lawful to advise it; otherwise it is lawful to advise it and to instruct the defendant by counsel whenever it is lawful for him to undertake it.

It is altogether unlawful to expedite it. For this is against public order and tranquillity. There would be continual contention between citizens and the executors of public justice.

To furnish the things necessary so that the defendant himself may expedite it is probable to St. Alphonsus, 283, and more probable to Lugo, disp. 40, n. 56. For that is lawfully given to others by which they lawfully make use. Struggl, loc. cit., n. 46; Elbel, *De Legib.*, 311, 313. Cf. 83.

85. **Is a defendant justly condemned to death held to flee from prison if he can?** The first opinion affirms, because otherwise he seems to be a murderer of himself. The second opinion, by far truer and to be held, denies. The reason is that although the defendant cannot perform an act immediately tending to death, such as mutilating his members, throwing himself from the gallows, drinking poison, etc., nevertheless mediate acts are lawful for him, such as climbing the ladder of the gallows, stretching out his neck to the scaffold, and thus remaining in prison; especially if he has a just end, such as to satisfy for his crime, or that his punishment may be of profit to others as an example. L. 281; Struggl, loc. cit., n. 43.

VIII. On Defendants

86. **Is it lawful to appeal to a higher judge?** Kenrick affirms, *Theol. Mor.*, Mechlin, 1890, tr. 8, n. 135, because the defendant can use every aid and support of law by which he may escape, with truth preserved. But it is commonly denied if the defendant knows that the sentence is just and that the process was just, although he may supplicate; because this would be to impose calumny upon the judge. Indeed, one appealing unjustly is held for the damage. But if he thinks that the sentence is inequitable, or that the process was unjust, or if there are diverse opinions, or new proofs are present, he can appeal. L. 285; St. Thomas, II-II, q. 69, a. 3; Lugo, disp. 37, n. 172ff.

87. **Note:** It is expedient that the confessor not admit the defendant to sacramental confession until, in the profane forum, the matters are clear; for he will scarcely be able to be compelled to confess everything because of fear lest he either be reported or be forced to confess the same things to the judge. Beforehand, however, contrition must be treated. L. 286.

88. **Is a defendant absolved in judgment held in conscience not only to restore the thing, but also to compensate the expenses of litigation?** Response: negatively with respect only to the expenses, if he is silent or denies apart from legitimate interrogation and therefore is absolved; although by being silent he sins against charity, and by denying he sins against truth. The reason is that he is not absolved because of his silence or denial, but because of defect of proofs.

Affirmatively, even with respect to expenses, if he, legitimately questioned, is silent or denies and is therefore absolved. The reason is that he uses an unjust means, to which he has no right, for his own defense.

Negatively, with respect only to expenses, if he acts in altogether good faith and the judge renders sentence for him according to the things alleged and proved. For he is not theologically culpable as cause of that damage.

But he "will by no means be excused from the obligation of restoring the thing because the other party consented to the sentence and did not appeal; for all this is judged involuntary, nor is he presumed to have wished to renounce his right in the interior forum." Lugo, disp. 37, sect. 15, n. 187. Cf. 67, 72.

IX. On Physicians, Surgeons, and Apothecaries

89. **What are the obligations of physicians, surgeons, and apothecaries?** Physicians and surgeons are held:

90. Under grave obligation, to have sufficient knowledge, so that they know how to prescribe suitable remedies for ordinary illnesses, and at least how to doubt concerning other extraordinary diseases, so that a more skilled physician can be called.

91. To apply diligence proportioned to the gravity of the matter committed to their care.

92. To preserve fidelity, lest they reveal secrets committed to their trust and abuse them; but if they fail in these things, they are held for all damages which follow from it.

93. To observe the just stipend owed to them, as was said concerning advocates.

94. To furnish their work gratuitously to the poor who are in necessity, as was also said concerning advocates. Cf. 40.

95. In applying remedies, they must observe the following rules:

First, they must abstain altogether from prescribing any medicine which directly and of itself is ordered only to evil. Cf. La-Croix, l. 6, p. 3, nn. 795, 796. Ordinarily, however, they must follow the safe and secure opinions of physicians. The reason is the danger and damage of the neighbor.

Second, when there is some certain medicine, namely one certainly to be useful to the sick, they are held to apply it, omitting the one about which there is doubt, because otherwise they would imprudently leave the neighbor in danger.

Third, if there are no certain medicines, they must apply the more probable and safer ones; both because otherwise they would bring the neighbor's health into danger, and because they are held to discharge their office, as much as they can, with the least danger and damage to the neighbor.

Fourth, if it is probable that a remedy will be useful, then they can, indeed are held to, apply it when they do not have a more certain one.

Fifth, if a remedy is doubtfully useful and certainly not harmful, it must altogether be applied to the sick person. The reason is clear: some hope shines forth of rescuing the sick person from death, and no danger threatens.

Sixth, when the health of the sick person is despaired of, and both are probable, namely that the remedy can help and that it can harm, there is a twofold probable opinion. The first denies that it can be applied, because it is never lawful to expose the sick person to danger of death, nor to danger of accelerating it. The other affirms that it is lawful, because when the sick person is despaired of, it is more conformable to prudence and to the will of the sick person, especially if he expressly consents to this, to apply to him a doubtful remedy than to omit it with certainty of death. The remedy then has at least this good effect: it makes the sick person's certain death now doubtful. Therefore it cannot be called evil. Tamburini has this regarding this question: "Each opinion is probable, and from the affirmative it follows that the physician must apply it, because, since he can, he also must consult for the bedridden person by every better way." *Expl. Decal.*, l. 1, c. 3, par. IV, n. 17. "When the health of the sick person is despaired of"; for outside the case of a despaired-of patient, it is not to be given, but one must wait for nature, with God's help, to relieve itself. St. Antoninus, p. 3, tit. 7, c. 2.

Seventh, it is not lawful to apply to a sick person, even a despaired-of one, a remedy of which it is unknown whether it is healthful or harmful, in order to make an experiment. The reason is that it is altogether illicit to make an experiment with danger to another's life. L. 291; l. 1, n. 46.

Apothecaries, if you except a few things, sin almost as physicians do in the cases just set forth; but especially by applying old medicines, selling useless ones, supplying remedies to pregnant girls for expelling the fetus, not faithfully executing the physician's mandates, for example, by offering one medicine for another, etc. L. ibid.

90. **Does a physician sin gravely who in time of plague deserts the sick lest he contract the disease?** Response: negatively, speaking of itself, if the physician has not been constituted by the community and does not receive any stipend from it; for then he is held from charity alone, which certainly does not oblige with grave danger of life.

Affirmatively, if the physician has been constituted by the community and receives a stipend from it. The reason is that then, from the pact entered into, and therefore from justice, he is held to provide for the common danger.

91. **To what is a physician specially held regarding the soul of the sick person whose care he has undertaken?** The physician is held of himself under grave obligation to admonish the sick person concerning the grave danger in which he is placed, and concerning the necessity of receiving the sacraments, lest he depart without absolution, Viaticum, and Extreme Unction. This is clear from the natural law of charity. But it suffices that he take care that the sick person be admonished by relatives or friends, so that he benevolently admits the priest and is induced to receive the sacraments. L. 1, 3, n. 182.

92. **Note:** There is a precept of Innocent III in this matter, C. *Cum Infirmitas*, de Poenit. et remiss., at least partly abrogated by contrary custom. L. 1, 3, n. 182; *Prax. Conf.*, n. 57; Ithur., cas. 49, nn. 8, 9.

93. **You will resolve:** A physician sins gravely:

94. If he undertakes to treat a grave disease without sufficient capacity.

95. If, when a grave and unusual disease occurs, he does not devote special work.

96. If he applies untested medicines for the sake of testing.

97. If, without the nature of the disease being well known, he rashly prescribes dangerous remedies, especially with danger of life or grave injury.

98. If, after recognizing the patient's danger, he is not present opportunely, visiting him day and night if there is need, and does not apply all remedies apt for driving away the disease.

99. If he does not permit other physicians to be called where this ought to be done; or if, calling others for consultation, he attends to friendship rather than skill.

100. If, on the contrary, without necessity he calls other physicians, with useless expenses to the patient, or against his conscience adheres to their counsels.

101. If he prolongs treatment for the sake of gain, uselessly multiplies visits where salary is exacted for each, or exacts an excessive stipend.

102. If, to favor apothecary friends, he prescribes superfluous medicines.

103. If he counsels abortion or the means of procuring it, or carries it out himself.

104. Finally, a physician sins gravely, indeed most gravely, if he does not forewarn concerning the grave danger of the sick person, so that the sacraments may be conferred upon him. L. 291 and l. 1, 3, n. 182.

X. On Guards, Merchants, and Artisans

94. **What are the obligations of guards, merchants, and artisans?** Guards are those who are set over the custody of woods, fields, etc., by a prince or by a private master. Merchants are all those who exercise commerce by buying and selling goods. Artisans are all those who devote work to some mechanical art from a received stipend.

Guards, besides the sin which they commit against religion by guarding negligently if they have taken an oath, also sin against commutative justice toward those damaged, and, in defect of those causing damage, are held for damages culpably not prevented. But probably they are held only by reason of the damage, not by reason of the fine. L. 237; H. A. 73; Lugo, disp. 37, n. 99ff.

Merchants are unjust by buying and selling goods at an unjust price, by not manifesting hidden defects of things, by mixing new and old things together and selling both at the same price, by not observing the conditions of contracts, etc.; in these cases they are held to restitution, according to the things said in the preceding seventh precept of the Decalogue.

Artisans are unjust by hiring out their work at an unjust price, by not manifesting defects of works, by wasting time through culpable negligence, by turning other workers away from labor, by not observing the conditions of contracts, etc.; in these cases they too are held to restitution according to the things said in the preceding seventh precept of the Decalogue.

On the Particular Obligations of Clerics

I. On the Positive Obligations of Clerics

95. **What is to be said about the holiness of life of clerics?** The life of clerics must shine with internal holiness and external edification, not only negatively with respect to immunity from sin, but also positively with respect to the exercise of virtues. This is clear: 1. from Sacred Scripture, from Councils, from the Fathers, from Trent, sess. 22, c. 1 de Ref., sess. 23, c. 4 de Ref.; 2. from the very excellence of the state and office which they profess. But whether the clerical state strictly taken, insofar as it is distinguished from the state of religious and of bishops, is or is not a state of perfection, is controverted among the doctors. Suarez, *De Relig.*, t. 3, l. 1, c. 17, nn. 2-4; St. Thomas, II-II, q. 184, a. 8; Supplement, q. 36, a. 4; L. 1, 6, n. 803; E. M.

96. **Note:** In order to promote this interior holiness of life and exterior edification in clerics, the Supreme Pontiffs very greatly commended spiritual exercises.

97. **Are clerics held to preserving celibacy?** In the Latin Church all clerics, from the episcopate to the subdiaconate inclusive, are held under a most grave precept to preserve perpetual continence, so that they can neither lawfully use marriage contracted before sacred ordination, nor afterward contract marriage lawfully or validly. This is clear from several chapters of canon law, especially C. 1, dist. 28, and C. un., de Voto in 6; Trent, sess. 24, c. 9.

"In the Latin Church"; for among the Easterners there is some exception by tolerance of the Church. In the Eastern Church priests can never enter marriage after sacerdotal ordination, nor deacons after the diaconate; but those married before the diaconate can be advanced to further orders and nevertheless live with their wives. Bishops are excepted, all of whom must constantly preserve perfect chastity. Among the Greeks, however, the subdiaconate is not numbered among sacred orders. Hence upon clerics not married, in ordination to the diaconate, the precept of chastity is imposed. Indeed, in some provinces in which the ancient discipline of the Western Church has been restored, the same obligation is imposed in ordination to the subdiaconate. Cf. 1015. L. 1, 6, n. 806; St. Thomas, Supplement, q. 53, a. 3; C. *Ut clericorum* 13, de Vit. et honest. cler.; C. *A crapida* 14, eod.; C. 1, 2, Qui cler. vel vov.; C. 1, 4, de Cler. coniug.; Benedict XIV, const. for the Italo-Greeks *Etsi pastoralis*, May 26, 1742, sec. 7, n. 26; Instruction for the Copts *Eo quamvis tempore*, May 4, 1745, sec. 30ff.; E. M.

98. **Is the obligation of celibacy from divine law?** Response: negatively; for if this law were from divine law, the Latin Church would not vary concerning it from the Greek Church, since divine law does not vary according to diversity of places. Therefore it is from the ordinance of the Church. The Church can therefore dispense from that obligation.

But whether that obligation is immediately from the precept of the Church, or immediately from a vow to be emitted by precept of the Church, Trent reports both, but does not define. Now there are those who teach that those ordained in sacred orders are held to chastity not from a vow, but from the ordinance of the Church alone; both because no mention of a vow is made, and because the precept of the Church suffices for this. But more probably and more commonly, others, with St. Thomas, II-II, q. 88, a. 11, derive this obligation immediately from a vow which is emitted in the very fact of ordination according to the mind of the Church; and this is expressly had in the law. C. *Cum olim*, de Cler. coni.; Benedict XIV, const. *Inter praeteritos*, Dec. 3, 1749, sec. 41. And Boniface VIII declared this vow solemn, C. un., de Voto et vot. redempt. in 6. L. 1, 6, nn. 807, 808; Albit., *De Inconst. in Fide*, c. 36, n. 132ff.

99. **What if someone were promoted to sacred orders while invincibly ignorant of the obligation of chastity annexed to them; or expressly unwilling to vow that obligation itself; or if he were compelled to it by grave fear; or if he were ordained in infancy itself?** Response to the first: some probably say that he is held to chastity, namely by force of the universal law itself of the Church; others "probably judge that if the ignorance were altogether invincible, the one ordained would not be held to chastity, neither from a vow nor from the precept of the Church, because the Church would not intend to obligate such a one. It is otherwise, however, if the ignorance were culpable; or if someone intended to receive the order with the same obligation with which others receive it."

To the second: "In such a case he would be held to chastity not from a vow, but from the precept of the Church, which from a motive of religion would bind him to chastity when the vow is lacking."

To the third: a distinction must be made. If he did not have the intention of receiving sacred ordination, he is not held, as one invalidly ordained. If he had the mind of receiving sacred orders and the fear was just, more probably he is held, because since he is unwilling irrationally, such fear

neither exempts from law nor invalidates the vow. Likewise, if he had the mind of receiving sacred orders but the fear was unjust, more probably he is not held, for the opposite reason. Therefore he can validly contract marriage; "nevertheless he cannot minister in order while the marriage continues, nor enjoy clerical privileges." Cf. 106.

To the fourth: "It is certain that one who is ordained before the use of reason, although the ordination is valid, nevertheless is not held to chastity; hence he can validly and lawfully enter marriage." Benedict XIV, bull *Eo quamvis tempore*, May 4, 1745, commands that in the sixteenth year of age an option be given to them; and if they wish to preserve chastity, they are admitted to exercise of order; otherwise, if they do not wish. And he adds that after ratification they contract marriage invalidly and are held to the Divine Office. But if someone is ordained after the use of reason, yet before puberty, some probably say he is held; others not improbably deny it. The reason is that such a vow, from which that obligation more probably comes, "constitutes a man in an irreversible state, in which the Pontiff never or rarely dispenses; hence such a vow demands a mature and perfect use of reason." L. 1, 6, n. 80, 781, 809-811; St. Thomas, Supplement, q. 39, a. 2; Sanchez, *In Dec.*, l. 5, c. 6, nn. 5-8.

100. **What is to be said about tonsure and habit?** Clerics are obligated to wear tonsure and clerical dress. This is clear from various places of canon law, especially the Council of Trent, sess. 14, c. 6 de Ref., sess. 23, c. 6 de Ref.; L. 1, 6, n. 825; St. Thomas, IV Sent., dist. 24, q. 3, a. 1, q. 1; Supplement, q. 40, a. 1.

101. **Do clerics sin gravely by not wearing habit or crown outside their own home?** Response to the first: those clerics are either simple clerics, or beneficed clerics, or constituted in sacred orders. If the first, the more common teaching is that, speaking of itself, they do not sin, not even venially, since by common law this grave obligation is imposed only on clerics in sacred orders and beneficed clerics. "Speaking of itself"; for particular laws and customs of places must be attended to. If the second, it is certain that they sin mortally, unless there is a just cause excusing, or smallness of matter; for grave penalties are imposed upon them in canon law.

But what space of time is required for mortal sin cannot be determined in general, but only from circumstances. They commonly admit that it is venial to set aside the habit only once or again. La-Croix, l. 1, n. 672, extends a short time to five or six days. Yet they also commonly admit that clerics sin gravely if even for a short time they lay aside or hide the clerical habit for an evil end. Benedict XIV, *De Syn.*, l. 11, c. 8.

To the second: clerics who are not constituted in sacred orders never sin gravely unless they are beneficed. Thus most commonly. Even clerics initiated in sacred orders at least do not sin gravely unless they omit wearing the crown, without grave cause excusing, and for a notable time, which in this matter is not the time of one or two months. But whether it is grave not to wear the crown for a whole year is not clear. Theologians more commonly affirm; but it is not clearly proved, since here the doctors easily mix crown with tonsure. L. 1, 6, nn. 825-827; La-Croix, l. 1, n. 672; l. 4, n. 1372; E. M.

102. **What properly are tonsure, crown, and clerical habit?** Tonsure, to be worn by clerics insofar as it is distinguished from the crown, is the prohibition made to clerics against letting the hair grow long, from C. 4, 5, 7, de Vit. et honest. cler.; this is grave unless the hair is

moderate, from the cited C. 4 and L. 1, 6, n. 826, or unless the custom of the region permits otherwise and scandal is absent. Nor can they use artificial hair without command of the bishop, S. C. C., Dec. 9, 1690, unless another custom obtains.

The crown is tonsure on the summit of the head in the manner of a crown. The crown must be wider or narrower according to order and dignity. La-Croix, l. 4, n. 1373; Benedict XIV, notif. 96; *De Syn.*, l. 11, c. 9; Clem. 2; Trent, cited places; C. 4, 5, 15, de Vit. et honest. cler.

Clerical habit is the talar vestment, and other things congruent to the order according to the judgment of the bishop; Trent, sess. 14 de Ref., c. 6; sess. 24 de Ref., c. 12 at the end; sess. 22 de Ref., c. 1. Therefore they vary according to diverse places. A talar vestment is one which flows down to the ankles, or at least to the knee; this has been received from a certain epikeia and the custom of some places in towns and villages, and is also permitted in cities themselves outside the celebration of Mass. Benedict XIV, notif. 71, n. 9; C. *Clerici* 15, de Vit. et honest. cler.; St. Thomas, Supplement, q. 40, a. 1; E. M.

103. **Note:** Since many things, especially regarding the exterior cult of clerics, are by no means determined in particular by common law, but vary according to diverse regions, one must stand by the statutes of each diocese, which the confessor of clerics must by no means be ignorant of.

I. On the Positive Obligations of Clerics

104. **Who are obligated to the recitation of the canonical hours?** In the Western Church the following are obligated to recite the canonical hours daily:

105. All clerics constituted in sacred orders, even suspended and excommunicated. This is clear from various places of canon law, from the Lateran Council in 1215, and from the bull of St. Pius V *Quod a Nobis*.

106. All beneficed clerics who have a right in the thing and full dominion of the benefice. This is drawn from the Lateran Council under Leo X, and also from the bull of St. Pius V *Ex proximo*.

107. All religious of each sex professed in an Order approved by the Church and destined for choir. This is clear from custom and from the decree of Gregory X, etc.

"In the Western Church"; for, as Benedict XIV says in the constitution *Eo quamvis tempore*, secs. 44-45, "deacons, subdeacons, and priests of the Eastern Church are compelled by no express law to the recitation of the Divine Office." Nevertheless, "even among the Easterners the laudable custom of reciting the Divine Office has prevailed." This indeed has the force of law; hence "the discipline of the Eastern Church subjects generally all those constituted in sacred order to the obligation and precept of reciting the Divine Office, according to the custom of the nation." L. 140ff.; St. Thomas, IV Sent., dist. 15, q. 4, a. 1, q. 3; E. M.

105. **You will resolve:**

106. Those constituted in minor orders are not held to the hours or to any other determined prayer. A cleric begins to be obligated from the hour of received subdiaconate, and indeed to the hours corresponding to the hour at which he is ordained. Therefore one ordained at noon must begin

from Sext and cannot begin from Vespers. But whether a subdeacon who recited that part before ordination has satisfied his obligation, some deny, while others probably affirm. The reason is that a debt can well be paid beforehand which certainly is morally about to be contracted. L. 140.

107. As regards beneficed clerics, the obligation begins from the day possession of the benefice is entered upon, and therefore they must begin from Matins. They are not held before accepted possession, nor if without fault of their own they perceive no fruits and will not perceive any; because they do not have the benefice according to every effect. This is certain. But it is probable that one who does not reside by legitimate license or dispensation, and therefore does not receive fruits, is not held to the hours, "because this obligation is on account of the sustenance given." On the contrary, one is held who, although he does not receive all his fruits, nevertheless receives so great a part as suffices for sustenance. Nor is he excused, if he is not constituted in sacred orders, because he has proposed to himself not to perceive the fruits of the benefice; because benefices were instituted not for the advantages of private persons, but for divine worship. Cf. Trent, sess. 21, c. 6 de Ref.; Lugo, *Resp. Mor.*, l. 5, disp. 6, 2; Viva, in Alexander VII, prop. 21, last sec.; L. 144 and l. 3, n. 664ff.

108. As regards religious, the obligation begins from the hour of emitted profession, from the hour of the day, not of choir. Novices, lay brothers, religious of the Society of Jesus, military religious, hospitalers, and the rest not destined for choir are not held to the hours. L. 141.

109. **Is one who received sacred order through unjustly inflicted fear held to recite the office?** More probably they deny. The reason is that, although fear does not take away voluntariness, nevertheless the Church is reasonably not judged to wish to obligate to the burden of office except those who receive order altogether spontaneously. And therefore such men ordained through grave fear are not held even to chastity. Yet in the external forum they are held to both until the fear has been established before the Sacred Congregation of the Council. L. 144; A. S. S., vol. 1, p. 330; vol. 2, p. 443; vol. 6, p. 85. Cf. 99.

110. **Are religious who for a just cause do not come to choir held under grave obligation to recite the office privately?** Response: affirmatively. The reason is that for a religious the principal obligation does not fall upon choir, but upon recitation of the office by reason of the Religion, which from its institute took on that burden. This obligation is clear from the universal custom of religious, who, when they cannot be present at choir, believe themselves obligated under grave obligation to the office privately recited. But universal custom, which was constantly observed by religious with great inconvenience, supplies a sufficient argument concerning the grave obligation assumed. Hence the opinion of some who say that the obligation of the office does not press a religious outside choir is not probable.

As regards nuns, De Alexandris, *Confessor. Monialium*, c. 8, q. 5, affirms the same because of the same reason of custom; and it is clear from the response of the Sacred Penitentiary to the bishop of Perigueux, Nov. 26, 1852. Bouix, *De Iure Reg.*, vol. 2, p. 619; L. 142; Pellizzar., *De Monialib.*, c. 6, n. 12ff.; E. M.

108. **Does a religious sin gravely who recites the office privately when he could easily be present at choir?** Response: negatively. For the obligation of choir, although grave for the

community, is nevertheless held to be light for individual private persons, provided the choir is not completely removed. Four free persons, or those fit and free for sustaining choir, suffice for choir. But if the religious are fewer, they are in no way obligated to recite the office in choir; yet they are not exempt from private recitation, as was just said. "Four free persons"; for if they are infirm or legitimately occupied, they are not obligated to choir even if they are four. But Viva and others probably think that for satisfying choir it suffices that only novices be present, because in favorable matters they are regarded as religious. L. 143. A moderate cause, however, can excuse from the light obligation of coming to choir. Clem. *Gravi*, de Celebr. missar.

109. **Note:** 1. Prelates who from negligence permit a notable part to be omitted in choir sin gravely.

110. Those in choir are not held to supply omitted things when, while others sing, they prepare or transfer books, search out psalms, play organs or bells, or perform other things necessary for choir, because while someone is occupied in matters pertaining to the solemnity of the office, the whole choir supplies for him. L. 143, 156; La-Croix, 1300.

111. **What specifically must be noted regarding recitation in choir or with a companion?** One who recites the office in choir or with a companion must recite integrally the things which are said secretly; hymns, psalms, and versicles by alternate, not by third, turns. But it suffices to hear, while another reads them, antiphons, brief responsories, chapters, and lessons.

Regarding those things which a companion recites or reads, in order that someone may be able to satisfy, it is necessary that the companion pronounce all things duly and rightly, and that he himself hear these things, although the companion is not obligated to recite the Divine Office, indeed even if he is distracted; because these things do not prevent someone from reciting according to the custom of the Church and communicating with the companion. Yet if the companion is obligated and does not attend, he does not satisfy, because he is not communicating with the other.

But because all reciting constitute, as it were, one body, and because those things which they recite or read in turn are communicated, if someone is not at fault for not perceiving by ear those things which the other part of the choir or the companion recites, it is probable, provided he attends as much as he can, that he satisfies. Hence one somewhat deaf also satisfies, and one hearing in confusion, for example because noise is made, because the companion recites in a low voice, or because of the ineptitude of the reader. "For this precept of the office must be interpreted benignly from the benignity of the Church. On the contrary, it will be very exposed to anxieties if companions in the office must always be solicitous about the quantity to which omission of hearing has arrived, so that they are held or not held to repeat." L. 163. "Somewhat deaf"; and what of a deaf person? If he recites with a companion whom he is not compelled to use, the doctors commonly deny. If in choir, still more deny; but several also affirm, and not without merit, for the obligations and rights of choir must be measured by an equal reason. D'Annibale, 3rd ed., p. 3, n. 151; La-Croix, 1295; L. 162, 163; Laymann, de Orat. et Hor. Canon., c. 5, n. 7.

111. **Note:** 1. "It is the common opinion that one satisfies well who hears from a companion the lessons, responsories, chapters, prayers, and antiphons. And probably he still satisfies who says the psalms alone and hears the lessons; or who says part of the psalms alone and part with a companion, because he communicates sufficiently in that part which he hears, and which by accepted usage is now satisfied by hearing." L. 162.

112. "But it is certain that in choir it is not necessary to hear everyone, but it suffices to hear one, and it suffices to hear in confusion at least part of the other choir, although you cannot hear distinctly." L. 163. One satisfies choir who recites the psalms in a low voice while hearing the other part, since one part constitutes one body with the other and they communicate with each other; nor is it necessary that those reciting in one choir hear all those reciting in the other. As regards canons, cf. 220; L. 163; La-Croix, 1298.

113. **Are religious who live outside the cloister by permission, fugitive religious, those cast out by sentence, and those condemned to the galleys held to the office?** Response to the first: St. Alphonsus affirms with others, adding, "as also those detained in prison." But Busembaum with others denies it concerning a religious "who obtained a dispensation to live perpetually outside the monastery, because although he remains a religious, nevertheless he is not regular." L. 141, 142.

To the second: Bonacina denies, and Tamburini thinks it probable; but Lessius and Concina better teach that he is held. The reason is that, just as they do not lose the religious state, so they are not exempted from its burdens. L. 142. The same must be said of excommunicated persons, even those to be avoided.

To the third: "They deny not improbably with Busembaum, etc., with Scotus and Laymann, who call this a safe opinion. The reason is that in them the essence of the religious state is now extinguished, since they are no longer held to vows, as Sanchez supposes as certain; nor is it in their power to return to religion." L. 142. But Sanchez, *De Matr.*, l. 8, disp. 8, n. 11, speaks of a professed religious dispensed for marriage. As regards one cast out, he brings another reason: "because since he is now justly outside the monastery and monastic life, he is exempted from its burdens."

To the fourth: "Cabassut more commonly denies, though he says that clerics constituted in sacred orders are held; but concerning both, Sporer, Lessius, etc., deny it. The reason is that such recitation would seem to yield to the disgrace of the religious order," and of the clerical state. L. 142; D'Annibale, 3rd ed., p. 3, n. 153; E. M.

113. **How great is the obligation of the Divine Office?** The obligation of the Divine Office is grave of itself. Therefore one who has this burden sins gravely if he omits the hours or a notable part of them. The reason is that he violates a precept in a grave matter, pertaining to the virtue of religion. C. *Presbyter* 1, de Celebr. miss.; L. 146; l. 3, n. 663; E. M.

114. **Note:** 1. "That is universally judged small matter which does not reach the quantity of one integral hour." Thus most commonly.

115. "One who omits the whole office must more truly be said to commit only one sin, because the whole office of one day falls under one precept." L. 143, 147, 148.

116. **Is it grave to omit Vespers on Holy Saturday?** Response: negatively. The reason is that the matter is light, both in itself and with respect to the whole office.

117. **Are nuns who recite only the Office of the Blessed Virgin bound to it under grave obligation?** Response: in orders in which only the Office of the Blessed Mary Virgin is recited, this recitation does not oblige under grave obligation, although solemn vows are emitted in

those orders, for example in the order of nuns called of the Visitation, as has often been decided. Moreover, in communities in which, besides the office of the day, the Office of the Blessed Virgin or of the Dead, or the seven penitential psalms, must also be recited, the obligation does not affect those reciting privately outside choir; indeed, not even those reciting in choir itself, at least commonly, unless there is custom. Cf. 129; E. M.

118. **Are beneficed clerics who omit the Divine Office held to restitution?** The obligation is so great that it induces upon him the burden of restitution of fruits, in proportion to the omission of the office, who by title of benefice is held to the hours, if, after six months have elapsed following possession obtained, he culpably has not recited the office. This is clear from the Lateran Council under Leo X. St. Pius V afterward issued a bull by which he confirmed and declared this decree, so that one who omitted the whole office on one day is held to restore all fruits corresponding to that day; for example, one who annually receives 365 florins is held to restore one florin for one day. But one who omitted Matins only is held to restore half the fruits of one day; one who omitted the remaining hours, likewise half; and one who omitted one of those hours, one sixth part. That restitution is to be made either to the fabric or to the poor. Bull of Leo X, de Reform. Curiae, cap. *Reform. Curiae et aliorum*, sec. *Statuimus*; St. Pius V, const. *Ex proximo*, 1571; L. 151 and l. 3, nn. 663, 666, 672, 673; E. M.

I. On the Positive Obligations of Clerics

118. **Note:** 1. Those are not obligated to restitution who omitted the hours from natural forgetfulness, just impediment, good faith, invincible ignorance, or otherwise without fault. The reason is that in conscience no penalty is owed where there is no fault. L. 151; l. 3, n. 665.

119. "That a beneficed cleric can sometimes be excused from restitution for neglected hours by title of money spent, understand this after the omission of the hours; for if before the omission, he is not excused, since proposition 33 condemned by Alexander VII stands condemned, even if not with that intention, upon the poor or other pious uses. And it is probable according to the opinion which Sanchez holds," etc. L. 153; l. 3, n. 700; La-Croix, 1215.

120. Under the name of the poor the beneficiary himself also is contained, provided he is truly in need and did not omit the office in fraud, namely so that he might assign the fruits to himself as to a poor person. Likewise, whatever is spent in repairing or increasing the estates of the benefice is understood to be spent on pious causes. Suarez, *De Relig.*, t. 2, l. 4, c. 30, nn. 18, 19; L. 1, 3, n. 672; E. M.

121. **How many sins does one commit who is held to recitation of the office by title of benefice, by omitting it?** If the one omitting it does not wish to restore the fruits, he sins both against religion and against justice. The first reason is that the Church obligates to reciting the hours from a motive of religion. The second reason is that, from the Lateran Council, one who does not say the office does not make the fruits his own.

If the one omitting it has the intention of restoring the fruits of the benefice, he indeed does not sin against justice, but he sins against religion. The first reason is that the Church confers a benefice under an obligation of justice that he not make the fruits his own if he does not recite; but by no

means under an obligation also of justice that he recite. Therefore the obligation of the office does not arise immediately from the benefice accepted, but from the precept of the Church, imposed by reason of the benefice, from a motive of religion. The second reason is that, as is clear from what was just said, there are two grave precepts: the first, by which beneficed clerics are obligated to the office, for this was the end of the Church in the institution of benefices; the second, by which the one omitting the office must restore the fruits. L. 145; l. 3, n. 663.

120. **Can a beneficiary, omitting the office on one day, supply it on another day?** He is not excused from mortal sin, as all teach, and as is clear from the cited bull of St. Pius V.

As regards restitution of fruits, the first opinion, which Bonacina calls probable, affirms. The reason is that in such a case he has now repaid an equal thing, just as if a chaplain omitted Mass on one day, he can well supply it on another. The second opinion, the most common, denies. The reason is that St. Pius V in the constitution *Ex proximo* decreed that one who "has interrupted" the canonical hours "on one or several days" does not make the fruits his own. Here it must be noted that the Pontiff did not say "omitted," but "interrupted"; by this word he sufficiently signified that one who interrupts the office on one day does not gain the fruits, even if he supplies on another day, because although such a man can be said not to have omitted the hours, nevertheless he cannot be said not to have interrupted them. L. 1, 3, n. 667; St. Thomas, Quodl. 3, a. 29.

121. **Is one who omits a part smaller than an entire hour held to restitution?** "If the parts omitted do not constitute grave matter, it is common that no restitution is owed, not even under venial sin, even if the fruits corresponding to that part reached a great quantity." L. 1, 3, n. 668.

122. **Must a beneficiary who omits the office restore all the fruits?** Response: Sanchez, Soto, etc., probably say that by a benign interpretation they are not held to restore all the fruits, but only those which correspond to the burden of the office omitted. The reason is both because the bull of St. Pius was thus received and thus explained by usage, as more conformable to natural equity; and because it seems harsh that bishops, pastors, and chaplains, who bear other burdens, should be obligated in the same way as simple beneficiaries, since all these receive fruits not only for the office, but also for other burdens. L. 1, 3, n. 673.

123. **Is one held to recite the office again who doubts whether he said it?** If the doubt is positive, that is, if there is some reason or probable conjecture that he recited it, although a reason is also not lacking for the opposite, he is not held; for he probably satisfied, and with probability of satisfying the law standing, the law in the case becomes of doubtful obligation. La-Croix, 1235, 1237; and St. Alphonsus, 150, who handed down this opinion as most common, citing several theologians for it, although afterward he departed from this opinion.

If the doubt is negative, that is, if no reason or probable conjecture is present, then he is held to recitation of the breviary. For the law then cannot prudently be called of doubtful obligation, since there is no probable motive suggesting its satisfaction. La-Croix, loc. cit.; L. loc. cit.

At the end of the cited number the same holy Doctor has this observation, useful for practice: "If you doubt whether you said a whole hour or not, the Salmanticenses judge that, if you often labor under

such doubt, you are not held to repeat, because then such doubt is easily presumed to arise from scruples; otherwise, if rarely."

Hence, they say, you are well excused from repeating the office if you do not remember having said something and you have a just conjecture for believing that you said it; for example, if you remember that you began some psalm, lesson, or hour, and afterward, distracted, came to the end of the psalm, lesson, or hour without remembering whether you recited the whole. For presumption favors you, because you are accustomed to recite integrally those things whose recitation you began. But if you come to some hour, for example Sext, and doubt whether you recited the preceding one, you can hold the same decision, because you are not accustomed to recite a later hour unless the earlier has been put first. Therefore you can prudently believe that you omitted nothing. La-Croix, 1236; L. 150.

124. **By what rite must the office be recited?** The canonical hours must be recited according to the prescription of the Roman Breviary issued by command of St. Pius V, so that all obligated to the hours do not satisfy their duty if they use another breviary, and therefore a beneficed cleric does not make the fruits his own. Cf. Suarez, *De Relig.*, t. 2, l. 4, de Hor. Can., c. 11, nn. 3, 4.

Religious are excepted who have the particular breviary of their order; the Milanese Church, which uses the Ambrosian rite; and the chapels of Toledo, which use the Mozarabic rite; likewise Churches which had a particular breviary for 200 years before the institution of the breviary by St. Pius V. These, however, can change their breviary into the Roman if the bishop and the whole chapter consent. But once they have used that faculty, they remain bound to the Roman Breviary. Likewise they have lost their privilege if they made any additions or changes in their liturgy. But in these excepted Churches the bishop can prohibit the use of the Roman Breviary; if, however, there is no such precept, it is controverted whether someone can privately recite the Roman Breviary. The same must be said about the Missal. This is clear from the bull of the same St. Pius V *Quod a nobis*, July 7, 1568, and from the constitution *Ex proximo*, S. R. C., Jan. 10, 1852, Aug. 28, 1856; Bouix, *De Iure Liturg.*, p. 4; L. 160; E. M.

125. **Note:** 1. Those who are not bound by reciting the Office of the Blessed Virgin are not prohibited from using any formula of this kind of office, provided it is Latin, unless a legitimate custom is present of reciting it in the vernacular language. S. R. C., Jan. 15, 1897.

126. Both breviaries and missals, and other liturgical books, cannot be printed without the attestation of the Ordinary, by which it is declared that they agree with those which are printed at Rome. Clement VIII, decree *Cum in Ecclesia*; Urban VIII, decree *Divinam psalmodiam*.

127. **Do those satisfy who recite another breviary, preserved from local custom introduced after the time determined by St. Pius V?** Response: negatively. S. R. C., Jan. 10, 1852.

128. **Does a priest need the bishop's permission to recite the Roman Breviary in the aforesaid place, where another is recited?** Response: negatively. This is clear from the cited response of the S. R. C. "Privately," says Busembaum apud St. Alphonsus, 160, "it is probable that it is lawful for all, even regulars, from custom, to use the Roman, as Lessius, Rodriguez, Sa, and Bonacina teach." Cf. the following number; for, excepting custom, if there is any, the same reason seems present in this case. L. 161. Cf. also A. S. S., vol. 1, p. 240.

129. **Are clerics obligated to the breviary held to use the proper breviary of the diocese?** Response: affirmatively, provided that this proper breviary has been recognized and approved by the S. R. C. The reason is that although this concession of proper offices has the character of a privilege, nevertheless all private persons are held to use a privilege conceded to the whole community. The case is excepted, as is clear, in which private persons, by virtue of an apostolic indult, could refrain from using the proper of the diocese.

130. **Is there still an obligation of reciting the gradual psalms, the Little Office of the Blessed Virgin Mary, and the Office of the Dead?** Response: negatively as regards clerics who recite the office privately. St. Pius V, const. *Quod a nobis*, sec. 9; S. R. C., Sept. 2, 1741.

Negatively also for those reciting the office in choir, unless there is a custom of reciting the aforesaid offices from the time of St. Pius V. S. R. C., Sept. 1, 1607; A. S. S., vol. 29, p. 568. L. 143; St. Thomas, Quodl. 6, a. 8; E. M.

130. **Note:** If these two are omitted where legitimate custom is present, it is a sin; but there is no obligation of restitution, since they are not prescribed.

131. **Must those obligated to the office recite under grave obligation the Office of the Dead on the day of the Commemoration of all the Faithful Departed, and likewise the Litanies on the feast of St. Mark and during the triduum of Rogations?** Response to the first: affirmatively, as is clear from universal custom. This office, however, consists only of Vespers, Matins, and Lauds.

To the second: affirmatively. The reason is that in the rubric after Monday of the fifth Sunday after Easter it is said thus: "Those who are not present for the procession of the Litanies should say them privately after Matins with their prayers and orations." But the word "should say" here imports a grave precept, because the matter is grave and everywhere the custom of reciting the litanies on these days is in force. Custom is the best interpreter of laws. La-Croix, 1290; L. 161; A. S. S., vol. 1, p. 240; E. M.

132. **In what order must the canonical hours be recited?** There is a twofold order to be observed in recitation of the breviary, namely the order of offices and the order of hours. The order of offices is described in the calendar of feasts and in the rubrics for their translation, where several occur at the same time. The order of hours is that which is set forth in the breviary, namely that Matins with Lauds be recited first, then the little hours be joined to them, that is, Prime, Terce, Sext, None, and finally Vespers with Compline follow.

As regards the Saints concerning whom the canonical hours are to be recited, the office is to be recited according to the calendar of one's own diocese, that is, of the one in which someone has domicile or a residential benefice. L. 161; St. Thomas, Quodl. 1, a. 13; Quodl. 6, a. 8; E. M.

I. On the Positive Obligations of Clerics

133. **What if someone recites another office in place of the office of the day?** One who deliberately recites one office in place of another does not satisfy if it is both of a plainly

different rite and notably shorter, as on Palm Sunday the office of Easter or Pentecost. If it is not shorter, but only of a plainly different rite, it is probable that he satisfies, for example if on Christmas Day he recites the office of the Passion; but he is certainly not without light fault. But if it is of the same rite yet notably shorter, he does not satisfy. If from each head it is almost equal, he satisfies, although likewise not without light fault; and this not only if he has done it three or four times in a year, but even if more often, which is the opinion of many and sufficiently probable.

Indeed he does not even sin lightly if he did this from some just cause, for example from devotion, or so that he might recite with a companion; or if he did it without deliberation, and then, if after a small part of the office has been recited he notices that he has erred, it will be in his power either to continue the one begun or the proper office. But it is better to recite the proper office, lest he persevere in error. Hence, if someone, deliberately or without deliberation, recited an office notably shorter, he must supply what was more in the proper one. Likewise, whether someone did this deliberately or without deliberation, on the day when the office already recited later occurs, this same office must more probably be recited again, not the one which he omitted, lest he err twice. Alexander VII, condemned prop. 34; L. 161; Lugo, *Resp. Mor.*, l. 5, disp. 8; La-Croix, 1237, 1250, 1255; E. M.

134. **What kind of sin is it to invert the order in recitation of the hours?** In private recitation it never exceeds venial sin, because such inversion of order does not contain grave deformity; for the order to be observed exists only under a secondary precept and as a circumstance of lesser moment. But if from some just cause you change the order, you will be altogether without fault. Some say that inversion of order is a mortal sin if it is done frequently; but more probably this must be denied with St. Liguori, 169. "The same must be said if within the same hour the order is inverted." L. 170, 161 at the end. But one who disturbs the parts of the office so greatly that scarcely the species of office remains does not satisfy. Suarez, disp. 11, c. 7.

In public recitation, it is controverted whether it is a grave sin or not to invert the order or change the time of the hours. Some affirm, if the inversion or change of time is notable and no cause excusing is present. The reason is that the canons repeatedly state that the hours are to be recited at the appointed times. Clem. *Gravi* 1, de Celebr. missar. Others deny, because a circumstance of this kind does not pertain to the substance of the precept, but is merely accidental. Each opinion is probable; but the second is more probable, because there is no certainty concerning a grave precept. L. 171.

135. **What cause is there for inverting the order of the hours?** Any reasonable cause excuses. The following can be assigned: 1. if you are invited by a friend to recite some hour with him, and you have not yet recited the preceding hour or hours; 2. if in the morning you do not have a breviary at hand and cannot conveniently wait, then you could recite the daytime hours from the diurnal which you have, afterward to recite Matins; 3. if you do not have the lessons at hand, you can recite the psalms of Matins and Lauds, indeed also the rest, with the lessons deferred; 4. if you come to choir when the hour has already begun, you can proceed with the others and afterward supply what was omitted. Likewise, if you come to choir after one hour is

already finished, you can sing the later one with the choir and afterward supply the earlier one. La-Croix, 1309, 1311; L. 170.

136. **Is it a sin to say the Matins of the following day before the office of the present day has been completed?** It is indeed a sin, says La-Croix, 1315, but only venial if it is done without cause. But neither is it certain that it is venial, since the office of one day seems to have no order with the office of another day. According to the opinion which holds that it is a venial sin, a sufficient cause for beginning Matins of the following day before you have completed the office of the present day is present if you are asked by another to recite Matins of the following day with him; and generally every cause sufficient for inversion of order among the hours of the same day would also suffice in the present case.

137. **Does one sin who does not recite the commemorations according to the order assigned by the rubric?** Several deny, because that rubric seems merely directive, like those which regard the position of the body or the signs of the cross. Indeed they say the same about the order to be observed among commemorations in Mass. But this last point at least must be denied, because, according to the more probable and more common opinion, all rubrics to be observed in Mass are preceptive, as St. Liguori says, l. 6, n. 399; E. M.

138. **What should pronunciation be like?** Pronunciation must be vocal, integral, and continued.

Vocal. The office must be recited by voice, and indeed by a distinct voice; it does not suffice that it be read only in the mind or merely run through with the eyes, nor is it enough if it is recited in the throat or between the teeth. The reason is that properly vocal prayer is prescribed; moreover, it is not judged properly vocal unless it is done by distinct voice.

Integral. The office must be recited integrally, not by syncopating or abbreviating with a stumbling tongue. To integrity belong the *Pater*, *Ave*, and *Credo* at the beginning and end of the hours, as is noted in the rubrics. Nevertheless the prayers *Aperi Domine* and *Sacrosanctae* do not belong to the integrity of the office, but are recited only by counsel.

Continued. Any notable interruption within one hour, if it is made without any cause, is not without fault; but it does not exceed venial sin. L. 166.

139. **Must one reciting the office hear himself in order to satisfy?** Response: more probably, negatively. The reason is that hearing is not prescribed, but only recitation, that is, the pronunciation of words which is called vocal. Therefore it suffices if the one reciting is conscious to himself that he pronounces the words; and St. Liguori, 163, says this is sufficiently probable.

140. **What are just causes for interrupting the office?** Any reasonable cause suffices for interrupting any hour whatever. The matter is of itself light. Therefore the following suffice: 1. any utility of oneself or of another which cannot be deferred without some inconvenience; 2. the reason of executing commands of superiors; 3. the reason of courtesy or charity, for example if the confession of someone is to be heard who would not wait gladly; 4. if you wish to do or note something in order to remove distraction or solicitude, for example lest you forget, etc., provided, however, that this is not done frequently, because frequent interruption for this reason is not without some irreverence. L. 168.

141. **Can Matins be separated from Lauds?** Response: affirmatively, according to the common opinion. For thus St. Liguori, 167: "It is common that Matins can be separated from Lauds without any cause." E. M.

142. **Can the nocturns be separated without cause?** Response: affirmatively. This is clear from universal custom, against which no law can be opposed. Indeed formerly, from the practice of the Church, they were separated, since they were customarily recited at various hours of the night. Indeed not a few say that even without a special cause an interval of three hours can be placed between individual nocturns. But if there is a just cause for whose sake the nocturns must be separated, that interval can also be prolonged according to the measure of that cause. L. 167.

143. **Whether or how does one sin who, after reciting one or another nocturn on the vigil, recites the remaining part of Matins after the whole night has intervened?** He must always be exempted from mortal sin, because he satisfies the substance of the precept. For according to the general rule, the substance of the precept is satisfied whenever the office is recited integrally in the natural or ecclesiastical day, so that venial sin is never exceeded then, however great an interruption intervenes even without cause. Therefore the present case ought not be excluded.

Even from venial sin will he be excused who does this for a reasonable cause, for example if the office is very long, as the Sunday office, and after the first nocturn has been recited he is very tired or overcome with sleep, etc.; since for a just cause any interruption is lawful. L. 168.

144. **Whether or how far must some hour be repeated because of a notable interruption placed within it?** An entire hour is never to be repeated, even if the interruption was placed without just cause. The reason is that individual psalms, and individual lessons or prayers, have their complete signification, and are sufficiently united by the intention of continuing.

Indeed, speaking of itself, nothing is necessarily to be repeated, even if the interruption occurs in the middle of a psalm, provided it is not in the middle of a versicle or in the middle of a prayer, because even individual versicles have their particular signification. L. 168.

145. **In recitation of the office, is it lawful to mix in or add something from devotion?** Response: negatively. The reason is that, since the form of the Divine Office has been determined and prescribed by the Church, nothing is to be added, subtracted, or changed unless it has been granted by the Apostolic See. E. M.

146. **Are you held to repeat what you recited with imperfect or mutilated pronunciation?** Response: affirmatively, if the mutilation is very notable, so that the sense of the words is corrupted and destroyed; and this holds even if you did it involuntarily, because the defect affects the substance of recitation. Make exception unless impossibility prevents it, for example stammering.

Negatively, if you mutilate syllables in such a way that the sense of the words is not corrupted, or if you mutilate in a small quantity; for then the fault does not affect the substance of the obligation, and therefore does not exceed venial sin. Indeed you do not sin in any way if you do this involuntarily

because of inadvertence, stammering, or an inveterate custom which can be overcome only with difficulty; nevertheless suitable effort must be applied to amend this custom.

147. **Before Lauds separated from Matins, must the *Pater* and *Ave* be said, as before the other hours?** Some affirm absolutely, because then Lauds are an hour distinct from Matins. Others more probably deny, because this is prescribed nowhere. Nor does the reason avail that Lauds then are like a distinct hour; for the *Pater* and *Ave* are not said at the beginning of Compline, although it is a distinct hour. La-Croix, 1305.

148. **At what time must the canonical hours be recited?** The obligation of reciting the hours is affixed to the day, so that it can in no way be satisfied on another day; therefore the obligation, from the mind of the Church, ceases with the day assigned to itself, and consequently is customarily called the burden of the day.

The time defined for completing the entire recitation of the office begins at midnight and ends at the following midnight, so that whoever recites the whole office within this time is always to be exempted from grave sin, at whatever hour he satisfies such a duty. The reason is that, by reciting the whole office within the natural day, he satisfies as regards substance.

Matins and Lauds, by privilege introduced by custom, can be recited the previous day toward evening. Matins and Lauds must be recited by priests before the celebration of Mass. This is clear from the rubric of the Missal, title 1, de Praeparat. sac., where it is read: "The priest about to celebrate Mass, at least when Matins with Lauds has been completed," etc.

All the little hours can be recited in the morning time; and indeed the first two must be recited before midday, while the later two can be said during the whole time, both morning and evening. Vespers and Compline are recited from midday up to midnight. In Lent, however, from the first Sunday, Vespers can be recited before the meal because of the ancient discipline according to which the fast was not broken before the recitation of Vespers. Yet on Sunday Vespers cannot be anticipated, because the fast is not observed on that day.

Formerly the hours were recited thus: Matins after midnight, Lauds at dawn, Prime after sunrise, Terce at the ninth hour of morning, Sext at midday, None at the third hour of afternoon, Vespers at sunset, and Compline at the twilight of night. E. M.

I. On the Positive Obligations of Clerics

149. **Can the little hours be recited even before dawn without any cause?** Response: more probably, affirmatively. The reason is that, once the ancient custom of reciting those hours at a determined time was removed, no other law or new custom imposed the obligation of fulfilling them only in the time following dawn. Indeed grave theologians expressly assert that these hours can be recited during the whole morning time, that is, from midnight to midday. L. H. A., appendix 3, n. 74.

150. **Does the obligation of reciting Matins and Lauds before Mass press under grave obligation?** Response: negatively, at least more probably. The reason is that there is no connection between the office and Mass, and therefore recitation of Matins does not seem to

be a disposition for celebrating, since a priest can also dispose himself piously for the sacred action by praying otherwise. Nor does a grave obligation appear from the rubric reported above, nor is it generally apprehended under grave obligation. L. 1, 6, n. 347; l. 4, n. 171; Benedict XIV, const. *Etsi pastoralis*, June 18, 1742; *De Sacr. Missae*, l. 3, c. 13.

Yet according to the common opinion, it would be grave to sing conventual and solemn Mass before Matins has been said in choir, unless a grave and public cause intervenes, with scandal removed. The reason is that such is the received custom in all Churches. Therefore by acting otherwise, public divine worship, the common good, and the suitable governance of the Church would be gravely injured, besides the scandal of the people. L. 1, 6, n. 348.

151. **What cause can excuse from the light obligation in the preceding case?** St. Alphonsus says, more commonly and more probably, that there is venial fault in omission of that recitation. But any moderate reasonable cause will excuse from it, for example, if the time for celebrating has arrived and the celebration cannot be deferred without some inconvenience; if greater convenience of study, or greater utility to be perceived from studies, requires this; if some unexpected business has arisen. L. ibid.

152. **At what hour is it lawful to begin recitation of Matins on the evening of the preceding day, according to the privilege mentioned above?** It is lawful to begin when the sun holds the middle course between midday and sunset. For then the ecclesiastical day begins, which according to all begins from Vespers, and at that hour first Vespers are customarily chanted. L. 174.

153. **Must the recitation of Matins be repeated if it was had before the aforesaid time?** Response: more probably, affirmatively. The reason is that the breviary is the burden of the day; therefore it must be recited on the assigned day itself. Moreover, if the aforesaid anticipation is made, the office is now recited outside the day, no differently than if the little hours of the following day were recited before midnight. Thus more commonly with St. Liguori, 174.

Yet several grave doctors, ancient and more recent, hold the opposite opinion, and St. Alphonsus himself admits that he formerly adhered to it. This opinion does not seem to lack probability until it is defined by some decree of the Sacred Congregation, since here there is question of a positive matter, which depends especially upon common practice and custom. If the ecclesiastical day, from St. Alphonsus himself and from St. Thomas, begins after Vespers, which according to the present usage of life are customarily said around the second hour after midday, why then can Matins and Lauds not be recited? Therefore if someone recited Matins after the second hour after midday, but before the time fixed by the rubric, as sometimes happens by error, he could be excused from repeating the breviary. St. Thomas, Quodl. 5, a. 28; La-Croix, 1314; Giribaldi, 192-194; D'Annibale, 3rd ed., p. 3, nn. 150, 178; Gury-Ballerini, 64; E. M.

154. **Can Matins of the Office of the Dead and the litanies for the feast of St. Mark and the Rogation days be recited on the preceding evening?** Response to the first: affirmatively. This is clear from universal custom and from the rubrics, where it is had thus: "When the *Benedicamus Domino* has been said, Matins of the Dead begins absolutely." Therefore, since

Matins of the octave of the feast of All Saints is customarily anticipated, or certainly can be anticipated, consequently Matins of the Dead also can be anticipated. L. 174.

To the second: negatively. The reason is that the litanies of themselves do not seem to be joined with Matins and Lauds, but are something altogether distinct. Besides, if the feast of St. Mark is transferred, the litanies must not be transferred; therefore they do not strictly inhere in Matins, indeed they have no connection with it. Finally, they are recited in place of assistance at the procession, and that assistance is altogether affixed to the day. L. 174; D'Annibale, 3rd ed., p. 3, n. 147.

155. **Is one who foresees an impediment to recitation of the office on the day itself of obligation held to recite Matins and Lauds on the evening of the vigil?** Response: negatively. The reason is that although Matins and Lauds can be recited the day before by force of privilege, nevertheless they need not be. The general rule is that no one is held to use a privilege. Therefore the strict obligation does not press before the following midnight. Hence, with an impediment standing from midnight to midnight, the obligation is removed. Yet it is very fitting that the recitation be anticipated.

156. **At what hour can recitation of Vespers begin in the morning during Lent?** The general rule is that Vespers can be recited privately at the same hour at which they are customarily recited in choir. Moreover, in choir they must be recited after conventual Mass and None. But the hour of conventual Mass depends on the custom of places. Therefore they can be recited at about the eleventh hour. For the rest, there is no obligation of reciting Vespers before midday during Lent, but it is a mere privilege, which no one is held to use. Compline does not enjoy the aforesaid privilege; hence it must be recited after midday at every time.

157. **Note:** "In order that someone may lawfully anticipate or postpone the due time of the hours, any useful or honest cause suffices, namely a sermon to be prepared or heard, danger of a coming occupation or labor, greater devotion or quiet, a time more suitable for studying, and the like." L. 173.

158. **In choir is there a grave obligation of reciting the office in due order and at fixed hours?** Response: more probably, negatively. The reason is that a circumstance of this kind, of time or order, does not pertain to the substance of the precept, but is a certain accidental ceremony. Nor indeed is there certainty concerning a grave precept imposed on this matter. L. 171.

I. On the Positive Obligations of Clerics

159. **What must be observed regarding place and posture in recitation of the office?** Regarding place: the office of choir must be recited in the place destined for this, that is, in choir or in the church. But if the office is recited privately, it can be said in any decent place, whether in an oratory, at home, in the countryside, or even while walking on the road or making a journey, provided that the place is congruent with the required attention and does not impede devotion.

Regarding posture: privately the office can be recited in any decent posture, whether with knees bent, standing, sitting, or walking. Thus the universal practice and all theologians. L. 179.

160. **Note:** Those who are held to choir can for a just cause recite in the sacristy, L. 143, or in another place outside the church. L. 1, 3, n. 675.

161. **Is it lawful to recite the office while lying in bed?** Response: negatively, a reasonable cause being excluded; for such a posture has some savor of irreverence. The same must also be said of any other posture of this kind. Yet this irreverence does not exceed venial sin, from which any moderate cause excuses, for example infirmity, weariness, or if someone cannot sleep at night, he could recite the office without being held to rise. L. 179.

162. **Is it lawful to recite the office in a carriage or on horseback?** Response: affirmatively. The reason is that this is prohibited by no law; nor from another source does it obstruct attention or the reverence owed to prayer, even if others were travelling and conversing at the same time. The general custom even of the pious has obtained this.

163. **Is it a fault not to observe the rubric according to which certain prayers are to be recited with knees bent?** Response: negatively, if there is question of recitation outside choir; for from custom and common interpretation, this rubric regards only choir. The same must be said about other signs used in choir. These things are indeed laudably done in private recitation, but are omitted without fault.

If there is question of recitation in choir, it is controverted. Some hold the rubric in this matter as preceptive, others as directive. Yet such an omission can never exceed venial fault. L. 179.

164. **Is it a sin to recite the breviary in an indecent place?** More probably, speaking of itself, it seems to be denied, unless the place would hinder due attention, for example, because of the crowding of people, noise, etc. Otherwise it would be indecent to pray in an indecent place, which is false, since, because God is everywhere, he can also be prayed to and adored everywhere. 1 Tim. 2:8; L. 179; La-Croix, 1320.

165. **Whether and what kind of intention and attention is required in recitation of the office?** Intention is the willing of doing something; attention is the application of the mind to what is being done.

One intention is express, another implicit. Express intention is that by which someone, taking the breviary from the beginning, says: I wish to pray. Implicit intention is that by which he does not indeed say this actually, but virtually intends it, while he wills to recite the canonical hours according to the precept of the Church.

Moreover, one intention is actual, which is; another virtual, which was and perseveres in some effect; another habitual, which likewise was, but remains in no effect.

Likewise one attention is external, namely that which excludes every external action physically incompatible with what is being done; another is internal, which consists in the interior advertence of the mind to what is being done.

Again, internal attention is threefold: 1. spiritual, which is to God himself as the term of prayer; 2. literal, or to the sense of the words and the signification of the things; 3. material, which is to the words only, or to pronouncing them duly. L. 176; St. Thomas, IV Sent., dist. 15, q. 4, a. 2, sol. 5.

Intention is necessary, because recitation of the office is a human act, which cannot exist without intention. "Concerning intention, it is certain that an actual explicit intention is not required, but that a virtual implicit one suffices, namely if you take the breviary in the usual way in order to fulfill the office, as you are accustomed to do, as Sanchez, etc., commonly teach. Indeed Croix rightly adds that there is no need to renew the intention for individual hours, even if some interruption intervenes, even without cause, because that resumption is made from the first intention. Indeed I think there is always present in exercise an actual intention of fulfilling the office." L. 176.

Concerning attention, to satisfy substantially the precept of the office no internal attention is required besides attention to pronouncing all things duly; and sufficiently probably, the intention of reciting, with external attention, suffices. The reason is that internal attention is not of the essence of prayer; therefore external attention joined with the intention of reciting brings it about that recitation of the hours, as regards substance, is true prayer. And thus teach very many grave doctors: Lugo, *De Euch.*, disp. 22, n. 25ff.; L. 176, 177; St. Thomas, IV Sent., dist. 15, q. 4, a. 2, sol. 4, ad 2.

For the rest, to cast aside scruples, it is very useful to note what the doctors commonly teach, even those who require internal attention, namely "that in order that someone be said not to satisfy the office, it is required not only that he voluntarily distract himself, but also that he fully advert that he is being distracted; for otherwise, although he spontaneously diverts himself, nevertheless he does not spontaneously divert himself from recitation." L. 177.

166. **Does one sin mortally who recites the hours while existing in mortal sin?** Response: negatively. The reason is that recitation of the office is not an act of sacred order; and although such a person obtains nothing for himself, nevertheless, since he prays in the name of the Church, he can well obtain for others. But that he prays in the name of the Church while existing in mortal sin does not seem an irreverence to be condemned as mortal. And if he prays from devotion, he does not seem to be condemned for any sin. L. 178.

167. **What are the causes excusing from recitation of the hours?** They are: impossibility, charity, and dispensation.

Impossibility, whether physical or moral, consists in grave difficulty of reciting the office. Hence the following are excused:

1. One who does not have a breviary because, for example, in undertaking a journey he forgot it, or lost it on the journey, with inability to obtain another. Yet if by his own fault he forgot it, lost it, or threw it away, he sinned gravely or lightly according as the cause of the omission was gravely or lightly culpable, and the omission of the hours is to be imputed to him according to the gravity of the fault admitted. "If you had the common office and not the proper of that day, you are held to recite the hours from the common." L. 158.
2. One who labors under a grave sickness, for example, fever, pain of the intestines, head, or eyes; or one who justly fears that from recitation a grave inconvenience would follow, etc. Hence he is sufficiently excused who prudently believes or fears that because of recitation of the office notable heaviness of the head, crudity of stomach, weariness of strength, or another grave inconvenience would come from it. But one who cannot recite because of blindness of the eyes is not held to learn the hours by memory, because this would be an extraordinary means.

3. One convalescing from grave illness can be excused for several days according to the judgment of a prudent person, until his strength is restored. "And this is probably admitted even if the sick person read some book for a great part of the day to console his mind. The reason is that although such a person could read a book of recreation, it does not follow that he can and is held to recite the office, for which another and greater attention is required, which brings greater difficulty." L. 154. The same must be said even if the sick person perhaps celebrated Mass or held conversations with others, because by these the illness is relieved, whereas by recitation of the hours it would grow heavier.
4. Also excused is one who in time of persecution fears that he would be betrayed by recitation of the breviary. L. 154, 156-158.

Charity toward the neighbor, that is, grave occupation which cannot be omitted without scandal or notable detriment of the neighbor. Such an occupation excuses from recitation of the office, because the natural precept of charity prevails over ecclesiastical law. Hence you are excused either totally or partially:

1. If at night, when about to recite the office, for example Vespers, you are called immediately to a dying person and neither time nor convenience is available to you for fulfilling the obligation of the office.
2. If you are occupied the whole day in hearing confessions which, because of particular circumstances, cannot be deferred, for example in sacred missions.
3. If you could not omit a sermon without scandal or detriment to reputation, and yet time would not be available for preparing it if the office had to be recited.
4. If you are occupied the whole day in settling quarrels or assisting the sick, for example in time of contagious disease, etc. L. 156.

Legitimate dispensation, or one granted by a legitimate superior. For the obligation of reciting the Divine Office, since it is of ecclesiastical law, can be removed by ecclesiastical superiors.

The Pope can validly grant this dispensation in every case, even without cause; lawfully, however, from a reasonable cause, for example because of excessive occupation, for settling scruples, etc.

The bishop also can dispense from this law, but not validly without sufficient cause, and only with some individual in particular for a short time, namely: 1. when recourse to the Pope is difficult; 2. when the dispensation is sought because of a cause which recurs frequently, for example because of infirmity; 3. when there is doubt concerning moral inability or concerning the gravity of the detriment to be feared. L. 159.

168. **What must be done in doubt whether infirmity suffices for excusing or not?** The sick person can commit himself to the judgment of a physician, C. *Fraternitatis* 6, de Frig. et mal. He can acquiesce in the judgment of a superior, who in doubt is also able to dispense. He can remit himself to the probable judgment of a prudent man. Indeed, probably he can also stand by his own judgment, if he himself can make such a judgment. L. 154.

169. **To what is a sick person held, if he is certain that he cannot fulfill the whole office, but doubts whether he can recite a part?** Probably he is held to nothing. For he is reasonably excused from the whole office, lest he be tormented by scruples, not knowing how far he can and is held to recite; and this anxiety would bring him great harm. L. 154 at the end.

170. **Is one somehow impeded from reciting the whole breviary held to the part which he can recite?** Response: affirmatively. The reason is evident. For the obligation of the breviary falls upon its individual parts, since the thing prescribed is divisible. This is also clear from proposition 54 condemned by Innocent XI. Therefore one who lacks a breviary and knows nothing else by memory except Lauds or Compline is held under grave obligation to recite those. L. 158; E. M.

171. **Are you held to recite the psalms if you have only these before your hands, or know them by memory, with the lessons and responsories left aside?** Response: more probably, affirmatively. The reason is that since you can recite a notable part of the office, there is no cause why you should be excused from it. But several say that you are held to nothing, because then the form prescribed by St. Pius V is lacking. Nor does the cited proposition 54 condemned by Innocent XI obstruct this, because in it there is question of one who can complete entire hours. The following rule is handed down by St. Liguori and others: if you can recite as much as a little hour, you are held under grave obligation to recite it; but if less, you are not obligated to recite anything, not even under venial sin, because such a small part, taken separately, is not judged appreciable for the end intended by the law. L. 153; La-Croix, 1220.

172. **Are you held to use a companion if you are not able to recite the hours alone?** Response: affirmatively, if you can easily find him. The reason is: 1. because then properly so-called inability is not present; 2. because the precepts of the Church require ordinary diligence for their fulfillment, and no means is more ordinary than using a companion in recitation. L. 158.

173. **Are you held to use a companion, with a stipend paid, if you do not conveniently find another?** Response: negatively. The reason is that the means is altogether extraordinary and also full of inconveniences; hence the Church is not judged to obligate to it. Indeed, if a companion who will recite with you gratuitously does not promptly occur, you are not held to seek someone with anxiety and solicitude, because this also would become an extraordinary means. And this also holds, at least probably from St. Alphonsus himself, 158, for a beneficiary.

II. On the Negative Obligations of Clerics

174. **Is it lawful for clerics to bear arms?** The bearing of arms, necessity being excluded, is prohibited to clerics by canon law. C. *Clerici* 2, de Vita et honest. cler. The reason is that the bearing of arms is unbecoming to the character of clerics, who after the example of Christ ought to be meek and humble of heart. Hence theologians with Benedict XIV, notif. 101, say that clerics in sacred orders sin gravely if they embrace military service. Nevertheless, those are not to be reproved who cooperate in a just war by counsel, exhortation, or even aid; and if they have temporal jurisdiction, they can declare war, conscript an army, and furnish arms, provided they do not bear arms nor perform the office of commander.

"Necessity being excluded"; because necessity has no law. C. *Dilecto* 6, de Sent. excomm. in 6, in canon law; for this is not repugnant by divine law. Hence priests also fought in the Old Law, 1 Macc. 10. Suarez, *De Censur.*, disp. 47, sect. 6; Lugo, *Resp. Mor.*, l. 5, disp. 14; St. Thomas, II-II, q. 40, a. 2; E. M.

175. **Are fishing and hunting prohibited to clerics?** Fishing is lawful, since by its nature it is altogether quiet and is nowhere read to be proscribed.

But frequent and clamorous hunts are forbidden, namely those which are done with a great apparatus of men, dogs, hawks, nets, and weapons. If they are done rarely, they lack grave fault; if they are quiet, they are lawful unless they have been positively prohibited by the Ordinary. But in order that they may be practiced with weapons, the permission of the Ordinary is needed. C. 1, de Cler. ven.; C. 1, Ne cler. vel mon.; Trent, sess. 24, c. 12 de Ref.; Benedict XIV, *De Syn.*, l. 11, c. 10, nn. 6-10; L. 1, 3, n. 606; St. Thomas, II-II, q. 168, a. 2.

176. **Is dice-playing prohibited to clerics?** A game of dice is said to be one which is wholly situated in pure chance, and whose outcome depends on mere accident, without any skill of the player obtaining any part in it. Such is, for example, the game of dice.

As regards inferior clerics, the doctors commonly say that this is not positively prohibited, because as regards them, at least from custom, the canons have been derogated, just as with laymen.

But it is prohibited to clerics constituted in major orders and to beneficed clerics. This is clear: 1. from natural law, because, speaking of itself, it is unbecoming to a cleric and brings scandal; 2. from canon law. Lateran IV, canon 16; Trent, sess. 22, c. 1 de Ref.; Benedict XIV, *De Syn.*, l. 10, c. 2, n. 2; l. 11, c. 10; L. 1, 3, nn. 884, 895.

177. **Do clerics sin gravely by playing dice?** If there is question of a public dice-player, all agree that he sins gravely if he plays dice in a large amount, or in a small amount provided, however, that the play is not only frequent but also over a long time. The reason is that dice-playing notably dishonors the clerical state, turning the soul too much away from divine things.

"Frequent, over a long time." "What kind of frequency is mortal? Bordoni thinks it is to play once in a week, but Roncaglia deservedly thinks this too strict. Indeed Lessius and Wigandt think clerics who play for a short time, even often, for the sake of recreation, are not to be condemned of mortal sin unless the proper statutes of the diocese prohibit this." L. 1, 3, nn. 896-898.

The reason of scandal and custom must also be attended to here. Therefore one must weigh "the quality of the person, whether he is of great or small esteem. For clerics who do not lead a very exemplary life in fact do not introduce grave scandal if they are seen even frequently to engage in such games, provided that they do not neglect their own ministries; indeed they provide no scandal if they do this merely for the sake of recreation. And these can truly be said to be excused by today's universal custom, which certainly differs from that ancient strict discipline of the primitive Church." L. loc. cit., n. 900.

"Clerics who rarely, moderately, and privately, without scandal, play dice do not sin gravely. Indeed probably not even venially, if they play for the sake of recreation in a place where the aforesaid canons

are not rigidly observed." L. loc. cit., n. 899.

As regards religious, because of their state and the scandal of others, they can more easily sin gravely by playing at games of chance or dice. Nevertheless, prescinding from scandal and from a contrary precept, religious also are excused from mortal sin if they play in a small amount, or not frequently; and they are also excused from venial sin if they do it for a reasonable cause, for example to console a sick or sad companion. Indeed this is lawful even for the sake of recreation and with due moderation, where it is permitted by approved custom. L. loc. cit., nn. 872, 873.

As regards bishops, if they play dice, since this is very unbecoming to the episcopal state, they can scarcely be excused from mortal sin. "A bishop," says St. Alphonsus, loc. cit., n. 902, "playing a game of mere chance even once, I think can with difficulty be excused from grave scandal; just as I also judge if they frequently engage in other card games that are not altogether fortuitous." L. loc. cit., nn. 898-902; St. Thomas, II-II, q. 168, a. 3.

178. **Is every card game judged aleatory?** One card game is of pure chance and altogether aleatory; another is mixed, partly aleatory and partly depending on the skill and industry of the player. Concerning the former, the same must be said as above concerning dice. But since from present custom the prohibition of the ancient canons seems greatly tempered, the reason of scandal must rather be attended to in practice. The latter kind of game is not to be had as illicit if the reason of scandal and a special law prohibiting it are absent; for it is not properly an aleatory game.

179. **Do clerics or religious sin mortally who assist by watching those playing dice?** "This is indeed prohibited in C. *Clerici* 15, de Vita, etc., where it is commanded to them that they not be present at games of this kind. Yet the doctors commonly deny that in this they sin mortally, unless they were the cause of mortal play, or negligently failed to correct the players, or unless they took complacency in such play insofar as it is mortal; otherwise if they were present only for the sake of delighting in the skill or fortune of the players. But bishops assisting at these games deliberately and frequently can with difficulty be excused even from the sin of grave scandal." L. 1, 3, n. 903; Sanchez, *Cons. Mor.*, l. 1, c. 8, resp. 29.

180. **Do clerics sin mortally by being present at bullfights?** St. Pius V, by motu proprio of Nov. 1, 1567, prohibited this to all and imposed censures. Gregory XIII, on Aug. 25, 1575, by another motu proprio moderated the former one. Finally, Clement VIII, on Jan. 3, 1596, moderated still more the motu proprio of St. Pius V. Gutierrez apud Sanchez, *Cons. Mor.*, l. 1, c. 8, dub. 31, teaches that by the constitution of Clement the prohibition against being present at bullfights, made to secular clerics constituted in sacred orders or holding benefices, was not taken away. But this is not sufficiently clear from the words of the Pontiff. Nevertheless the Sacred Penitentiary, Sept. 19, 1893, responded that it cannot be tolerated that a priest, even by force of custom, be present in the arena. Regulars, however, were positively and clearly excepted by the Pontiff himself from his limitation, and therefore they are prohibited from being present. Villada, *Cas.*, etc., p. 1, p. 344; St. Thomas, IV Sent., dist. 16, q. 4, a. 2, q. 3; E. M.

181. **What is to be said about entrance into taverns; about dances and comedies; about dwelling with women?** Entrance into inns and taverns outside necessity is altogether

forbidden to clerics, C. *Clerici* 15, de Vit. et honest. cler. And certainly this is too opposed to clerical modesty and gravity.

Diocesan synods everywhere, after Trent, sess. 22, c. 1 de Ref., sess. 24, c. 12 de Ref., prohibit clerics under precept of obedience from being present at dances, both public and private, and at public comedies, as Benedict XIV notes, *De Syn.*, l. 11, c. 10: both because of the grave dishonor of the clerical state which is accustomed to arise from it, and because of the danger to which the holiness of clerical life is exposed, and because of the grave scandal of laypersons. L. 1, 3, nn. 427, 429.

Yet this does not prohibit clerics, for the sake of honest recreation and exercise, from performing or being present at those representations which are had in communities, provided that the rules of modesty and temperance are observed. There are also certain public spectacles which do not seem so unbecoming to clerics, such as military exercises, horse races, enclosures of wild beasts, the tricks of performers, extraordinary musical assemblies, etc. Here the whole matter is to be judged from the nature of the thing itself, from the usage of the region, from the place, from frequency, from the quality of the person, and similar things.

And here it must be noticed that vain and lascivious music is also prohibited in Churches, but by no means pious music which by its harmony can stir up devotion. Trent, sess. 22, de Observ. et vit., etc.; Benedict XIV, encyclical letter *Annus qui*, Feb. 21, 1749, sec. 3ff.; notif. 37; S. R. C., July 6, 1894.

Dwelling under the same roof with women is prohibited to clerics, unless they need them and those women are free from every suspicion. Such are presumed to be blood relatives in the first and second degree, and affines in the first; but not likewise in the second, unless one owes reverence to the other, as the widow of an uncle or nephew; nor likewise strangers, unless they are both of proved virtue and regularly of advanced age. All these things must be in the judgment of the Ordinary. "Advanced," that is, they must be at least forty years old. "Regularly"; for it is lawful to dwell with younger women, the wives of their servants, or maidservants or attendants of those who are of the household. C. 1, 9, de Cohabit. cler.; C. 27, dist. 81; Trent, sess. 22, c. 4 de Ref. The reason is danger of lapse and scandal. Benedict XIV, inst. 82, 83; *De Syn.*, l. 11, c. 4, n. 7; Pirhing, l. 3, t. 2, nn. 2, 3; Reiffenstuel, l. 3, t. 2, n. 8; E. M.

182. **Is trading lawful for clerics?** Trading properly so called is forbidden to clerics constituted in sacred orders and to all religious, so that they sin gravely if they give much work to trading. Trent, sess. 22, c. 1 de Ref.; C. 15, 16, de Vit. et honest. cler.; C. 1, 3, 6, Ne cler. vel monach.; L. 1, 3, n. 831; St. Thomas, IV Sent., dist. 16, q. 4, a. 2, q. 3.

Trading properly so called is when someone buys a thing with the intention of profiting by selling or exchanging it whole and unchanged at a higher price. Can. 3, caus. 14, q. 4; St. Thomas, II-II, q. 77, a. 4. "Properly so called" or lucrative; for economic trading is also customarily distinguished, by which necessities for sustenance are bought and superfluous things are sold; and artificial trading, by which something is bought so that it may be sold after being changed either naturally or by one's own industry. Neither of these is prohibited of itself. But if the thing is changed by another's industry or by hired workers, it differs little indeed from trading. Likewise if things are sold in a public workshop, that too is unbecoming to the clerical state. Cf. Bizzarri, ed. 1885, p. 338.

"Constituted in sacred orders"; for it is the common opinion that trading is not prohibited to clerics in minor orders. But it is doubted whether it is forbidden to beneficed clerics in minor orders. Molina, etc., deny; but the opposite is better held with the common opinion, which Lugo, etc., hold. L. loc. cit.

"If they give much work to trading"; for a cleric does not sin gravely by practicing trading twice or three times, if it is not shameful and not in a large quantity, because the laws speak of one exercising it. Hence, even if only once or twice he trades in grave matter, Cajetan, Salas, etc., probably hold that he does not even sin gravely. L. 1, 3, n. 831. In order that trading be forbidden to clerics, the intention of buying more cheaply so that it may be sold more dearly is required; hence it is lawful for them to sell more dearly so that they may buy more cheaply. L. loc. cit., 836.

Benedict XIV, bull *Apostolicae servitutis*, established that the penalties inflicted against cleric traders must also be extended to clerics illicitly trading in any way under the alien name of a layperson, just as if they illicitly exercised the business itself by themselves and in their own name. These penalties are *ferendae sententiae* as regards clerics and monks. But as regards missionaries of the East Indies and America, to whom trading and commerce are more gravely forbidden, the penalties are incurred by them by the fact itself from the constitution of Urban VIII *Ex debito*, Feb. 22, 1633, Clement IX *Sollicitudo pastoralis officii*, June 17, 1669, and resolution of the Holy Office, March 6, 1817. Cf. 1218.

Clement XIII, bull *Cum primum*, again prohibited clerics from trading through interposed persons; and especially from exercising active exchange through others, namely acting the parts of a money-changer; adding that if family necessity is present, or if a business comes by some title from laypersons, the cleric still cannot trade without permission of the Apostolic See in Italy, and outside Italy without permission of the bishop. Besides, he adds that if a doubt arises concerning some contract, whether it can lawfully be entered by a cleric, "the most expeditious way is to write to the Sacred Congregation of the Council, which will decide the doubt." L. loc. cit., 832, 833. But from received morals, if a cleric has succeeded his father in business together with his brothers, he is permitted to exercise it through others. Likewise no permission is needed if someone trades to obtain for himself necessities of life, and not only things necessary to his state.

It is certain that it is not lawful for clerics or religious to lease the things of laypersons for the sake of making profit. The reason is that although this is not properly trading, but only a certain species of trading, nevertheless it was forbidden by the Council of Chalcedon, C. *Pervenit* 1, caus. 21; C. 1, Ne cler. vel mon. And therefore it is not lawful to fatten sheep, swine, etc., on these pastures, Lugo, *De Iust.*, disp. 26, n. 29, unless a contrary custom is in force somewhere, L. 1, 3, n. 835. "To lease"; for one who succeeds to a lessee will be able to retain. Pagnan., in C. 1, n. 81, Ne cler. vel mon. By no law is it forbidden to clerics to give a loan to others. La-Croix, l. 3, p. 2, nn. 1005, 1006; Molina, disp. 339, n. 2; L. loc. cit., 834; St. Thomas, II-II, q. 77, a. 4, ad 3; E. M.

183. **You will resolve:** It is not trading prohibited to ecclesiastics or religious if they buy cattle which, fattened on their pastures, they sell, because they sell the fruits of their estates or fields; nor if they keep flocks so that they may sell offspring, milk, and wool. Nor does a cleric sin:

184. If he buys a field with fruits already mature and sells them, because he sells the fruits of his field.

185. If what he had bought for his own uses he later sells more dearly, either because he does not need it or because his plan has changed.

186. It is also lawful of itself for clerics to buy iron in order to sell swords; colors in order to sell paintings; wool in order to sell cloth, provided, however, that they themselves make these things, and not through hired workers, because otherwise this would very nearly approach trading; likewise provided that they themselves do not sell these things in a public workshop, which would be unbecoming. L. loc. cit., 834, 836; E. M.

187. **Is it lawful for clerics to alienate things of the Church?** Paul II, in the Extravagant *Ambitiosae*, de Reb. Eccl. non alienand., prohibits, under grave penalties, the alienation of immovable goods and precious movable goods of the Church which can be preserved; and he declares the alienation altogether invalid. L. 187. Cf. 1209.

188. **What arts and offices are prohibited to clerics?** It is prohibited to clerics in sacred orders and to monks to practice medicine and surgery where there is need of incision, amputation, or cautery, and no necessity is present; and indeed under irregularity if mutilation or death follows from it. For this is opposed to the mildness which all clerics ought continually to have. Yet if no skilled person is present and the case presses, a cleric will be able to perform incision or cautery without sin, and therefore without danger of penalty or irregularity. Likewise ecclesiastics can be available to others with the best counsels of the healing art.

It is also prohibited to clerics and monks publicly to hear law and medicine. But secular and regular clerics who frequent government universities for the sake of studies must observe the prescriptions established by the Sacred Congregation of Bishops and Regulars, instruction *Perspectum*, July 21, 1896.

Likewise by the same canon law every art is prohibited to all clerics which is generally judged contrary to the honor of the clerical state, such as the art of butchers, tavern-keepers, performers, etc. Decretals, titles de Vita et honest. cleric.; Ne cler. vel mon., etc.; L. 189; l. 7, nn. 384, 385, 389.

Besides, beneficed clerics or clerics in sacred orders are everywhere prohibited by canon law, under grave obligation, from exercising the following offices:

1. The office of tutor, curator, or procurator of minors, and any other office which is of public ministry, such as prefect of the city, quaestor, etc., and which obligates them to render accounts concerning justice or concerning goods administered, except in the case where the wards or minors are close relatives of the clerics. Cf. C. un., de Oblig. ad ratiocin.; Clement XIII, const. *Cum primum*, par. *Et parem*; Italian Civil Code, art. 246. But by present practice it has been received that they can be deputies, senators, and consultants of municipalities, unless a special prohibition is present.

2. The office of judge in a cause of blood; soldier; advocate; procurator and notary in secular courts, except in the case where the cleric conducts either his own cause, or that of his Church, or of a needy person, or of a person joined to him in the fourth degree; administrator of the goods of a private layperson, not miserable, with obligation of rendering accounts for the substance administered. For the rest, the doctors do not dare to condemn of mortal sin a cleric who, because of such procuration, would not neglect his own ministries, especially if he did

this not for the sake of avarice, but to preserve more decently his own state and family. For the law speaks only of one who would so immerse himself in procurations of this kind that he would be forced to neglect his own ministries. L. 190; l. 3, n. 838. Decretals, cited titles and chapters; Trent, sess. 7, c. 14 de Ref.; sess. 23, c. 1 de Ref.; Benedict XIV, *De Syn.*, l. 13, c. 10; St. Thomas, II-II, q. 187, a. 2; q. 71, a. 2; E. M.

III. On Beneficiaries in General

186. **What are a benefice and a pension?** An ecclesiastical benefice, considered in itself, is a portion of goods dedicated to God, joined to an ecclesiastical office legitimately erected and perpetually subsisting. With respect to the beneficiary, it is commonly defined: a perpetual right competent to a cleric legitimately instituted, of perceiving fruits from ecclesiastical goods, on account of a spiritual office constituted by the authority of the Church itself. The goods are something temporal; the office, spiritual; the right, temporal annexed to the spiritual. But the right of perceiving fruits from another's benefice is called an ecclesiastical pension. L. 83, 137.

Salaries which, after immovable goods have been usurped, the republic substituted for the revenues of these goods, put on the nature of the thing substituted and are judged by its law. Sacred Penitentiary, Jan. 19, 1819.

187. **How many kinds of benefice and pension are there?** Some benefices are major, others minor. Major benefices, in which there is external and internal jurisdiction, are those to which the highest rank in the Church adheres, such as the patriarchate, archiepiscopate, episcopate, cardinalate, and in the opinion of some also an abbacy. Yet these are not customarily indicated by the common name of benefices, but by their proper name; and sometimes they are also called consistorial benefices, because the Roman Pontiff is ordinarily accustomed to make their collation in the Consistory of Cardinals.

Those benefices which are not contained in the number of the aforesaid are called minor; and some are double, others simple. Double benefices are those which, besides the common recitation of the canonical hours which inheres in all benefices, and the ministry of the altar, have something else annexed, namely either preeminence and jurisdiction in the internal forum, and they are called benefices with care of souls; or preeminence alone, and they are personates; or some function, and they are called offices; or preeminence and jurisdiction in the external forum, and they are dignities.

Moreover, some dignities are major, and they are those already listed, namely episcopate, archiepiscopate, primacy, patriarchate, cardinalate, and above all the pontificate. Others are minor, such as archdeaconry, etc. Under the name of dignities generally assumed in Apostolic rescripts come the minor dignities. Simple benefices were instituted only for pouring forth prayers to God and for service of the altar, such as an ecclesiastical chaplaincy, etc. L. 84, 116; Bouix, *De Par.*, p. 172ff.

One pension is lay, another clerical. A lay pension is given either to a layperson or to a cleric for some temporal ministry or some temporal cause, and it is something wholly temporal. A clerical pension, however, is given to a cleric as a cleric; and it is called mixed if it is given to a poor cleric, an old man, etc., so that he may be supported, or for another temporal cause. But it is simply clerical if it is given,

for example, to a preacher, a coadjutor of a pastor, etc., on account of spiritual ministry. L. 137; l. 3, n. 73ff.; Schmalzgrueber, l. 3, t. 5, 12; Ferraris, v. Beneficium, Pensio.

188. **How are ecclesiastical benefices acquired?** Ecclesiastical benefices are commonly acquired in three ways:

189. Through election, by which a cleric is elected by the whole chapter or congregation and confirmed by the ecclesiastical superior or prelate.

190. Through presentation, by which someone is presented by a patron to the superior, by whom he is necessarily accepted and instituted if he is found suitable. Nomination can be referred here, by which someone, although not a patron, nevertheless by indult offers someone to a superior for some benefice, so that it may be conferred upon him by the superior.

191. Through collation, when the benefice is given gratuitously by the sole right of the prelate.

Hence another division of benefices arises: into elective, patronal, and collative. L. 85, 86; l. 3, n. 101ff.; Decretals, title de Elect.; Trent, sess. 14, c. 13 de Ref.; sess. 25, c. 7 de Ref.; E. M.

189. **What is the right of patronage?** The right of patronage is the faculty or right of presenting a cleric so that a benefice may be conferred upon him. One who has this faculty of exhibiting a cleric to the bishop is called a patron. By the very ancient received discipline of the Church, it was permitted to those who either erected, endowed, or restored churches or benefices to choose clerics acceptable to themselves for those same benefices, and to present them to bishops. Trent, sess. 14, c. 12, 13 de Ref.; sess. 24, c. 3 de Ref.; sess. 25, c. 9 de Ref.; L. 87; l. 3, n. 71.

190. **What benefices must be conferred by competition?** Trent, sess. 24, c. 18 de Ref., considering how much it contributes to the salvation of souls that parishes be governed by worthy men, expressly ordered that they cannot be conferred except upon the worthier among those who, in an examination to be instituted before the bishop himself, or, if he is impeded, by his vicar general and examiners, not fewer than three, have been approved; and it declared provisions otherwise made null and void by the law itself. Indeed St. Pius V, in the constitution *In conferendis*, March 18, 1567, besides the aforesaid nullity of collation, established that this concession is devolved to the Apostolic See, or to those to whom the right of conferring the parish belongs. To parishes add the theological and penitentiary prebend, which benefices likewise are to be conferred by competition from Benedict XIII, constitution *Pastoralis officii*.

Competition has place in benefices with care of souls of ecclesiastical right of patronage, but by no means in benefices with care of souls of lay right of patronage. In this case, if several have been presented, all are to be examined, and from all approved one suitable person is to be instituted. Pagnan., C. 24, de Iure patronatus, n. 31.

The form of competition is had in Trent, sess. 24, c. 18 de Ref.; constitution of St. Pius V *In conferendis*; constitution of Benedict XIV *Cum illud*, Dec. 14, 1742; A. S. S., vol. 7, p. 353ff.; Benedict XIV, *De Syn.*, l. 4, cc. 7, 8; l. 13, c. 24, n. 7; Reclusius, *De Concursibus*; Bouix, *De Par.*, p. 352ff.

191. **To whom must benefices be conferred?** Benefices are not to be conferred except upon suitable and worthy persons, namely those who display the conditions or qualities required by the sacred canons. One to be elected to a benefice must be:

192. Of honorable morals. Hence deservedly excluded is the wicked person, criminal, infamous person, irregular, censured person, simoniac, murderer, one who has procured abortion, heretic and his favorer, receiver, etc., as is clear from various texts of law. Rule of Law 87 in 6; Trent, sess. 7, c. 3 de Ref.

193. One who excels in knowledge, which indeed from Trent, sess. 7, c. 1 de Ref.; sess. 22, c. 2 de Ref.; sess. 24, c. 12 de Ref., is different according to the different quality of benefices.

194. Celibate; for from canon law a married man cannot be admitted, and collation made to one who is joined in marriage is invalid. And if a cleric constituted in minor orders has a benefice and contracts marriage, he must be deprived of the benefice, C. *Sane* 2, *Quod a te* 3, de Cler. coni., or even loses it by the law itself, Schmalzgrueber, l. 3, tit. 3, n. 5.

195. Born from legitimate parents, and not the son of a heretic; otherwise the election is null. Trent, sess. 7, c. 1 de Ref.; sess. 22, c. 2 de Ref.; sess. 24, c. 1 de Ref.; sess. 25, c. 15 de Ref.; Benedict XIV, *De Syn.*, l. 13, c. 24, n. 11ff.; Pichler, l. 1, t. 17, n. 4ff.

196. Having the prescribed age. It is common that if the age is lacking even by one hour, the collation of the benefice is null. Trent, sess. 22, c. 4; sess. 23, c. 6 de Ref.; sess. 24, cc. 8, 12 de Ref.; L. 1, 6, n. 799.

197. Marked at least by first tonsure; otherwise it is not conferred upon a cleric. C. 7, de Praescript.; C. 2, de Instit. But if the benefice requires a certain sacred order, it is necessary that within a year from possession that order be received. Yet if there is grave necessity or utility of the Church, the bishop can dispense with the beneficed cleric so that he may devote himself to studies. Schmalzgrueber, l. 3, t. 4, n. 62, from Trent, sess. 5, c. 1 de Ref.; sess. 6, c. 2 de Ref. Make exception unless it requires such an order actually; then the order is required at the very time at which the benefice is acquired. Here, however, it must be noted that election and nomination are sometimes customarily made even of a layman, namely under hope of future clericate.

198. Having a true intention of persevering in the ecclesiastical state and receiving the sacred order which is required for the benefice, unless a just cause occurs which persuades otherwise. Otherwise he would deceive the Church in a grave matter, whose intention is that he receive the order at the appointed time. Hence one would sin gravely who, without that intention, received a benefice requiring sacred order; and this intention must be true and determinate. Trent, sess. 22, c. 4 de Ref.; L. 1, 6, n. 785. And if the benefice is a parochial church, and someone has received it not intending to be promoted to the priesthood, he must restore the fruits which he has thus fraudulently perceived, unless afterward, with will changed, he has been promoted. C. *Commissa* 35, de Elect. in 6. If no sacred order is annexed to the benefice, more truly he sins lightly, because by no law is it clear that this is lethal.

199. Finally, that the one to be instituted to a benefice is not already provided with another benefice. For it is certain by canon law that plurality of benefices in one cleric is absolutely

prohibited. Nevertheless, with dispensation of the Supreme Pontiff added, if there is some honorable cause, several benefices can be obtained. Indeed even without dispensation in some cases several benefices can be obtained. Trent, sess. 7, cc. 2, 4 de Ref.; sess. 24, c. 17 de Ref.; C. 28, de Praeb., etc.; Trent, sess. 22, c. 2 de Ref.; L. 112-118; St. Thomas, Quodl. 8, a. 13; Quodl. 9, a. 15; Sanchez, *De Matr.*, l. 7, disp. 45; Schmalzgrueber, l. 3, t. 5, de Praeb.; Benedict XIV, *De Syn.*, l. 13, c. 8, nn. 8, 9; E. M.

200. **How are benefices lost?** Benefices can be lost in four ways:

201. By death of the beneficed cleric, because they are conceded only to persons and cannot pass to heirs by hereditary right.

202. By sentence of a judge, either merely declaratory of a crime if there is question of certain enormous crimes by which the benefice is lost by the fact itself, with the aforesaid sentence added; or condemnatory because of crimes not so enormous. Where there is question of perpetual benefices, or strictly such, no one can be despoiled of a benefice except because of a crime expressed in law and with the order of law observed. Cf. Trent, sess. 21, c. 6 de Ref. But by economical removal, "if the bishop has inspected the cause as necessary, he will lawfully be able to transfer persons from one place to another." C. *Quaesitum*, de Rer. permut.; Reiffenstuel, cited title, n. 38; Schmalzgrueber, same title. But if benefices are not perpetual, nor strictly such, but are manual benefices, as they are called, then the benefices can be taken away at the nod or judgment, for example, of the bishop, and the beneficed cleric is removable, but from a just cause.

203. By free renunciation, which is the spontaneous dismissal of one's own benefice made into the hand of the legitimate superior accepting it; or by resignation, which is a renunciation made in favor of another into the hand of the legitimate superior accepting it; or by exchange, which is mutual resignation of a benefice in favor of another into the hand of the legitimate superior accepting it. But novices are prohibited from renouncing before the two months nearest to profession. Trent, sess. 25, c. 16 de Ref. In the renunciation of benefices, however, their publication must be made from the constitution of Gregory XIII *Humana vix iudicio*, Jan. 13, 1583, in the mode and form prescribed in the same constitution. The aforesaid constitution was confirmed by Benedict XIV, const. *Ecclesiastica*, June 15, 1746.

204. By mere disposition of law, after marriage or religious profession, through acceptance of another incompatible benefice, etc. Sanchez, *De Matr.*, l. 7, disp. 42, n. 4; C. *Beneficium* 4, de Regular. in 6. L. 133-136; l. 3, n. 80ff.; A. S. S., vol. 29, p. 226.

205. **What are the obligations of beneficed clerics and pensioners?** The obligations of beneficed clerics are some special, which will be set forth in their proper places, where there is discussion of bishops, canons, and pastors; others are common to all.

Common to all beneficiaries is:

1. The obligation of reciting the canonical hours.
2. The obligation of restoring fruits if they omit recitation of the office and the other obligations to be fulfilled.

3. They are held under grave obligation to distribute to pious uses or alms all revenues from merely ecclesiastical goods which are left over beyond their honorable sustenance. Trent, sess. 25, c. 1 de Ref.; St. Thomas, II-II, q. 185, a. 7; Quodl. 6, a. 12.
4. They must wear tonsure and ecclesiastical habit, and also preserve celibacy. Benedict XIV, const. *Apostolicae Ecclesiae*; *De Syn.*, l. 12, c. 3.
5. They cannot alienate goods, whether immovable or movable, such as sacred furnishings of the Church, give them in pledge, make them subject to servitudes, or change the form of estates, not even for the better, unless it is much and evidently better. C. 1, de Pignor.; Benedict XIV, notif. 69, n. 5.
6. They must preserve the things of their benefice in good repair and guard its rights, from the surplus revenues of the benefice itself, if there are any; otherwise according to the judgment of the Ordinary. L. 7, C. de Usufr.
7. If the benefice is residential, they must dwell in the place of the benefice and fulfill by themselves the burdens annexed to the benefice. C. 2, 3, 4, 9, 16, de Cler. non resid.; Trent, sess. 24, c. 12 de Ref.
8. Those provided with benefices having care of souls, or with dignities or canonries in cathedrals, must emit the profession of faith within two months from the day of possession obtained; otherwise they do not make the fruits their own afterward and until they have emitted the profession. Trent, loc. cit.
9. If sacred order is annexed to the benefice, they must receive it in the next year after possession entered upon, as was already said.
10. Finally, they must fulfill the obligations established in the tables of foundations.

The obligations of pensioners are:

1. To recite the Office of the Blessed Virgin Mary, unless from another head he is held to the hours, from St. Pius V, const. *Ex proximo*; otherwise he does not make the fruits his own, in proportion to the time and office. But this bull was not received everywhere. Cf. Suarez, *De Relig.*, t. 2, l. 4, c. 30, n. 22; L. 1, 3, n. 74.
2. If the pension, or pensions taken together, exceed 60 camera ducats annually, that is, 322 lire, he is held to walk in habit and tonsure, Sixtus V, const. *Cum sacrosanctum* and const. *Pastoralis*; otherwise he loses the pension by the law itself, ibid., sec. 2, namely if he seems to have returned to the lay state, Schmalzgrueber, l. 3, t. 12, n. 28.
3. Probably he can dispose of the pension entirely freely. L. 139; l. 3, n. 491.
4. **What must specifically be noted concerning the application of Masses?** One who by reason of a benefice is held to celebrate is also held to apply the Mass for the founder, unless the latter's contrary intention is clear. S. C. C., March 21, 1868; A. S. S., vol. 3, p. 525; L. 1, 6, n. 332.

If the beneficed cleric is indeed held to celebrate, but the application of the Mass has been left free to him, he can then certainly receive a stipend for it. But otherwise one must say if in the foundation of the benefice the contrary has been provided, or nothing is expressed. S. C. C., July 13, 1630; L. 324.

Unless it is expressed that he celebrate by himself, he will be able to celebrate and apply through another. S. C. C., Sept. 17, 1783; Feb. 24, 1872; A. S. S., vol. 7, pp. 181, 182; L. 330.

One who cannot satisfy the foundation because of sickness is not held, if it is brief, for example 15 days, or even one or another month, as Lugo probably teaches, disp. 21, n. 49, to substitute another or compensate, since not even honorable masters deal so strictly with servants; provided, however, that the founder did not will otherwise. C. *Significatum* 11, de Praebend. It is otherwise, however, if the sickness is long-lasting, unless perhaps he is poor and was promoted to orders by that benefice; for such a one can be vacant as long as he labors under illness. S. C. C., Feb. 5, 1650; April 24, 1655; Elbel, *De Euchar.*, 214; L. 333.

One who is held daily to celebrate by himself and to apply for the founder can celebrate four or six times in the year for himself, for one joined to him, for a friend or benefactor, provided no other stipend is received; likewise he will be able once in the week to be vacant for the sake of devotion and reverence, and this from the presumed will of the testator. Therefore this is illicit if the contrary will is clear. C. *Significatum* 11, de Praebend.; S. C. C., April 18, 1683; Benedict XIV, inst. 56, nn. 5, 6; Elbel, *De Euchar.*, 215; L. 332.

Masses are to be celebrated at the designated time and place, and ordinarily this is grave. Nevertheless, to celebrate earlier or later within a moderate time, namely within a month, or in another place once or twice in a month, or several times from a just cause, is free from grave fault, unless either another mind of the founder seems present, or unjust damage to another forbids it. But it is the right of the Ordinary to change the time and place from a just cause, interpreting the will of the founder. Elbel, *De Euchar.*, 216; L. 329.

III. On Beneficiaries in General

195. **Is there an obligation of choosing the worthier for benefices?** It is certain that those who promote the less worthy to episcopates and cardinalates are in no way excused from mortal sin. This is had from Trent, sess. 24, c. 1 de Ref., and confirmed from proposition 47 condemned by Innocent XI. "From this it is clear that Pontiffs and kings indeed sin gravely when they do not promote the worthier to the aforesaid dignities. The reason is that, since the benefices or aforesaid dignities were instituted for the common good of the Church, those who omit choosing the more suitable for the governance of Churches greatly detract from that good." L. 91. The same must be said of the Minister of cults who proposes to the Prince, and of bishops who are consulted by Governments, unless they suggest those whom they judge worthier and more useful to the Church.

It is likewise certain that bishops are similarly held to choose the worthier for benefices with care of souls. The reason is the same; Trent, sess. 24, c. 18. Now the greater worthiness of those to be chosen is not to be taken absolutely, but respectively to the utility of the Church. Therefore the worthier person is understood not as the one more learned, but as the one more apt and more useful

than the rest for fulfilling the functions annexed to the benefice. L. 92; St. Thomas, Quodl. 4, a. 15; Quodl. 6, a. 9; Quodl. 8, a. 6.

It is doubted, first, whether bishops sin mortally when choosing the less worthy for simple benefices, with the worthier omitted. For there is a twofold opinion. "The first probable opinion denies, because slight damage is inflicted on the community. But the second opinion, more common and more probable, teaches that even for simple benefices the worthier are to be chosen under grave obligation. The reason is that the very utility of the Church, on account of which benefices were instituted, demands of itself that the worthier be promoted; otherwise clerics would apply themselves little to rendering themselves worthier, and thus the utility of the Church would greatly fail. Yet the doctors limit this and say it is not a mortal sin: 1. if the worthier person is passed over not everywhere, but once or twice; 2. if the excess of worthiness is small; 3. if the benefices are of small moment; 4. if by law of foundation someone from some family, college, or town must be chosen; 5. if it is foreseen that the worthier person will shortly resign the benefice." L. 93-96.

Add: 6. If no certain hope appears that the worthier person will be chosen, it is expedient to vote for the less worthy if otherwise this one would certainly be chosen. For by dissenting someone would sow nothing but enmities and discords. Indeed it is also necessary to vote for the less worthy if otherwise an unworthy person would be chosen. And if no worthy person occurs, it is lawful even to confer a benefice upon an unworthy person if necessity presses and it is hoped he will be useful. D'Annibale, 3rd ed., p. 3, n. 38; Ferraris, v. Beneficium, a. 5, n. 28.

It is doubted, second, whether lay patrons who are not kings are held under mortal sin to present the worthier to benefices with care of souls. "The first opinion, which Palaus, Garcias, P. Navarrus, and others hold, denies that they are held to present the worthier, whether the benefice is simple or with care of souls." For the Council of Trent imposes no other burden on the layman than to present a suitable person. "But it must altogether be held with the second opinion that in benefices with care of souls a patron, even a lay patron, is held under grave obligation to present the worthier. This seems certain to me, because in these benefices the same reason certainly runs which runs in episcopates, for which Trent has already declared, as we saw above, that the worthier are to be promoted by anyone whatever." "Lay patrons, not kings"; for "it is certain that patrons of episcopates, such as kings, are held to this from the related c. 1 of Trent, sess. 24 de Ref., as above, where the Council declared this concerning all promoting. It is certain that if the patrons are ecclesiastics, they are also held to present the worthier, as the Council decreed," c. 18 of the said sess. 24. "To benefices with care of souls"; for "if the benefices are simple, just as it is probable that bishops are not held under grave obligation to confer them on the worthier, so it is also probable that patrons are not held to this. But because it is more probable, as we have said, that these must be conferred on the worthier, so we also judge it more probable that patrons are held under grave obligation to present the worthier. The reason, etc." L. 97; Benedict XIV, letter *Redditae nobis*, April 9, 1746.

It is doubted, third, whether those resigning benefices must also seek the worthier. For "the first opinion denies, and Lugo with Vazquez calls it probable. The second opinion, altogether opposite, absolutely affirms that the one resigning is held to seek the worthier. The third opinion admits that resignation can be made to one not worthier only when the one in whose favor the resignation is made is equally worthy as the one resigning, because then no damage is inflicted on the Church. But concerning all these opinions, the opinion of the most learned Lugo seems more equitable to me,

namely that the whole reason of fault in this point is to be taken from the reason of damage which would come to the Church, etc." L. 98, 99.

It is doubted, fourth, whether the worthier are also to be chosen for regular prelatures. "The first opinion denies, unless there is question of the generalate or a perpetual prelature; but it must altogether be affirmed with the common opinion. The reason is that they are, as it were, bishops." L. 100, 101.

One who seeks and obtains a benefice can commit judgment concerning his own suitability and worthiness to the estimation of others, although he does not regard himself as worthier than others, provided he certainly does not recognize himself as unworthy. St. Thomas, II-II, q. 185, a. 3; E. M.

196. **Is the election of a worthy person in benefices valid, if the worthier person is omitted?** "If the benefice is simple, it is certain from the common teaching of the doctors that it is valid. There is doubt if it is with care of souls. Palaus, etc., probably deny. But Lugo, etc., more probably affirm that the collation is valid." L. 102, 103; St. Thomas, II-II, q. 63, a. 2, ad 3.

197. **Is promotion of an unworthy person invalid?** If this unworthiness regards lack of those qualities which render one incapable because by strict law they are required for valid acquisition of a benefice, such as age, legitimacy, celibacy, clericate, sacred order actually had or at least to be received within a year if it has been annexed to the benefice, that someone is not excommunicated, suspended, irregular, a murderer, the son of heretics, that he has not been a public heretic or schismatic, etc., then it is clear that that election is null. Schmalzgrueber, l. 1, t. 14, nn. 30, 31.

But if it indicates only mere unworthiness or ineptitude for performing the offices inhering in the benefice itself, such as defect of knowledge, defect of integral life and reputation, exercise of a theatrical art, etc., then the election is not, at least in the external forum, invalid by the law itself, because nothing is had defined concerning this. Yet it is to be invalidated from Trent, which commanded "that ecclesiastical benefices, especially those having care of souls, be conferred upon worthy and suitable persons; but collation or provision made otherwise is altogether to be invalidated." Sess. 7, c. 3 de Ref.; Decretals, title de Filiis presbyter., etc.

198. **Are those who choose a worthy person for a benefice, with a worthier one omitted, held to restore the damage inflicted upon him or upon the Church?** The first opinion affirms that they are held to restitution. Some say they are held to compensate the damage to the worthier person omitted; others think the damage must be repaired not only to the worthier person, but also to the Church. The second opinion denies that they are held to restitution either toward the Church or toward the worthier person; it is otherwise, however, if an unworthy person is chosen. "Each opinion," says St. Alphonsus, "is very probable"; and he asserts that the second seems more probable to him. L. 107; l. 3, nn. 547, 585. Cf. 199.

199. **When benefices are conferred by competition, is one choosing a worthy person, with a worthier one omitted, held to repair the damage to this latter person?** The first opinion, common, affirms. The reason is that benefices are common goods and rewards of merits. Yet the second opinion denies. The reason is that the pact which is had in competition is not a rigorous pact obligating according to the laws of commutative justice, but is only a promise

obligating from fidelity; for benefices are especially instituted for carrying out divine worship. But competition looks only to this, that it may appear who are worthy, who worthier. L. 109; l. 3, n. 585.

200. **Does a less worthy person opposing himself through competition against a worthier person sin mortally, and is he held to restitution if he obtains the benefice?** Response: affirmatively, if the one opposing himself is unworthy, because he obtains illicitly and unjustly.

Negatively, if he is simply less worthy. The reason is that it does not pertain to him to discuss merits, but to the examiners and to the one conferring the benefice. And this is the mind of the Church and the common practice, that all worthy persons compete. L. 110; St. Thomas, II-II, q. 63, a. 2; q. 185, a. 3.

201. **Are examiners held to denounce the worthier candidates to the bishop?** The first probable opinion denies with Lugo, etc., because from Trent, sess. 24, c. 18 de Ref., not the worthier but the suitable are to be reported by the examiners, so that from these the bishop may then choose the worthier. The second opinion, more probable and more common to St. Alphonsus, affirms. The reason is that competition is prescribed precisely so that the bishop can more easily and safely choose the worthier. L. 111; E. M.

202. **Must examiners indicate not only the knowledge of competitors, but also the other moral endowments?** Response: affirmatively. "When the examination has been completed," says Trent, "as many as have been judged suitable by these men in age, morals, doctrine, prudence, and other things opportune for governing the vacant Church are to be reported." S. C. C., Aug. 2, 1607, expressly declared that examiners "fail gravely in their duty if they are judges of doctrine only, and do not inquire who, before the others, are suitable and commendable in probity of morals, labors, previous service rendered to the Church, and the other endowments necessary for cumulatively performing the parochial office." Indeed it adds that there is no collation which has been made upon a judgment of the examiners limited to doctrine alone. And Benedict XIV, encyclical *Cum illud*, Dec. 14, 1742, openly reproved the contrary abuse growing up somewhere, *De Syn.*, l. 4, c. 8. A. S. S., vol. 2, pp. 81, 90; vol. 11, pp. 13, 127.

IV. On the Obligations of Bishops

203. **What is to be said about the holiness and knowledge of bishops?** The holiness of life of bishops must be eminent. The reason is that the episcopate is the state of perfection acquired and to be exercised. But they must excel in so much knowledge that they can satisfy the most grave duty of governing the diocese. Trent, sess. 6, c. 1 de Ref.; sess. 22, c. 2 de Ref.; sess. 25, cc. 1, 17 de Ref.; Suarez, *De Relig.*, t. 3, l. 1, c. 15; Bouix, *De Iure Reg.*, vol. 1, p. 15ff.; St. Thomas, II-II, qq. 184, 185; Quodl. 2, a. 11; Quodl. 5, a. 22; Quodl. 12, a. 17; L. 1, 6, n. 804.

204. **What is to be said about the obligation of residing?** It is certain that bishops, even if they are cardinals, are held to residence, and that this of itself obligates under grave obligation, from Trent, sess. 6, cc. 1, 2 de Ref.; sess. 23, c. 1 de Ref.; and from the open declaration of Benedict XIV, const. *Ad universae*; L. 121. For this is a very grave matter, regarding the salvation

of souls. Hence they are held to receive the office of consecration within a short time. Trent, sess. 23, c. 2 de Ref. "And thus they cannot even exchange Churches, as is expressly had from canon 15 of the First Council of Nicaea, and the same is had in canon 5 of Chalcedon and in Epistle II to Anastasius." L. 76. Cf. also L. 121. But the space of time required for grave fault must notably exceed the three months permitted by Trent. L. 127.

This residence is to be understood not only as material and idle, but as formal and laborious. This is clear: 1. from Trent, loc. cit., where they are held to discharge the office enjoined upon them; 2. from Benedict XIV, inst. 17, n. 6, *Grave*, sec. 13; *De Syn.*, l. 7, c. 1, n. 7; l. 13, c. 8; L. 127.

A bishop satisfies the obligation of residence by residing in any place of his diocese. This is clear: 1. from Trent, ibid., "in his Church or diocese"; 2. from Benedict XIV, bull *Ubi primum*; L. 124; Ferraris, v. Episcopus, a. 3, n. 14, who adds: "provided he goes to the Cathedral at the times prescribed by Trent, sess. 23, c. 1 de Ref.; S. C. Episc., Dec. 17, 1649"; make exception "unless episcopal duties in his diocese call him elsewhere." Trent, loc. cit.; Lucidi, *De Visit. SS. Lim.*, vol. 1, p. 140, 3rd ed.

205. **What causes excuse bishops from continuous and perpetual residence?** From Trent, loc. cit., there are four: 1. Christian charity; 2. urgent necessity; 3. due obedience; 4. evident utility of the church or republic.

For these same causes a pastor also can be absent beyond the two-month period granted to him.

The stated causes regularly do not legitimate the absence of bishops except insofar as there is added either the permission of the Supreme Pontiff, or of the metropolitan, or, if he is absent, of the older resident suffragan bishop. "Regularly"; for certain cases are to be excepted. And from the Council of Trent itself, loc. cit., an exception is made: "unless the absence occurs because of some duty and office of the republic annexed to the episcopates; since the causes of this are notorious and sudden, it will not even be necessary that they be signified to the metropolitan." Benedict XIV, const. *Ad universae*, Sept. 3, 1746, secs. 6, 9, 20; Urban VIII, const. *Sancta Synodus*, Dec. 12, 1634; L. 122, par. *Insuper*, 125 at the end.

206. **Besides the aforesaid causes, is it never lawful for bishops to be absent from their diocese?** It is lawful for bishops, outside the aforesaid causes, to be absent from their dioceses for two or at most three months; but this cannot be done except from an equitable cause and without any detriment of the flock, Trent, loc. cit. By these words, says Benedict XIV in *Ad universae*, "levity of soul, desire for enjoyments, and other futile causes are entirely excluded." For this three-month absence, however, bishops do not need permission of the Holy See. L. 122.

207. **Is a bishop excused from residence because of danger of contracting plague?** Response: negatively. The same must be said of a pastor. S. C. C. and declaration of Gregory XIII, Dec. 18, 1576. Yet then the pastor can administer the sacraments to those infected with plague through others, lest the healthy, fearing plague, refuse to confess, and so that he may also satisfy the other duties of his office. But since superiors also, whether regular prelates or others, are bound by the obligation of residence because of the care to be carried for their own, hence they too are held in time of plague to assist their own. L. 119, 233; St. Thomas, II-II, q. 185, a. 5.

208. **To what penalties are bishops who transgress the precept of residence liable?** Besides other penalties they are held to restitution of fruits. For they do not make them their own, namely if they do not reside beyond three months without legitimate cause and express permission of the Roman Pontiff; and they are held to distribute them to the fabric of the Churches or to the poor of the place without any other declaration. Trent, sess. 6, c. 1 de Ref.; sess. 23, c. 1 de Ref.; Benedict XIV, const. *Ad universae*; L. 122, 126, 127.

209. **What is to be said about the obligation of visiting the diocese?** The bishop is bound by obligation to visit the various churches of his jurisdiction by himself, or through another if he has been legitimately impeded, so that he may know his sheep as is fitting, discover their necessities, and supply means for meeting them. He is obligated to this by divine and natural law, for he is pastor of the whole diocese; nor can this law be abrogated by any custom.

This visitation must be made once in a year, or within two years if the diocese is large. All churches and public oratories are to be visited, and also parochial Churches united to monasteries.

But on occasion of visitation, procuration is owed to the bishop; this is the furnishing of those things necessary for fitting food and lodging, to be supplied by those whom they visit. He likewise has the right of visiting pious places. Regular prelates also are held frequently to visit the monasteries of their congregation and to apply themselves to their reform. Trent, sess. 7, cc. 7, 8 de Ref.; sess. 21, c. 8 de Ref.; sess. 22, cc. 6, 8, 9 de Ref.; sess. 24, cc. 3, 9, 10, 11 de Ref.; sess. 25, cc. 1, 8, 11, 20 de Reg.; Giraldi, p. 1, ss. 583, 597; E. M.

210. **What is to be said about the governance of clerics?** A special care of watching over the life and honor of clerics falls upon bishops. This is clear: 1. from Trent, sess. 14, proem. de Ref.; sess. 22, c. 1 de Ref.; 2. from the encyclicals of Pius IX *Qui pluribus*, 1846, and of Leo XIII *Etsi Nos*, Feb. 15, 1882. Bishops are held to institute an ecclesiastical seminary and to have particular care of it. Trent, sess. 23, c. 18 de Ref. Likewise they are held to confer orders by themselves. Trent, sess. 23, c. 3 de Ref.

211. **What is to be said about care to be had for doctrine?** It belongs to the bishop to watch over institutions, whether private or public, and also over the printing of books, so that nothing may be handed down which is opposed to faith and morals. It also pertains to him by a special title to denounce pernicious books. This is openly clear from his office as pastor. Trent, sess. 5, c. 2 de Ref.; Leo XIII, const. *Officiorum*, Jan. 25, 1896.

212. **What is to be said about the obligation of preaching?** "As regards bishops," says Sporer, t. 3, p. 73, n. 27, "although they regularly, according to custom, are not held to preach and administer the sacraments by themselves, nevertheless they must personally watch that this be provided through others, and besides instruct the flock by good example and assist the poor. It was said regularly, for I think bishops are held at least sometimes to preach, since they, as Trent declares in the cited c. 1, sess. 23, are held by divine law to feed their sheep by preaching the divine word. And this is declared by the same Council, sess. 5, c. 2 de Ref." L. 127.

Likewise in Trent, sess. 24, c. 4 de Ref., it is said that the duty of preaching is the chief duty of bishops, and the Holy Synod "commands that in their own Church they themselves, or, if they have

been legitimately impeded, through those whom they assume for the duty of preaching, announce the Sacred Scriptures and the divine law." Cf. also Trent, sess. 24, c. 7 de Ref.

213. **What is to be said about celebration of Mass?** Frequently indeed from fittingness, and at least on Sundays and feast days from grave obligation, they must perform the sacred action for the whole diocese. They must also incite the people more often to prayer, by appointing private and public prayers in principal necessities and decreeing supplications, etc.

Likewise the bishop must give work so that all things which regard the holy celebration of Mass are observed by everyone. Trent, sess. 22, decree de observ., etc.; sess. 23, c. 1 de Ref.; Leo XIII, const. *In suprema*, June 30, 1882; L. 1, 6, n. 337; H. A., tr. 7, nn. 65, 66; E. M.

214. **What is to be said about convening a synod and visitation to the Sacred Thresholds?** Bishops are held to celebrate a diocesan synod every year. Trent, sess. 24, c. 2 de Ref. Besides, every three years they are held to visit the Sacred Thresholds and to render an account to the Roman Pontiff of the state of their own Church, from the constitution of Sixtus V *Romanus Pontifex*, Dec. 20, 1585. Instruction of the Sacred Congregation de Propaganda Fide, June 1, 1877; A. S. S., vol. 10, p. 202; Benedict XIV, *De Syn.*, l. 2, c. 5.

215. **What is to be said about the power of the vicar general?** A vicar general is one who is legitimately deputed to exercise episcopal jurisdiction generally, in place of the bishop, so that his acts are judged to have been performed by the bishop. Whatever the bishop can generally do from his proper ordinary jurisdiction, but not delegated jurisdiction, although ordinary insofar as it is annexed to office, the vicar can do; for he constitutes one tribunal with the bishop. Yet this general rule has several exceptions, which can be seen among the canonists. Thus "the vicar general cannot grant dimissorial letters unless he has express faculty concerning this from the bishop, or unless the bishop is outside the province, or distant by two or at least one day's journey from his own diocese." L. 787; C. *Cum nullus*, de Temp. ord. in 6. Likewise the bishop can, according to his judgment, limit the jurisdiction of his vicar in certain cases.

But it is certain from several decisions of the S. C. C. that the vicar general can, just as a pastor can, validly assist at marriage without a special mandate of the bishop, and can grant to another who is a priest the faculty validly to assist at it, since he is the Ordinary. Trent, sess. 24, c. 1 de Ref.; Benedict XIV, *De Syn.*, l. 2, cc. 3, 8; L., appendix de Priv., 31, 47, 58.

V. On Canons

216. **What are canons?** Canons, so called because formerly they were subject to a common rule, constitute the general council of the bishop, and are bound by various obligations regarding divine worship, the altar, choir, and, when the See is vacant, the administration of the diocese. Canons are constituted especially where there is an episcopal See, or cathedral church. Churches which, besides the cathedral, have a college of canons are called collegiate churches. Some canons are regular, who under a provost lead a common life bound by vows, and these are now found in smaller number; others are secular, who live separately from ecclesiastical

benefices or pensions and preserve the canonical institute as regards various duties to be carried out in the Church. Trent, sess. 22, cc. 2, 4 de Ref.

217. **What is to be said about the residence of canons?** Canons are held by obligation of residing in their own churches. Trent, sess. 24, c. 12 de Ref.; L. 129. Now from the cited place of Trent, two things seem absolutely prescribed to canons: residence in the place and presence in choir. Yet there are those who hold that canons not having care of souls can spend day and night outside the place of their own benefice, provided that at suitable hours they come to the Church for service. And this is also clear from a declaration of the S. C. apud St. Alphonsus, l. 3, n. 675 at the end.

They can be absent for only three months, Trent, loc. cit., whether continuous or interrupted, S. C. C., 1575; "otherwise in the first year they are deprived of half the fruits," etc. "But Bonacina says from a certain declaration of the Sacred Congregation that canons are not deprived of fruits if they are absent only for a few days beyond three months, for a transgression of this kind does not seem such that it deserves the aforesaid grave penalty of deprivation of half the fruits." L. 129.

They cannot use vacations on Sundays and feast days of the whole year, nor on the days of Advent, Lent, the octaves of the Nativity and Resurrection of the Lord, Pentecost, and Corpus Christi. S. C. C., June 21, 1640. "But canons during the three months in which they are absent do not gain distributions, but they do gain the fruits of the prebend, provided they resided during the rest of the year and frequented choir." L. ibid.; S. C. C., Sept. 14, 1829. A canon uselessly spending the three months conceded by Trent is more probably not held to restore the fruits of the benefice. The reason is that the Council absolutely concedes to canons to be absent for three months, with no special cause required.

Not all canons can be absent at the same time on permitted days, nor more than a third part of the chapter, lest worship be impeded. S. C. C., March 12, 1594; June 21, 1640. It is indeed penal that from Trent, loc. cit., they must be deprived of half or all fruits, and therefore these are not to be paid before sentence. Thus Scavini, Milan ed. 1874, l. 1, n. 431, and others. St. Alphonsus requires no sentence of a judge from a declaration of Benedict XIV. But this in reality is not sufficiently clear. L. 1, 3, n. 675.

If they go out of the diocese during the time permitted by the Council, they need the bishop's permission; otherwise, however, if they do not go out of the diocese. S. C. C., March 12, 1594; May 9, 1626.

Canons absent from choir lose distributions. Trent, sess. 22, c. 5 de Ref.; sess. 24, c. 12 de Ref. Distributions lost because of absence cannot be condoned by associates. S. C. C., Dec. 6, 1794.

It is in the power of the Ordinary, besides the conciliar months, to concede another month from a just cause, St. Pius V, Oct. 7, 1580, apud Fagnan., in C. *Licet*, n. 4, de Praeb.; indeed he can also permit a longer absence because of an extraordinary cause, namely because of infirm health, raging persecution, or undoubted utility of the Church or republic. Trent, sess. 21, c. 3 de Ref.

Canons cannot serve choir through substituted outsiders, nor can absent canons substitute for each other, one for another, Trent, loc. cit.; S. C. C., March 23, 1721; L. 1, 3, n. 675. But those absent are

not held to substitute someone for themselves. S. C. C., March 15, 1785. L. 129; Benedict XIV, notif. 107; E. M.

218. **What is to be said about the office of choir?** All canons are held to sing or chant the Divine Office in choir. Nor are they excused because perhaps they are few; for the S. C. C. defined on March 13, 1696, that canons, even if few, for example two or three, are held to sing or recite the office in choir. Hence it does not suffice that canons merely be present in choir or at the offices; but they are held to concur personally in song or recitation, insofar as they can, with raised voice and pious affection of heart. Trent, sess. 24, c. 12 de Ref.

219. **Do canons sin gravely who do not assist at choir beyond the time permitted by Trent?** Several deny; but it must more truly be affirmed if they are notably absent from choir beyond the time permitted by Trent, which the time of three or four days is not. The reason is that, as is clear from Trent, sess. 24, c. 12 de Ref., the obligation of assisting does not arise from distributions, as though if they renounce these they free themselves from every obligation; but from the primary institution of benefices, which were instituted not for anyone's utility but for the worship of God and for carrying out divine ministries. L. 1, 3, n. 675.

220. **What are canons who are not present in choir held to restore?** Those who are absent without legitimate and just cause do not gain distributions; this is clear from C. *Consuetudinem* un., de Cler. non resid. in 6, and from Trent, loc. cit. Besides, they must restore the fruits of the prebend, but not before sentence, and if they are absent from choir beyond the conciliar months. This is clear from the same Trent, loc. cit.

Those who are absent from legitimate causes lose neither the fruits of the prebend nor distributions. Legitimate causes are infirmity, reasonable necessity of the body, and evident utility of the Church.

But one who is absent because of causes diverse from the three aforesaid, yet also just, for example because of study, visitation, and other such things, does indeed gain the fruits, but not distributions.

Commonly regarded as present are a canon with care of souls in the cathedral or collegiate church itself, while he is occupied in the care of the parish; the penitentiary, while he hears confessions in his Church; and the theologian, on the day when he explains Sacred Scripture to the faithful. Trent, sess. 22, c. 3; sess. 24, c. 8 de Ref. To these must be added, in Italy and the adjacent islands, those who are vacant for spiritual exercises for ten continuous days per year, namely by permission of the bishop, and not on those days on which it is prohibited to be vacant. Clement XI, encyclical, Feb. 1, 1700. Trent, sess. 21, c. 3; sess. 22, c. 3; L. 130, 131; E. M.

221. **Do canons who are indeed present in choir but by no means sing, or recite in a low voice, satisfy choir so that they are not held to restitution?** It is certain that they not only lose all distributions, but are also held to restore the fruits of the prebend; these, however, again not before sentence, and only beyond the conciliar months. Therefore it seems certain that they sin gravely if the quantity is grave. Benedict XIV, constitution *Cum semper*, Aug. 19, 1744; brief *Dilecte Fili*, Jan. 19, 1748; L. 1, 3, n. 675.

222. **Note:** 1. The things said about canons concerning choir are also to be understood about beneficed clerics who by reason of benefice are obligated to choir.

223. "It must be noticed that whenever something is represented by the organ as to be sung or responded to alternately with the versicles of hymns or canticles, that which is to be responded to by the organ is to be pronounced by someone from the choir in an intelligible voice. And it would be laudable that some singer, jointly with the organ, should sing the same in a clear voice." *Caeremoniale Episcoporum*, l. 1, c. 28, n. 7. "Those parts both of the Divine Office and of Mass which are omitted because of the sound of the organ are to be said in a low voice in choir; but when it is not played, they are to be sung integrally." S. R. C., July 22, 1848. If the aforesaid omitted parts are not recited in a low voice, the obligation of the Divine Office is not satisfied. L. 143.

224. **Can a bishop permit that habitually not all hours be sung?** Response: negatively; and this has already been decided several times by the S. C. C. Lucidi, *De Visitat.*, 3rd ed., Rome 1883, etc., vol. 1, p. 329ff.

225. **Must the Office of the Dead, of the Blessed Virgin Mary, and the gradual psalms be recited in choir from obligation?** Response: negatively, because they are not of rigorous precept, but of directive rubric or counsel, unless there is custom. Cf. 129; Lucidi, loc. cit., p. 332.

226. **What is to be said about conventual Mass?** Canons are held by turn to sing conventual Mass and to apply it on individual days for founders and benefactors in general, and the others must be present at it. Benedict XIV, const. *Cum semper oblatas*. "Canons are altogether held to celebrate and sing conventual Mass of the current office, in order that they may lawfully gain the daily distributions." S. R. C., June 25, 1611. Lucidi, loc. cit., vol. 1, p. 305ff.; vol. 3, p. 188ff.; L. 419.

227. **What is to be said about the assistance owed to the bishop?** Trent, sess. 24, c. 12 de Ref., establishes thus concerning canons of cathedrals: "All are to be compelled to assist and serve the bishop when celebrating or exercising other pontificals." The *Caeremoniale Episcoporum*, l. 1, c. 15, agrees and declares that all canons are held to come together in canonical habit at the designated place, and both lead the bishop proceeding to the Church for the sake of exercising pontificals and likewise accompany him returning. But this is to be understood when on more solemn feasts or ceremonies the bishop comes to the Church to celebrate, or to be present at the sacred action, vested in cappa or about to perform pontificals. "On other days it is enough that some from the dignities and canons receive and lead back at the door of the Church the bishop vested in cappa." S. R. C., June 13, 1891. But canons are not held to assist the bishop privately celebrating.

Canons also compose the general council of the bishop. For the bishop, unless a contrary and true custom is present, in a particular case must ask the counsel of the canons before he issues mandates; but he does not need their consent in order to establish and press them, except in cases determined by law. Namely, in this council the canons do not have the right of a deliberative vote, but merely a consultative one. Thus Benedict XIV, *De Synod.*, l. 13, c. 1, nn. 8, 9: "Much in this matter must be deferred to the custom of places. It is certainly not necessary that the bishop about to promulgate new laws request the opinion of the whole clergy; but it is enough if he asks the counsel of his chapter, although he is not held to follow it. Indeed the bishop who by legitimately prescribed

custom has acquired for himself the right of making and publishing laws without consulting the chapter will be freed from the very obligation of seeking the counsel of the chapter." E. M.

227. **What is to be said about the function of canons when the See is vacant?** When the episcopal See is vacant, the whole jurisdiction of the bishop, whether ordinary or delegated by law, passes to the chapter and from it to the capitular vicar, to be elected within eight days, excepting those things which savor of innovation or alienation, and excepting likewise the erecting of confraternities and the approving of their statutes; nor can the chapter retain to itself even the smallest part of jurisdiction.

Nevertheless he cannot perform visitation when a year has not yet elapsed from the last Sacred Visitation; nor grant dimissorial letters for tonsure or orders within the year, except to those constrained, that is, laymen presented to an ecclesiastical benefice, and clerics who, from an obtained benefice, must receive some order within the time defined by law or by the tables of foundations. "Yet the chapter, when the See is vacant, can even within the year give testimonial letters to someone who from another source has permission to receive orders. Probably it can also give someone permission to be initiated with first tonsure, because tonsure is not an order. But that which the chapter can do when the See is vacant it cannot do by itself, but through the elected vicar." L. 788.

Likewise he cannot confer benefices, except benefices of lay patronage, grant indulgences, etc. The office of capitular vicar ceases as soon as the new bishop has obtained possession; but favors made by him remain as long as they have not been revoked. The capitular vicar to be chosen is "one who is at least a doctor or licentiate in canon law, or otherwise, as far as can be done, suitable." Trent, sess. 24, c. 16 de Ref. From the S. R. C. he is not held to celebrate Mass for the people. Decretals, title Ne Sede Vac.; C. 1, 14 de Maior.; Rules 2, 11 of the Apostolic Chancery; Trent, sess. 7, c. 10 de Ref.; sess. 24, c. 16 de Ref.; Pius IX, const. *Romanus Pontifex*; S. C. Indulg., Nov. 15, 1878; Nov. 23, 1878; A. S. S., vol. 11, p. 353; Benedict XIV, *De Syn.*, l. 2, c. 9; Sanchez, *De Matr.*, l. 3, disp. 28, n. 5; L. 1, 6, n. 788; E. M.

VI. On Pastors

228. **What is to be said about residence?** The first obligation of a pastor is personal residence. Otherwise he cannot fittingly feed his flock. Therefore non-resident pastors are not excused from grave fault and from restitution of fruits, as Trent declared, sess. 23, c. 1 de Ref. "The Holy Synod declares and decrees exactly the same, even as regards fault, loss of fruits, and penalties, concerning inferior curates as concerning bishops: yet so that whenever it happens that they are absent, after the cause has first been known and approved by the bishop, they leave a suitable vicar, to be approved by the Ordinary himself, with due assignment of wages. But they are not to obtain permission to depart, to be granted in writing and gratuitously, beyond the time of two months except from a grave cause." Trent, sess. 24, c. 13 de Ref.; L. 123, 126-128; Ithur., cas. 45, nn. 56, 58; Benedict XIV, notif. 17; St. Thomas, II-II, q. 185, a. 5.

229. **You will resolve:** "In proportion to the time of absence they do not make the fruits their own." Trent, ibid. And one residing neither materially nor formally, nor fulfilling his office through another, loses them before every sentence of a judge. For "they are held by no other reason

than the contract entered into between themselves and the Church, from which the fruits of benefices are given to them under the condition of residence; when this is not fulfilled, even without fault, such pastors in no way acquire the fruits." L. 127. Therefore they are held to restitution, although they perceived them in good faith, unless nevertheless in good faith they consumed them and did not become richer from them.

One who does not reside materially but fulfills his office through another suitable person loses the fruits after the conciliar two-month period, but by no means loses them within the conciliar two-month period of absence.

One who resides materially but not formally, if he discharges his offices through no other priest, does not make the fruits his own by natural law itself. If he provides these things through another, whether he loses them by canon law is not sufficiently clear. St. Alphonsus, 127, affirms, because residence is not understood except as formal; Garcia and Reiffenstuel deny, because in proper signification not to reside is to be absent. And D'Annibale, 3rd ed., p. 3, n. 174, calls this "more equitable and truer." Restitution is to be made to the fabric of the Church or to the poor of the place. Trent, loc. cit.

230. **Note:** 1. For absence through two months, whether continuous or interrupted, an equitable cause is required, but not a grave one, provided that no detriment to the parish follows from it and excepting time of plague. Gregory XIII, Oct. 12, 1576. Yet one who would depart without an equitable cause, not beyond the two-month period and without detriment to the parish, is held by only light fault. But it would be grave to be absent even for two or three days, even if no one is actually sick, with no vicar left, if other priests are lacking in that place. Beyond the two-month period the Ordinary can indeed give permission, but from a grave cause, and not for much time, but for two or three months. The S. C. C. has often judged legitimate permission given by Ordinaries to the sick for four months. D'Annibale, loc. cit., 173; St. Thomas, Quodl. 12, a. 28.

231. "The doctors commonly say from a declaration of the Sacred Congregation that a pastor is not regarded as residing if he does not by himself exercise the more principal duties, namely the administration of the divine word, of the sacraments, etc." L. 127. Cf. Ithur., cas. 45, nn. 61, 62. Yet he can be helped by vicars if the parish is large and he cannot conveniently carry out all things by himself, especially in those things which have greater inconvenience, such as going to the sick by night, preaching, teaching children, hearing confessions, etc. But he must use coadjutors as associates; and therefore he himself also must provide these things when a just impediment ceases, especially if he has been requested; otherwise he is not without grave fault. If a pastor alone does not suffice for carrying out his offices, he must join other priests to himself. But he must renounce the parish, or at least assume a coadjutor, if because of old age and chronic infirmity he cannot discharge parochial offices. Trent, sess. 21, c. 4 de Ref.; C. 5, 6, de Cler. aegrot.; C. un., same title in 6; constitution *Apostolici ministerii* of Innocent XIII, n. 9ff.

232. Pastors must live in the house of their Church, if one is present there. But if one is not present, they must reside in another house which is within the limits of the parish, at least morally, namely one which is so near to the parish Church that he can conveniently serve it, and to

which parishioners can easily have recourse to him for receiving the sacraments. L. 124; Ithur., cas. 45, n. 57.

233. As is clear from several decisions of the S. C. C., a pastor is not excused from residence within the limits of the parish because of malignity of the air, infirm health, old age, because the parish is small, or because only three or four inhabitants remain. D'Annibale, loc. cit., n. 172; Trent, sess. 7, c. 3 de Ref.

234. **Is the aforesaid permission in writing altogether required, so that it is not valid if had orally?** Lessius and others deny, and St. Alphonsus does not think this opinion improbable; La-Croix judges it probable. The reason is that, although Trent requires permission in writing, nevertheless it is not clear that this formality is required for the very validity of the act. L. 123.

235. **Can a pastor, having a just cause of departing, be absent for the aforesaid two months without express permission of the bishop?** The first opinion affirms, and Lessius, La-Croix, Azor, and others think it probable. The reason is that from Trent any honest cause suffices for absence of two months; nor is the bishop's permission and approval required for such absence, but only for absence beyond the two-month period, for which the bishop must approve the gravity of the cause. Moreover, absence for two months is regarded by the Council as small matter, for it includes it by the word "for a little while." Therefore to be absent for two months from a just cause, without the bishop's permission, would at least of itself not exceed venial sin.

And indeed Trent, sess. 23, c. 1 de Ref., had established that bishops are so held to personal residence that they cannot be absent except from those four causes indicated above. Likewise it had established that bishops can be absent for three months, even when the aforesaid causes do not exist, provided, however, that this be done from an equitable cause and without detriment of the flock, because this brief absence is not judged contrary to the debt of residence. Moreover, speaking about inferior curates, it says that those things which it had previously established concerning bishops are to be applied to them. The Council of Trent indeed employs certain restrictions for inferior curates; but as regards fault and penalties incurred by the fact itself, it adds nothing further. Therefore these seem to have to be judged from the aforesaid. For this reason, as certain from the mere text of the Council, only this can be deduced: that both bishops and pastors sin gravely if they are absent for a notable time beyond the permitted months.

The second opinion denies, and St. Alphonsus follows this. The reason is that although from the Council a grave cause is not demanded for departing for two months, nevertheless it is absolutely required that the cause be recognized and approved by the bishop, from those words: "whenever it happens that they are absent, after the cause has first been known and approved by the bishop." So much the more because the pastor is prohibited by the Council from departing unless the vicar who is left is first approved by the bishop. L. 123.

Yet since that "whenever" could be referred to the time outside the two-month period conceded by the Council itself, an entirely valid argument does not seem to be drawn from it; nor from the fact that, although the vicar can be chosen by the pastor himself, he must nevertheless be approved by the bishop, if he were to leave in service of the parish a suitable administrator or vicar already otherwise approved by the bishop and actually already found there.

Nevertheless the S. C. C. constantly responded that express permission of the bishop is needed, even if he wishes to be absent for a week or for two days. Benedict XIII declared the same in the Roman Council, title 17, c. 6. But for absence of two or three days, by custom received in many places, no permission is required. Therefore the statutes of each diocese must be attended to. Benedict XIV, notif. 17, n. 12.

"For the rest," says the same St. Alphonsus, loc. cit., "the pastor will lawfully be able to be absent for a short time without permission if some necessity occurs which does not allow delay for approaching the bishop, provided he leaves a suitable vicar. Likewise, from smallness of matter, the pastor can be excused at least from mortal sin if he departs for a short time, as the doctors commonly say, provided he does not leave the sick in the article of death. But how much this short time is, they commonly admit that a pastor does not sin gravely who is absent without permission for six or seven days, a suitable vicar nevertheless being left; indeed Continuator Tournely, Cabassut, Sanchez, etc., extend this up to 15 and 30 days."

233. **What are the grave causes excusing pastors from residence beyond the permitted two-month period?** They are the same four which excuse bishops from Trent, namely Christian charity, urgent necessity, due obedience, and evident necessity of the Church or republic. L. 125; Ithur., cas. 45, nn. 58-60.

234. **What is to be said about visitation of the parish, and about care of the poor and sick?** A pastor is held by the obligation of visiting the parish, insofar as he must know his sheep. "By divine precept," says Trent, sess. 24, c. 1 de Ref., "it has been commanded to all to whom care of souls has been committed to know their sheep." Hence pastors must prepare books of marriages, of the baptized, of the confirmed, of the state of souls, and of the dead. And from the same Trent, loc. cit., one of the duties of the care of souls is "to carry paternal care for the poor and other miserable persons." From the Roman Ritual, *De visit. et cura infirm.*, "The pastor must remember above all that care of the sick is not among the last parts of his duty." He must have altogether special care of them, since the work of the pastor is especially necessary for them. Besides, he is held to carry out the dead and perform just rites for them; and if they were poor, altogether gratuitously. Trent, sess. 24, c. 1 de Ref.; Roman Ritual; L. 160, 188.

235. **What is to be said about correction and admonition?** Pastors are held under grave obligation to correct and admonish their sheep existing in mortal sin, or in proximate danger of it, even with danger to their own life, and not only in their extreme spiritual necessity but also in grave spiritual necessity, provided nevertheless: 1. there is hope of amendment; 2. although there is not hope of amendment, omission of admonition would yield to common harm and would render others more ready to sin. The reason is that they are most strictly obligated, not only from charity but also from justice by reason of the office and stipend given to them, to assist subjects constituted in spiritual necessity.

Besides, they are held to inquire whether someone is placed in such necessity. For to the pastor is committed the salvation of each sheep. But if pastors are held to the office of correction, much more are bishops. Trent, sess. 6, cc. 3, 4 de Ref.; sess. 13, c. 1ff. de Ref.; St. Thomas, II-II, q. 33, a. 3, 2 ad 4; IV Sent., dist. 19, q. 2, a. 1; L. 1, 2, n. 40.

236. **What is to be said about prayer and celebration of Mass?** The pastor is held frequently to pray for his subjects, so that he may implore for them the graces necessary for salvation. But specifically the pastor is held to celebrate Mass: 1. whenever the people must hear it. Trent, sess. 23, c. 4 de Ref. 2. Whenever it is necessary to bless nuptials; in both cases under grave obligation. 3. Several times in the week; but how often is not clear. Yet it is clear that the bishop can compel them under grave obligation to celebrate twice or three times if the parish is populous and other Masses are not celebrated in it; not likewise at solemn rites of funerals, unless alms is given. L. 1, 6, n. 314; Benedict XIV, inst. 44, n. 9; *De Syn.*, l. 12, c. 7, n. 7.

237. **Must a pastor also apply Mass for the people?** Pastors must celebrate for their sheep on all Sundays and feast days on which the faithful must hear Mass, although in some places servile work is permitted, indeed although such feasts have been abrogated or transferred; unless perhaps with the solemnity the Divine Office, of which the principal part is Mass, has been transferred to Sunday. Nor do contrary custom, even immemorial, or slender revenues of the parish, or infirmity of the pastor excuse. Nevertheless, if the pastor is so poor that he does not have fruits suitable for sustenance, he can, with the consent of the bishop, accept alms by celebrating for the people during the week. This is clear from Innocent XII, brief *Nuper*; Benedict XIV, const. *Cum semper oblatas*, Aug. 19, 1744; Pius IX, const. *Amantissimi*, May 3, 1848; A. S. S., vol. 7, p. 191; L. 1, 6, nn. 313, 325; E. M.

238. **Note:** 1. Not only pastors are held by this obligation, but also vicars deputed by the bishop to parochial care with a certain assignment of fruits, whether perpetual or temporary and removable; likewise curates-administrator, and vicars too, when a parish is vacant, deputed by the bishop to care of souls until the election of the new rector of the church. All these are held whether they are secular or regular. But ecclesiastical superiors, secular or regular, chaplains of monasteries, prisons, or hospitals, etc., are not held to perform the sacred action for subjects. Nor likewise are coadjutors of pastors and missionaries in mission places held.

If from one parish two have been made, each pastor is held. If someone has two parishes, he will have to apply in each, either by himself, if he has the faculty of binating, or through another, or on another day if he does not have it, unless perhaps those parishes have been united by extinctive union. The same must be said of a canon-pastor on the day on which he must celebrate conventual Mass. Benedict XIV, loc. cit.; Leo XIII, const. *In Suprema*, June 30, 1882; A. S. S., vol. 1, pp. 407, 408; vol. 2, p. 90ff.; vol. 3, p. 97; vol. 5, p. 137; vol. 8, p. 474.

2. Bishops are also held to apply Mass for their sheep, only one Mass if they govern several dioceses or abbeys united equally principally. But those who are also pastors of some parish must apply in this parish through a vicar. Likewise apostolic vicars in those places where dioceses are constituted and they themselves fulfill the functions of the legitimate pastor. Not likewise capitular vicars. Cited constitution *In Suprema*; A. S. S., vol. 14, p. 534ff.

3. If only the festivity has been transferred to Sunday, as in France the feasts of Epiphany, Corpus Christi, etc., Mass must be applied on that day on which the office is celebrated. But if only the office is transferred, Mass must be applied on that day on which the festivity is celebrated, for example, the feast of the Annunciation of the Blessed Virgin Mary on Thursday of Greater

Week. But if on that day another festivity is also celebrated, one satisfies each by one application of Mass, just as by hearing. A. S. S., vol. 8, p. 36, p. 605.

4. The obligation of applying Mass for the people is personal, and no custom to the contrary has force. S. C. C., Sept. 27, 1847. Yet if the pastor or bishop is sick, or is impeded by another just and legitimate cause, he can and is held to celebrate for the people through another, S. R. C., May 11, 1720, with stipend paid to him; and if he cannot substitute another for himself, he himself is afterward held to apply as many Masses. S. C. C., Dec. 14, 1859.

But a pastor satisfies his obligation through a read Mass, since no prescription is found that it must be a solemn or sung Mass. Nevertheless he must celebrate it in his own parish and not in another church, notwithstanding any custom to the contrary. S. C. C., Sept. 15 and Nov. 17, 1629. But a pastor legitimately absent from his parish on a feast day satisfies his obligation by celebrating Mass for his people in the place where he is staying, provided that another priest celebrates in the parish and explains the word of God. S. C. C., Dec. 14, 1872. Bouix, *De Paroch.*, p. 550ff.; Ferraris, v. Parochus, a. 3, n. 1; A. S. S., vol. 24, p. 665ff.; E. M.

VI. On Pastors

239. **What is to be said about preaching?** From Trent, sess. 5, c. 2 de Ref.: "All bishops and all other prelates of Churches are held to preach by themselves, if they have not been legitimately impeded. Archpriests also, parish priests, and whoever obtain care of souls, by themselves, or through other suitable men if they have been legitimately impeded, at least on Sundays and solemn feast days, should feed the peoples committed to them, according to their own capacity and that of the people, with salutary words, teaching those things which it is necessary for all to know for salvation, and announcing to them with brevity and facility of speech the vices which they ought to avoid and the virtues which they ought to follow."

St. Alphonsus, l. 3, n. 269, after relating these words, says: "Hence I do not doubt that the aforesaid precept obligates both bishops and pastors gravely and absolutely. Yet the doctors commonly admit smallness of matter in such a precept. Hence they seem not improbably to hold that pastors who sometimes omit preaching do not sin gravely; it is otherwise, they say, if they omit it for one whole continuous month, or for three discontinuous months in a year. So much the more because in the cited Trent, sess. 5, c. 2, at the end it is said that if the pastors themselves, having been admonished by the bishop, have failed in their duty for the space of three months, they are to be compelled by censures, etc., to fulfill their office. From this it seems that in this matter its smallness has greater latitude." Trent, sess. 24, cc. 4, 7 de Ref.; Ithur., cas. 45, n. 63; Ferraris, v. Parochus, a. 2, n. 72; E. M.

240. **Note:** 1. If a pastor is transitorily sick, he can be excused. But he is by no means excused because such a custom is in force in that place, or because few hearers are present, or because frequent sermons are had in nearby Churches. Constitution *Apostolici ministerii* of Innocent XIII, cited by Benedict XIV, inst. 10, n. 3.

241. A pastor who reads pious books to his hearers does not fulfill his duty of preaching, because reading is not preaching. Nevertheless he is not held to make a formal sermon to the people. S. C. C. apud Benedict XIV, notif. 10, n. 3; Trent, sess. 5, c. 2 de Ref.; Ithur., cas. 45, nn. 67-69.

242. It will belong to the prudence of the bishop to dispense in this matter on more solemn feasts. S. C. C., April 1, 1876; Benedict XIV, inst. 27; S. C. Bishops and Regulars, July 31, 1894; A. S. S., vol. 27, p. 162.

243. **Are pastors held under grave obligation to catechize?** Response: affirmatively. This is clear from Trent, sess. 5, c. 2 de Ref. But especially regarding the instruction of children it has this: bishops "at least on Sundays and feast days shall take care that children in individual parishes be diligently taught, by those to whom it pertains, the rudiments of faith and obedience toward God and parents; and if there is need, they shall compel them even by ecclesiastical censures, notwithstanding privileges and customs." Sess. 24, c. 4 de Ref. Cf. also ibid., c. 7; A. S. S., vol. 13, p. 513; vol. 15, p. 236.

244. **What is to be said about administration of the sacraments?** Pastors are held, by themselves, to administer the sacraments, not only when the time of precept and of grave necessity is pressing, but also, as regards sacraments which can be repeated, as often as the sheep duly, or not inopportunely, ask, unless they are legitimately impeded or can provide for them through another without inconvenience and offense of those asking. Trent, sess. 21, c. 4 de Ref. Cf. 360ff.

"Pastors are held under grave obligation diligently to examine midwives, whether they know the things necessary for baptizing. For it falls upon them by office to be present to women in childbirth, and not rarely an occasion occurs to them to administer baptism in necessity." L. 1, 6, n. 117. The same is clear from the Roman Ritual, de Bapt.

Pastors are held to be present at marriages and to provide all things, as far as is in them, so that they are done rightly. Roman Ritual, de Sacram. matrim.; L. 1, 6, n. 54.

243. **What is to be said about vicars of pastors?** Vicars of pastors, since they bear the place of pastors either regarding the whole parochial office or only regarding part of it, are held to the same obligations as the pastors themselves, yet with due proportion; and besides, they owe reverence and obedience to the pastor himself. L. 1, 6, n. 325 at the end.

244. **Can a vicar depart, at least for a short time, without the pastor being notified? Can he delegate another priest? When the pastor has died, can he perform all sacred functions as before?** Response to the first: negatively, because the reason of right order, and also of necessity, requires that the pastor himself not depart from the parish without the vicar being notified, so that, when a case occurs, the vicar can supply for the pastor. Therefore this is all the more true if there is question of the vicar, since he is constituted under a certain guardianship of the pastor.

To the second: affirmatively. There is indeed no difficulty by reason of baptism, since there is by no means question of validity, but of mere liceity. But no greater difficulty is to be raised regarding marriage, although jurisdiction is required for validity. The reason is that one delegated to a universality of causes can subdelegate. But the vicar is deservedly judged delegated to a universality of causes, unless in some places his delegation is restricted. For the vicar is constituted by the bishop himself so that he may help the pastor in all things and supply for him. But he cannot delegate another priest to assist at a marriage to be celebrated outside the parish, because then not even he

himself could validly bless the spouses, since only territorial jurisdiction, or jurisdiction within the parish, is given to him. St. Thomas, Quodl. 12, a. 31; cf. 767; vol. 1, n. 254.

To the third: affirmatively. The reason is that vicars receive all delegation from the bishop himself. Therefore, notwithstanding the death of the pastor, the vicar can perform all sacred functions as before. E. M.

VII. On Simple Priests and Inferior Clerics

245. **What is to be said about priests?** Simple priests are held to serve the church to which they are assigned and to apply themselves to the salvation of the faithful. This requires two things especially: to teach children and the unlearned the rudiments of faith, and to hear the confessions of those who are in mortal sin, if the one who from the office received is held to provide these things is lacking or does not suffice for all. This is clear not only from the general obligation of charity, but also from the very office of priesthood, and from Trent, sess. 23, cc. 13, 14, 16 de Ref., which declares that priests are not ordained except because of the necessity and utility of the Church.

But no one, from the constitution *Ex quo* of Benedict XIV, can abandon without the permission of the bishop the church to whose service he has been assigned. Nor is it lawful to leave one's own diocese without command of the Ordinary; and if any have departed, they can also be recalled by penalties and censures, excepting those who depart seeking elsewhere the things necessary for their livelihood, unless suitable sustenance is provided for them. S. C. C., March 15, 1625; Sept. 13, 1749; Aug. 30, 1732.

Therefore bishops can forbid foreign priests, without commendatory letters of their own Ordinary, to administer sacraments in their dioceses or to perform divine things, not even regulars, and in churches of regulars, unless perhaps they are of the same order. Trent, sess. 22, decree de observ., etc.; sess. 23, c. 16 de Ref.; L. 1, 6, n. 625; A. S. S., vol. 5, p. 475; vol. 10, p. 474ff.; vol. 14, p. 121; vol. 23, p. 608ff.; Bizzarri, *Collectan.*, ed. 1885, pp. 89, 303, 304.

All priests, by reason of the priesthood itself, are held by divine law under grave obligation to celebrate sometimes, three or four times in the year. S. C. C., Nov. 1696; St. Thomas, III, q. 82, a. 10. And St. Alphonsus, l. 6, n. 313, calls this opinion "by far the more common and safer." For there is another opinion which excuses at least from mortal sin, provided they receive communion at Easter and contempt and scandal are absent. The reason for this opinion is that the precept is not clear, since the reasons of the opposite opinion are by no means convincing. But from St. Alphonsus this opinion "at least because of scandal is scarcely practically probable." Cf. Trent, sess. 23, c. 14 de Ref.

Yet certainly it is venial without reason to abstain from performing the sacred action and from hearing confessions, since the reason of each is the same. In common necessity they can also be compelled by their own Ordinary to perform the sacred action on feast days and administer sacraments; indeed, if pastors do not suffice for this and others are lacking who can be joined to them as coadjutors, they can be compelled to teach children the rudiments of faith, to preach, and to carry out the care of souls. Constitutions of Benedict XIV *Declarasti nobis*, *Etsi minime*; S. C. C., March 18,

1578; Roman Council, 1725, tit. I, cap. 5; Trent, sess. 24, c. 18 de Ref.; A. S. S., vol. 14, p. 409; vol. 17, p. 288.

"No one, whether secular or regular, even in churches of their own orders, should presume to preach when the bishop contradicts." Trent, sess. 24, c. 4. Cf. also sess. 5, c. 2 de Ref.; Clement VIII, const. *Superna*; St. Thomas, Quodl. 12, a. 27.

All clerics, especially priests, owe reverence and obedience to the bishop in those things which pertain to morals and to ecclesiastical discipline. C. *Conquerente* 16, de Off. iud. ord.

246. **What is to be said about inferior clerics?** "There is no doubt that if someone dared to approach sacred ordination knowing that he had not been called by God, he could not be excused from mortal fault, both because of the grave presumption of intruding himself into the sanctuary against the will of God, and because of the certain danger of damnation to which he then exposes himself. Yet, in order that the one to be promoted be excused from fault, it suffices for him that he display a good end and offer himself to the bishop so that he may be tested, provided he does not certainly know that he has never been called by God." L. 78.

The Apostle thus teaches the grave necessity of this vocation: "Nor does anyone take the honor to himself, but one who is called by God as Aaron was." Heb. 5:4. The sublimity of the order, the sanctity of the office, and the gravity of the burden also prove the same. L. 802, 808.

One who receives minor orders or first tonsure with the mind of escaping the lay forum and afterward returning to secular life, some from St. Alphonsus, 785, probably say sins venially; others more probably say he sins mortally. Trent, sess. 23, c. 4 de Ref.

But one who neglects to follow a divine vocation does not seem able to be excused from some fault when undoubted signs of vocation are had, because of the very great dangers of salvation in which one will be placed who, having scorned the divine vocation, embraces the worldly state from his own will. Cf. 255ff.

The endowments of inferior clerics must be two, so that they may be held worthy of sacred orders: knowledge and holiness. The first reason is that ignorance, generally speaking, in ecclesiastics harms not only oneself but also others. Yet less knowledge is required in religious destined only for choir, such as Carthusians. Add also if someone, for example, were to be constituted in some chaplaincy in which Mass alone would have to be celebrated.

The second reason is that from Trent, sess. 23, c. 12 de Ref., only those ought to be assumed to sacred orders "whose proved life is old age," namely those who are old in virtue. And this is confirmed from the common authority of Supreme Pontiffs, Fathers, and Doctors, all of whom require in one to be ordained not only negative holiness, namely that he be immune from grave sin, but also positive holiness, that is, that he be imbued with good morals. Innocent XIII, const. *Apostolici ministerii*. "Sacred orders pre-require holiness." St. Thomas, II-II, q. 189, a. 1, ad 3. L. 1, 6, nn. 782, 783, 802, 803; St. Thomas, Supplement, q. 36, aa. 1, 2; Roman Catechism, de Sacr. Ord., nn. 30-32; E. M.

247. **Must absolution be denied to a cleric habituated in occult sins of lust who wishes to ascend to sacred orders without a preceding trial of continence?** Regarding the proposed

question, St. Alphonsus, l. 6, n. 64ff., where he has a dissertation on this matter commended by Benedict XIV, *De Syn.*, l. 11, c. 2, says these things:

"First, the present and ancient law of the Church, always constant, binds bishops, confessors, and those to be promoted, so that when some cleric relapsing or accustomed in the vice of the flesh wishes to ascend to sacred order, whether to the subdiaconate, diaconate, or priesthood, although he has sincerely been converted to the Lord and therefore can immediately be absolved, nevertheless he will not be able to receive sacred order unless for some time he gives work to uprooting the depraved habit. And if he persists in receiving order immediately, he is not judged disposed for absolution, because he violates the law of the Church in a grave matter.

"Second, nevertheless there can be a case in which God gives the penitent so extraordinary a grace of compunction that it renders him so proved that he can immediately assume sacred order, and therefore receive the benefit of absolution, without first being tested by experience of time. And here it must be noted that what has been said of the vice of lust must be said of any other, namely drunkenness, avarice, blasphemy, hatred, etc. But that simple sanctifying grace by no means suffices for receiving sacred orders, but interior perfection is required beyond it, is clear from the common consent of the holy Fathers and Doctors, who with one voice demand it."

But by how much space of time, outside the extraordinary case, relapsing persons are to be proved, there is not one rule, as Benedict XIV observes, *De Syn.*, l. 11, c. 2, since rather, with all circumstances of person, matters, and cases maturely weighed, the whole question must be resolved before the Lord.

The author of the work *Istruzione pei Novelli Confessori*, p. 2, c. 3, n. 68, denies a positive law of the Church, and others also think this. Hence they assert that natural law must be attended to, since, as celibacy is annexed to sacred orders from the law of the Church and from vow, one would act against the right judgment of prudence who wished to assume so great a burden which he judged himself unable to bear. Hence the confessor could not absolve him if he wished still to be initiated in sacred orders. On the contrary, the confessor could absolve him if he sincerely believed that, with the help of God's grace, he could live chastely, and efficaciously proposed that he would apply suitable means to be freed from the depraved habit.

But cf. Trent, sess. 22, c. 1 de Ref.; sess. 23, cc. 12, 13, 14, 18; and St. Thomas, II-II, q. 184, aa. 6, 8; q. 189, a. 1, ad 3; Supplement, q. 36, a. 4, ad 3; q. 35, a. 1, ad 3, where he says: "For the suitable execution of orders, any goodness whatever does not suffice, but excellent goodness is required." If for the execution, therefore also for the reception. Hence the holy Doctor immediately adds: "So that just as those who receive order are constituted above the people by the grade of order, so also they should be superior by merit of holiness. And therefore grace is pre-required, which suffices for this, that they may be worthily numbered in the people of Christ. But in the very reception of order a further gift of grace is conferred, by which they are rendered suitable for greater things." And the Roman Council, tit. 6, c. 3: "Those who are about to approach nearer to the most sacred mysteries, we will that they excel in that knowledge and piety by which they can worthily minister the sacraments of the Church, teach Christ's faithful sound doctrine, and lead them in the way of salvation no less by example than by words." How indeed can this be prudently judged to be about to happen concerning a cleric hitherto entangled in sins and vice of lust, without another probation?

On the Particular Obligations of Regulars

I. On the Nature of the Religious State

248. **What is the religious state?** The religious state, inspected according to its intrinsic essence, is defined: a stable institute of life, approved by the Church for the faithful who, under a certain rule and common mode of living, wish to tend to perfection through the three vows of poverty, chastity, and obedience, with the handing over of oneself made to God and accepted by him. Therefore religious neither necessarily pertain to the hierarchy of jurisdiction nor to the hierarchy of order; but they are, or can be, simple faithful in the Church, and therefore of either sex. Suarez, *De Relig.*, tr. 7, l. 2, c. 1, n. 1; Bouix, *De Iure regular.*, vol. 1, p. 47.

Their state is a state of perfection. There is certainly a twofold state of life: one of common life, which intends nothing other than observance of God's commandments; another of perfection, which adds observance of the counsels. The perfection of Christian life is in charity. "Each thing is said to be perfect insofar as it attains its proper end, which is the ultimate perfection of the thing. But charity is what unites us to God, who is the ultimate end of the human mind." St. Thomas, II-II, q. 184, a. 1. Therefore the perfection which constitutes a state of perfection distinct from the state of common life is the perfection of charity.

Moreover, a threefold perfection of charity can be considered. The first is absolute, by which "God is loved as much as he is lovable, and such perfection is not possible to any creature, but belongs to God alone." The second is that by which "the affection according to its whole power always actually tends into God; and such perfection is not possible on the way, but will be in the fatherland." The third is that by which "those things are excluded which are repugnant to the movement of love into God. And such perfection can be had in this life. And this in two ways: in one way insofar as from a man's affection everything contrary to charity is excluded, such as mortal sin; and without such perfection charity cannot exist, whence it is of necessity for salvation. In another way insofar as from a man's affection is excluded not only what is contrary to charity, but also everything which impedes the affection of the mind from being totally directed to God; without this perfection charity can exist." St. Thomas, II-II, q. 184, a. 2.

Hence precepts pertain to that former charity, while counsels pertain to this latter. Therefore this perfection of charity is certainly not in merely essential charity, but in a certain particular superabundance of charity which surpasses the common and necessary charity of Christians. But this excess of charity is not situated in some one or several transitory acts of charity, even if they are of great or greatest intensity, but in such charity, in preparation of soul and habitual disposition, that a man is proximately prepared and disposed to act easily and ordinarily according to God's precepts and counsels. St. Thomas, q. 184, aa. 2, 3, 4. And thus the same Angelic Doctor, q. 186, a. 1, ad 4, says: "The state of religion is principally instituted for acquiring perfection through certain exercises by which impediments of perfect charity are removed." And in article 2: "One who assumes the state of Religion is held to tend to this and to work for this, that he have perfect charity."

Now the state of perfection is twofold: one is the state of acquired perfection, the other of perfection to be acquired. The former is proper to bishops, the latter to religious. Moreover, the state of

perfection to be acquired is one thing incomplete or begun, and another complete. For the former, the three chief evangelical counsels of poverty, chastity, and obedience are not required; but some counsel suffices, whether it is one of those three chief counsels or another, for the counsels are very many in number. But for the latter, the three evangelical counsels of poverty, chastity, and obedience are required and suffice, to be observed by obligation; and consequently they must be strengthened by vow. But the religious state is the complete state of perfection to be acquired. St. Thomas, q. 184, aa. 4-8; q. 186, aa. 3-7; Bouix, loc. cit., p. 1, s. 1.

Moreover, although those three vows ought of themselves to be perpetual, for this is demanded by the very notion of state, nevertheless it is by no means required from the intrinsic nature of the thing that they be solemn, but it is enough that they be simple. This is openly clear from the constitutions of Gregory XIII *Quanto fructuosius*, 1583, and *Ascendente Domino*, May 25, 1584, where it is established that those who in the Society of Jesus have emitted three simple vows are truly and properly religious.

But the solemnity of vows is nothing other than a certain force added to them by disposition of the Church: of constituting a religious properly and strictly such from canonical institution; of making certain acts of the religious regarding the matter of the same vows invalid or at least invalidable; and of rendering the vows themselves altogether firm and stable. And that force is absolute, not merely relative to a certain time, or until the religious is dismissed free from vows. Hence for the solemnity of vows not any force whatever of producing the aforesaid effects suffices; but that force must be absolute, that is, so perpetual and immutable that neither the religious nor even the religion itself can suspend or remove that force and the vow itself. It is by no means required, as is clear, that that force of the vow and the vow itself cannot be removed by the Roman Pontiff; for that force is of ecclesiastical law, and therefore the Pope can dispense both from the effect of solemnity of vows while solemn vows remain, decree of the Sacred Congregation of Extraordinary Ecclesiastical Affairs, July 31, 1878, and from the solemn vows themselves. Therefore the solemnity of a vow consists in its complete dependence and subjection to the Supreme Pontiff, as regards the existence of the vow, its force, and the aforesaid canonical effects.

Thus Busembaum, l. 3, n. 195, says a solemn vow "is that which as such is accepted by the Church. But every other vow is simple, which does not have such solemnity," namely such acceptance of the Church regarding the aforesaid canonical effects. And St. Thomas, II-II, q. 189, a. 5: "There is a twofold vow of religion. One is simple, which consists in a promise made to God alone, which proceeds from interior deliberation of mind; and this vow has efficacy from divine law. But another is the solemn vow, which makes a monk or religious; and this is subject to the ordinance of the Church because of the solemnity which it has annexed." And from this ordinance of the Church the Angelic Doctor immediately derives that a vow made before puberty "does not have its effect, so as to make the one professing already be a religious," and consequently that it is not solemn, "however much someone may have full use of reason or be capable of malice, namely because the Church regards what happens in the majority of cases." Therefore solemnity of a vow is not from the very nature of the vow, but from the constitution of the Church alone. C. *Quod votum* un., de Vot. et vot. red. in 6; St. Thomas, II-II, q. 133, a. 1; q. 134, aa. 4, 5; q. 186.

Hence especially is had the distinction between Religion properly and strictly so called according to canonical institution, and a religious Congregation. For by Religions properly and strictly so called

are to be understood institutes which have the essence of the religious state with solemn vows. By religious Congregations, however, are to be understood institutes which have the essence of the religious state, but only with simple vows, approved nevertheless by the Holy See, and so approved that the vows emitted in such a Congregation are not private vows, but are accepted by someone in the name of the Congregation or of the Apostolic See. Otherwise it is not a religious Congregation, but a secular one. Benedict XIV, brief *Quo magis*, Dec. 18, 1742; Bouix, loc. cit., p. 2, s. 1.

By the taking of these three vows, with attention to their nature, there is a total handing over of oneself to God, St. Thomas, q. 186, a. 7; a. 6, ad 2, which nevertheless is accepted not immediately by God himself, but by some man in his name. And thus it has always been judged by the Fathers that the religious state is a donation and handing over of oneself made to God. But God, "according to ordinary providence, does not undertake the particular care of governing a private person immediately by himself, nor does he need these sensible things so that he may use them immediately and without intervention of second causes. And therefore a donation thus made to God would either be vain and idle, or would be as if tempting God by demanding immediate governance from him; and for this reason it does not please him, nor is it accepted immediately by him." Suarez, *De Relig.*, l. 2, c. 4, nn. 7, 8.

By acceptance of these vows on the part of the Church, a blessing and consecration of the person is had, whence he becomes a sacred person, that is, irrevocably devoted to God. And then the vows are solemn. St. Thomas, II-II, q. 184, a. 4. And if acceptance on the part of the Church is not for every effect of the aforesaid vows, but only for some effects, and therefore the vows are not solemn but simple, then there is not a blessing and consecration of the person, but a certain simple blessing, which does not devote the person to God in so immovable a way. Hence a dismissed person is ordinarily also dispensed from vows and ceases to be dedicated to God.

Hence it is wholly clear that the Church's approval is necessary for the religious state. But the Church no longer approves in the religious state the eremitical life, but common life under a certain rule and under certain constitutions. C. fin., de Rel. dom.; C. un., same title in 6; Bouix, p. 1, s. 2; Benedict XIV, notif. 105, n. 59ff.; E. M.

249. **You will resolve:** 1. From profession of the religious state a reciprocal obligation results between the religious and the community: namely, not only is the religious held to remain in the order, but the order in turn is held not to cast him out without just cause. The reason is that "a religious becomes a member of one mystical body, which is the religion itself; but this cannot happen except through mutual union between the whole and the part. Since that union is moral, it is made through mutual obligation." Suarez, *De Relig.*, l. 2, c. 4, n. 10.

250. A religious by force of his profession is not held to be perfect, but is held under grave obligation to study in some way for perfection. St. Thomas, q. 186, a. 1. But he must tend to perfection primarily through the essential means of the religious state, namely through observance of the three vows of poverty, chastity, and obedience; secondarily through accidental means, namely through the proper rules of the order, at least by not despising those helps. St. Thomas, q. 186, aa. 2, 7. Hence one sins gravely who firmly decides not to tend to perfection, or in no way to care about it.

251. But whether a religious sins gravely who intends to observe only mandates under grave obligation, while he decides to transgress all other things or not care about them, is controverted. The first opinion probably affirms, because a religious of this kind is no longer tending to perfection. Yet the second opinion, more common and more probable, denies. The reason is that the obligation of tending to perfection is from religious profession, which consists in vows. From the vows there is no grave obligation of observing all things, but of observing all things which gravely regard the vows themselves. But to profess a rule, or according to a rule, is not to vow to observe all things which are in the rule, but to obligate oneself to regular life, to which only that which is gravely against a grave precept expressed in the rule is gravely contrary. But contempt of perfection and of regular life is directly contrary to profession of both. L. 11; St. Thomas, II-II, q. 186, a. 9. Cf. 302.

252. Therefore one also sins gravely who transgresses rules from formal contempt, even if they obligate only to venial fault or to no fault, namely when he transgresses them with the mind of not being subject to them or to the precepts of prelates. It is otherwise if he transgresses them led by concupiscence, or because he thinks they are not necessary for salvation, or if he judges that they are not prescribed under grave obligation. Therefore to transgress rules in matters of small matter, even from custom, does not of itself exceed venial sin. "Of itself," for it can be grave by reason of scandal, if it were gravely pernicious to Religion by inducing others by bad example to laxity of rule; by reason of proximate danger of sinning gravely in some particular case; and if from this he were constituted in such a state that he must be expelled as incorrigible. St. Thomas, q. 186, a. 9; Trent, sess. 25, cc. 1, 22 de Reg.

253. **Does the rule always obligate, and how?** Whether there is an obligation of observing the rule, and how great it is, is ordinarily explained in the rule itself. If nothing is determined in it, custom must be attended to, which is the best interpreter of laws. For the rest, no obligation is to be imposed unless it is certainly clear. Bouix, vol. 2, pp. 571-587; Sanchez, *In Decal.*, l. 6, c. 4, n. 9.

254. **Do religious dispersed by force remain bound by the obligations of religious life?** Response: affirmatively. For they remain true religious. Hence they are by no means to be judged freed from their solemn vows. Yet by reason of the particular condition in which they are found, a certain modification must be attended to regarding obedience and poverty; for regarding chastity there can be no difficulty.

Regarding obedience, from the accident of suppression of the religion, the professed do not become seculars, nor are they freed from vows to which they still remain bound; but they are only permitted by the Sacred Congregation to live in the world and in the habit of a secular cleric, nevertheless wearing inwardly something proper to the regular habit, under the obedience and jurisdiction of the Ordinary. Yet they always remain subject to their own superiors.

Regarding poverty, dispersed regulars can lawfully and validly acquire things useful or necessary to themselves, but by no means superfluous things, keep money with themselves, and enter various contracts of buying, selling, and donation. For religious can perform all these things by permission and deputation of prelates. Moreover, in the case of dispersion, such deputation is deservedly presumed: for then each one, by the fact itself, is deputed as, so to speak, steward of himself, at least

for all cases in which recourse to the superior cannot be had. L. 65, note; Cardinal De Luca, *Opera*, t. 14, annot. ad S. Conc. Trid., disc. 36, nn. 1-4; de Regn., p. 1, disc. 38, n. 16; Bouix, p. 3, s. 2; A. S. S., vol. 5, p. 82ff.; vol. 7, p. 147; vol. 9, p. 109; vol. 14, pp. 91, 92; E. M.

252. **Does a religious promoted to a parish or episcopate remain bound by the obligations of religious life?** Response to the first: affirmatively, and therefore he is held to wear the habit of the religion and to observe the rule in all things which can stand with his office, unless a legitimate contrary custom excuses.

To the second: affirmatively, according to the form of the constitution *Custodes* of Benedict XIII; S. C. Bishops and Regulars, May 6, 1864; L. 4; St. Thomas, II-II, q. 185, a. 8; E. M.

253. **Do apostates and fugitives remain bound by the same obligations?** Response: affirmatively; for they have been legitimately freed from no obligation, and they must return to religion. Bouix, vol. 2, p. 506ff.; Ferraris, v. Apostasia, n. 21ff.; A. S. S., vol. 2, p. 116; L. 80, 82.

254. **Are those cast out and dismissed free from the said obligations?** Response: affirmatively as regards merely regular observances; for by sentence, separated from religious life, they are no longer bound by observances proper to religious life.

Negatively as regards vows, if there is question of the solemnly professed; for by expulsion these by no means cease. Hence they are held under grave obligation to amend themselves and return to religion. Superiors, moreover, are held to receive those amended.

Affirmatively as regards vows, if there is question of simple vows. For those dismissed and cast out are ordinarily also dispensed from simple vows either by their own superiors, if they have such faculty, or by the Holy See. Innocent XII, July 24, 1674; Bouix, vol. 2, p. 511ff.; L. 79ff.; St. Thomas, Quodl. 12, a. 36; Ferraris, v. Eiicere; A. S. S., vol. 1, p. 227; E. M.

II. On Divine Vocation

255. **Is a divine vocation required?** It is certain that there is a divine vocation to the religious state, by which God calls some before others to this more excellent state and grants the graces for carrying it out rightly. This is proved: 1. from the common authority of the doctors; 2. because, if divine vocation is given to the sacerdotal state, the same must consequently be said of the religious life, which is a more perfect and much more difficult state.

256. **Note:** 1. The saints judge that this vocation is always from God. For it cannot be from nature, which shrinks from chastisement of the flesh; nor can it be from the devil, since he induces no one to good from a good end. St. Thomas, II-II, q. 189, a. 10, ad 1.

257. The ordinary signs of vocation are: aptitude for the obligations of the religious state in general, and for observance of such and such an order in particular; a constant and right inclination to such a state, notwithstanding some past wavering arising from temptations of the devil or from repugnance of nature; and a certain interior peace and pleasantness from consideration of such a state. Extraordinary signs are divine revelation and a certain singular inspiration toward such a state.

258. In this matter there is no need of many counsels and long deliberation. St. Thomas, q. 189, a. 10; Clement VIII, const. *Cum ad regularem*; *Spiritual Exercises* of St. Ignatius; L. 1, 6, n. 802; Lugo, *Resp. Mor.*, l. 3, disp. 1, nn. 5, 6, 8.

II. On Divine Vocation

257. **Whether and how does one sin who, though not called, nevertheless undertakes the religious state?** He sins gravely if he clearly knows the defect of vocation, because of the proximate danger of transgressing the grave obligations of the religious state, to which he knowingly and willingly exposes himself. Yet he will be excused from that fault if he has a firm will to fulfill the obligations of the state he has assumed, trusting in the grace of God.

"A novice who entered religion with the intention of not persevering can scarcely be excused from grave fault, on account of the temporal damages and inconveniences which he would then bring upon the religion in vain, and also on account of the scandal which he would give to the other novices; for the example of a companion brings a great temptation upon another." L. l. 6, n. 785.

For the rest, he who has entered religion from a disordered and not divine vocation should do sincere penance and hope in the Lord. The graces certainly necessary for him will not be lacking; and he will also easily be able to have special helps from the riches of divine Goodness and Mercy.

258. **What is to be said of those who induce others to religion?** "Response: It must be said," says St. Thomas, II-II, q. 189, a. 9, "that those who induce others not only do not sin, but merit a great reward." Yet a threefold disorder could occur concerning an inducement of this sort: if one allures him violently, simoniacally, or by lies. Cf. *Quodlibet* 3, q. 5; Trent, sess. 25, c. 18 *de Reg*.

259. **Whether and how does one sin who, sensing himself called to religion, does not obey the divine vocation?** Response: "To neglect a religious vocation is not of itself a sin; for the divine counsels do not of themselves obligate under fault. Yet by reason of the danger to eternal salvation to which the one called commits himself, making an election of state not according to the divine good pleasure, it cannot be excused from some fault. And indeed, if someone believed that by remaining in the world he would incur damnation, both because of his own frailty, which he had experienced amid the occasions of the world, and because of the lack of helps which he would have in religion, he cannot be excused from grave sin, since he casts himself into grave danger of his salvation ...

"But whether the conscience of those is in a bad state who, having already become morally certain of God's vocation to religion, strive to persuade themselves that by remaining in the world, or by returning to it, they can work out their salvation just as easily? It does not seem doubtful that these expose themselves to great danger of salvation ... The reason for this danger is that one who remains in the world contrary to God's vocation will not have the fitting helps of grace which God prepared for him in religion; and therefore, deprived of them, he will with difficulty resist the temptations of the world, and thus, succumbing, will incur damnation ... For the rest I do not wish to pronounce an absolute judgment on this point: I leave it to the wise." L. 78.

Therefore in practice particular cases, with all their circumstances, must be maturely weighed; and no one after the fact is to be cast into despair, but courage should be added to him, so that, if the deed no longer has a remedy, he may trust in God, who is rich in mercy, and may institute a Christian and holy life with greater solicitude. Elbel, *De Actibus humanis*, nn. 124, 125.

260. **Whether and how do those sin who turn others away from the religious state?** One who by force, fraud, or grave fear impedes or turns someone away from religion sins gravely, also against justice. This is proved from Trent, sess. 25, c. 18 *de Reg.*, where one who impedes a girl from religion is excommunicated. And surely everyone has the right not to be impeded by force or deceit from attaining a good.

But if the turning away is done only by prayers or promises, it will be a grave sin only against charity, because this cannot happen without grave harm to the one who is drawn away from religion. "But parents," adds St. Alphonsus, n. 77, "who turn their children away from religion I think sin with a twofold grave sin; for besides the sin against charity, they commit another sin against piety, since by their own office of education they are bound under grave obligation to attend to the spiritual progress of their children ... Yet because of this I do not deny that many parents can be excused from mortal sin, at least for some brief time, by reason of ignorance or inadvertence, which can easily be present in them because of vehement affection of the flesh toward their children." Elbel, loc. cit., n. 126; L. l. 3, n. 663.

III. On the Novitiate

261. **Who can enter religion?** All those, and only those, can enter religion who, first, are *sui iuris*; second, are not bound to others by some graver obligation; and third, are not criminals. Those who are not *sui iuris* but depend on others cannot validly enter and profess without their consent. Others, however, validly enter and profess, even though illicitly. L. 65; St. Thomas, II-II, q. 189, aa. 5, 6; E. M.

262. **You will resolve:** From the first head the following cannot enter religion: first, those before puberty, because they are subject to parents or guardians as to the disposition of life.

Second, spouses after a consummated marriage, unless the other party is guilty of a delict on account of which he or she can lawfully be dismissed. But a religious profession entered by one spouse against the will of the other spouse is resolved into a simple vow of chastity, from C. 3, 12 *de Conv. coni.*

Third, it is furthermore certain that a bishop already consecrated, and even one only confirmed, cannot enter religion without the permission of the Supreme Pontiff, on account of the vow by which a bishop is bound perpetually to his own Church. C. *Licet de Regularibus*; C. *Inter de Translat. episcop.*

From the second head the following cannot enter: those entangled in intricate and litigious accounts and burdened with debt; those who have seduced a virgin with a promise of marriage; those who would leave brothers in extreme necessity, or parents or unemancipated children in grave necessity.

From the third head those cannot enter whom public acts show to have been accused or investigated for crime. C. *Cum de omnibus* of Sixtus V; C. *In suprema* of Clement VIII. Lugo, *Resp. Mor.*, l. 3, d. 1; L.

65, 71, 76, 969, 971; St. Thomas, II-II, q. 185, a. 4; q. 189, aa. 5, 7; E. M.

263. **Can children past puberty lawfully enter religion against the will of their parents?** Response: affirmatively. The reason is that there is no obligation of obeying parents regarding the election of a state, especially a religious state, because not only do they not have experience, but because of their own interest or worldly affection they are often changed into enemies. The contrary articles of civil and general law, C. I. 221 and C. G. 372, 374, are to be attended to in practice in order to avoid grave inconveniences.

"Sanchez and others, with Suarez and others and the common opinion, say that a son cannot enter religion while leaving parents in extreme or grave necessity, even if the son has emitted a vow of religion. But it is otherwise if the necessity is common, or if they suffer only some diminution of status." L. 66.

But whether a son already professed is bound to leave in order to aid parents pressed by want: in extreme necessity it is certain that he is bound. But if the necessity is grave, there is a threefold opinion. The first says that he is bound by reason of a natural obligation, which is not extinguished by the vow. The second says, very probably, that he is bound if the necessity precedes the profession, otherwise not if it follows. For the natural obligation perseveres in the first case, but in the other it cannot arise. The third, more probable, teaches that in such a case he is not bound, nor can the son leave without permission, whether the necessity of the parents preceded profession or not. The reason is that "one who is already professed in religion is already reputed as if dead to the world. Hence he ought not, on occasion of sustaining his parents, to leave the cloister." St. Thomas, II-II, q. 101, a. 4, ad 4; q. 104, a. 5; q. 189, a. 6.

It is not lawful to abandon brothers or sisters in extreme necessity, but it is lawful in grave necessity. Nevertheless one could, by reason of charity, defer or even omit the religious state in order to aid brothers gravely in need. *Quodlibet* 3, a. 16; 10, a. 9; L. 67, 68, 70; l. 2, n. 50; l. 3, n. 335.

264. **Can one burdened with debts enter religion?** Response: affirmatively, if the debts by which one is burdened are uncertain as to the person, so that restitution must be made to the poor. For, even granted that uncertain debts are owed to the poor or to pious causes by natural law, the matter is equivalently obtained according to the mind of the owners if those debts are remitted so that one may enter religion, since they are always given to pious causes; and surely nothing is so pious as to dedicate oneself and all one's goods perpetually to God. This is still commonly conceded, at least for the internal forum, if the debts are from a purely liberal contract, because in this the condition is always understood: unless I have chosen a better state.

If there is question of debts from delict or from an onerous contract, there are three opinions, all probable according to St. Alphonsus, n. 71, but the third more probable. The first absolutely denies, because it is contrary to natural justice to seek a spiritual good with temporal harm to creditors. The second absolutely affirms, because "on account of money the person of a free man is not obligated according to the Civil Laws, but only his goods, because the person of a free man surpasses every estimation of money. Hence he can lawfully, after showing his goods, enter religion, nor is he held to remain in the world so that he may procure the means from which to pay the debt." St. Thomas, II-II,

q. 189, a. 6, ad 3. The third affirms that a debtor can enter in the case in which otherwise he would have to remain for a long time in the world; for then payment would be held as morally impossible. But it is otherwise if, remaining in the world for a brief time, for example within a year or two, with danger to his soul excluded, he would easily pay his debts, or a great part of them, by industry and labor.

These things are according to natural law. For Sixtus V, bull *Cum de omnibus*, 1587, rendered unfit for religion those debtors who had squandered their goods, or who had to render accounts before they paid their debts or rendered the accounts themselves. Clement VIII, however, constitution *In suprema*, 1602, indeed removed that unfitness, but left the prohibition. Yet these things are to be understood: first, of those who, by remaining in the world, can satisfy their creditors; otherwise they would remain uselessly. Second, of those who are burdened with great debts through their own fault, because the bull speaks of those burdened with an enormous debt who have squandered their goods. Third, Benedict XIV established that the decrees for religious men also include women where the cause is the same. Cf. C. *Si datam hominibus*. Nevertheless in the present matter the aforesaid bull is not to be extended to nuns, nor to those burdened with uncertain debts, since in odious things strict interpretation must always be used, and witnesses testify that Sixtus V declared this in another decree. Fourth, finally, the precept is to be understood of accounts to be rendered that are very litigious, intricate, fraudulent, and likely to give cause to lawsuits; for the Pontiff speaks only of these. L. 71; Bouix, p. 534ff.; Lugo, d. 21, n. 61ff.

265. **Can a pastor lawfully enter religion when the bishop contradicts?** "It must altogether be affirmed," says St. Alphonsus, n. 74, and the matter is certain from C. *Duae sunt leges*, caus. 19, q. 5, from the constitution of Benedict XIV *Ex quo dilectus*, Jan. 14, 1747, and from St. Thomas, II-II, q. 189, a. 7. Yet he is held first to notify the bishop of his purpose, lest the flock be abandoned without a guardian. But the bishop can still legitimately contradict and even recall the pastor from religion if the parish would suffer grave detriment.

As regards clerics and other beneficiaries, it is likewise certain that bishops cannot impede their clerics from entering religion, as is contained in C. *Clerici*, caus. 19, q. 1. Yet the bishop could rightly recall his cleric from religion if his entrance would be to the grave detriment of the church to which he was attached. Benedict XIV, cited constitution; L. 75; l. 6, n. 828.

266. **Can a religious transfer from his own order to another stricter one?** A religious can well transfer from his own order to another stricter one, after petitioning permission from his own prelate, even if it is denied, from C. *Licet* 18 *de Regularibus*, provided however that, according to the precept of Urban VIII, it is established that the religion is prepared to receive him. Hence they commonly teach that the prelate would sin gravely if he denied permission without a just cause, because he would inflict grave injustice on the subject by drawing him back from a more perfect state. Yet in this matter the particular law of each religion must be attended to. Trent, sess. 25, c. 19 *de Reg.*; L. 73; St. Thomas, II-II, q. 189, a. 8; Pignatelli, *Cons. Can.*, t. 1, cons. 39; Bouix, vol. 2, p. 519ff., p. 534.

267. **What age is required for beginning the novitiate?** It is certain that the age of puberty suffices for the novitiate; indeed nothing seems to prevent even those before puberty from

being admitted, provided they have the use of reason and sufficiently understand what the novitiate is.

From Trent, sess. 25, c. 17 *De Reg.*: "A girl who wishes to receive the regular habit should be more than twelve years old; she should not receive it before then, nor afterward should she or another emit profession, until the bishop, or, when he is absent or impeded, his vicar, or someone deputed by them at their expense, has diligently examined the will of the virgin, whether she is coerced, whether seduced, whether she knows what she is doing." This twofold examination is grave; nevertheless the omission of only one or the other is not held grave, nor indeed does the omission of both render the profession invalid.

But from the decree of the Sacred Congregation of Bishops and Regulars, May 23, 1659, nuns should not be admitted to the habit before completing the fifteenth year. St. Thomas, II-II, q. 189, a. 5; Bouix, pp. 553, 666; Ferraris, v. *Moniales*, a. 1, n. 72.

268. **How long must the novitiate last?** Apart from privilege, the novitiate must last for a full year; otherwise profession is null. Trent, sess. 25, c. 15 *de Reg.* As to longer duration, the particular constitutions of various orders and congregations must be attended to.

The year of novitiate is to be computed from the moment of receiving the habit, or, if reception of the habit is not required in some religion, from the moment of entrance into the novitiate with the intention of remaining there. The year must be completed for validity, so that in a leap year the passing of the day which is added must be awaited. Thus the Sacred Congregation of the Council expressly declared. It must likewise be continuous for validity, from a decree of the same Sacred Congregation, which established that a novice who had gone away from a monastery in order to enter another Religion, and who after spending only two hours in another convent repented of the act and returned, was bound to begin a new year of probation. Ferraris, v. *Annus probationis*, n. 25ff.; E. M.

269. **When is the year of probation judged to be interrupted?** It is judged to be interrupted chiefly: first, whenever the novice leaves the monastery without permission, with the intention of not returning, even if he immediately returns, as is clear from what has just been said. Second, whenever he is dismissed absolutely by the superiors and afterward is admitted again. Third, if he departs by private authority in order to enter another house or another province, even of the same order.

But the novitiate is not judged to be interrupted: first, if the novice is sick in the house, even for a notable time, although he cannot be present at the exercises of the novices at all. Second, if, compelled by violence, he departs from the house and afterward returns. Third, if, having received permission, he briefly goes aside to his parents or others for the sake of recovering health or conducting business. Fourth, if he is dismissed by false accusation and afterward, the truth having become known, is again admitted. Fifth, if he makes a journey commanded by his superiors, because then he remains under their dependence. Lugo, *Resp. Mor.*, l. 4, d. 2; Sanchez, *In Decal.*, l. 5, c. 4, nn. 30-35; Lezana, *Op.*, t. 4, cons. 8; Suarez, *De Relig.*, t. 3, l. 5, cc. 14, 15; La-Croix, l. 4, n. 13ff.; Schmalzgrueber, *de Reg.*, n. 68ff.; Ferraris, loc. cit., nn. 10-24.

270. **Can the time of novitiate be extended?** Response: affirmatively, if there is a legitimate cause; otherwise, if there is not. Thus from Trent, sess. 25, c. 16 *de Reg.*, and from the declarations and practice of the Sacred Congregation of the Council. Ferraris, loc. cit., n. 29ff.; E. M.

271. **If a novice, after completing the whole year of novitiate, is not admitted to profession, but is dismissed, or spontaneously departs, and after a brief delay returns and is admitted, can he immediately profess without another new year of novitiate?** Response: affirmatively, provided that the condition of the person or of the religion has not been changed. Thus the Sacred Congregation of the Council declared on Feb. 27, 1597 and Feb. 12, 1598. The first reason is that here he has already been tested for a full year, which alone is required by Trent. The second reason is that, since a judgment for profession must be taken from probation, if a change occurs after probation, the preceding probation will serve little or nothing for making that judgment. Ferraris, loc. cit., n. 20ff.; v. *Professio religiosa*, n. 64; E. M.

272. **Does one who is dismissed after profession, and afterward received again, need a new novitiate?** Response: affirmatively. The reason is that the first novitiate has already obtained its whole effect through the profession to which it was ordered. Lugo, *Resp. Mor.*, l. 4, d. 1, n. 3.

273. **In what place and in what habit must the novitiate be made?** The novitiate cannot be made outside the monastery; indeed it must be made in the monastery destined for it. Thus from the decree of Clement VIII, June 20, 1599, and several other decrees and the practice of the Sacred Congregation. Ferraris, v. *Annus probationis*, n. 36ff.

By common law the novitiate must be made in the habit of the religion which the novice intends to profess. Trent, sess. 25, c. 1 *de Reg.* And this is required also under pain of nullity, according to the Sacred Congregation of Bishops and Regulars. Ferraris, v. *Habitus*, nn. 2, 3; v. *Moniales*, a. 1, n. 76ff.; v. *Novitiatus*, n. 4; C. *Is qui de Regularibus* in 6; Clement VIII, decree *Regularis disciplinae*, March 12, 1596; Benedict XIV, C. *Si datam*, section 6; Lucidi, c. 4, n. 146; E. M.

274. **Whether, when, and how must a novice dispose of his goods?** A novice must renounce his goods within the two months immediately preceding profession of solemn vows, not before, and with permission of the bishop or his vicar. Trent, sess. 25, c. 16 *de Reg.*; Sacred Congregation of Regular Discipline, Aug. 1, 1862.

But before profession of simple vows they must cede, for the time during which they remain in the same profession of simple vows, the administration, usufruct, and use to whomever they please, and even to their own order, if they so wish. Sacred Congregation of Regular Discipline, June 12, 1858. But in order that a renunciation of this sort be valid in conscience, the solemnities of civil law are not needed. L. l. 3, n. 935; Ferraris, v. *Annus probationis*, n. 53; v. *Novitius*, n. 30ff.; v. *Moniales*, n. 98ff.; A. S. S., vol. 9, p. 56ff.; E. M.

275. **Is a novice bound to regular discipline?** Novices are not held to observe the rules and precepts of their order from a properly so-called obligation. Thus the doctors unanimously, led by this reason, that no foundation of an obligation of this kind can be assigned. C. *Ad Apostolicam* 16 *de Regularibus*; Schmalzgrueber, tit. *de Regularibus*, n. 85ff.

But although the prelate cannot command a novice by reason of vows, as is clear, he can nevertheless command by reason of the power which any superior naturally has in any community, and by reason of ecclesiastical jurisdiction over the novice. C. *Recolentes de statu monachorum*. Hence several infer that he can bind novices by precepts under sin and under censures, and reserve cases with respect to them. But several other and grave theologians teach the contrary as to this last point, namely that novices, without the permission of the prelates of the order, can validly confess to any confessor approved by the local Ordinary for seculars, and be absolved by him, even from cases reserved in religion. Ferraris, v. *Novitiatus*, nn. 13-16; Bouix, p. 598; Craisson, n. 2675ff.; Montrouzier, *De Inst. Soc.*, I, pp. 77, 96.

Generally, however, novices enjoy all the privileges, indulgences, protection of the canon, etc., which the professed of the order they intend to embrace enjoy; for by Rule of Law 55 in 6: "He who feels the burden ought also to feel the advantage." Bouix, loc. cit., p. 599; Ferraris, loc. cit., nn. 20, 21.

IV. On Profession

276. **What is the force of religious profession?** Religious profession is distinguished in two ways, for one is such broadly, another such strictly. The former is had by simple vows, the latter by solemn vows. But where the word profession is used without addition, it is usually understood of profession strictly taken.

Solemn profession frees the professed from paternal power, because the professed passes into the full power of the regular superior and is fully subject to him. But understand this of burdensome matters, not of favors. For this is a benefit, and what is granted in favor of someone is not to be turned to his disadvantage, Rule 16 in 6. Hence the professed retains rights of succession; and if goods come to a son after profession, they pertain to a quasi-castrense peculium, all of which, although he does not acquire them for himself, he nevertheless acquires for the monastery.

Profession likewise frees from irregularity arising from birth with respect to receiving sacred orders, but not with respect to prelacies. C. 1 *de Filiis presbyt.*; St. Thomas, II-II, q. 189, a. 3, ad 3; E. M.

IV. On Profession

277. **What is required for religious profession?** For the validity of profession it is required: first, that the person be capable of entering religion. Second, that the one professing have completed the sixteenth year, computing this time mathematically from moment to moment. For Trent, sess. 25, c. 15 *de Reg.*, so decreed, according to the Sacred Congregation and all the doctors. Third, that a complete year of probation have preceded. Trent, ibid. Fourth, that it be made with the intention of making profession; for it is a certain spiritual marriage with the religion, and therefore, just as in carnal marriage, when consent is lacking, the thing itself fails. Fifth, that profession not be emitted because of fraud or deceit; otherwise true consent would be lacking. Sixth, that it not be made from force or grave fear, unjustly inflicted from without in order to extort profession. C. 1 *de His quae vi metusve*, etc.; C. ult. *Qui clerici vel voventes*; Trent, sess. 25, cc. 18, 19 *de Reg.*; A. S. S., vol. 1, p. 31; vol. 3, p. 435; Zitelli, *Apparat.*, p. 221; Lucidi, ed. 3, p. 84ff.

Seventh, that the three substantial vows be emitted; otherwise the essence of the religious state will not be present. Eighth, that profession be made in some approved religion. Ninth, that profession be accepted by one having power for this. Cf. Ferraris, v. *Moniales*, a. 1, n. 101ff.; C. *Ad apostolicam de Regularibus*. Tenth, that the one professing place no condition repugnant to the substance of religion. Eleventh, that profession be made expressly; for tacit profession as to men was abrogated by Pius IX, decree of the Sacred Congregation of Regular Discipline, June 12, 1858. Cf. A. S. S., vol. 5, p. 412; vol. 8, p. 41ff.; Ferraris, loc. cit., n. 109. Twelfth, that men have first emitted simple vows and have remained in them for a full three years before solemn profession is emitted. Pius IX, brief *Ad universalis Ecclesiae*, Feb. 7, 1862. Meanwhile, however, "they are held to observance of the rule of the order as the solemnly professed are." Same Sacred Congregation, Aug. 6, 1858. Thirteenth, if one vow, for example poverty, is not solemn, neither are the other two solemn. Sacred Penitentiary, 1820, to the Bishop of Limoges. Fourteenth, as regards nuns, solemn profession is not had without papal enclosure. C. *Periculoso* un. *de Stat. reg.* in 6; Trent, sess. 25, c. 5 *de Reg.*; St. Pius V, C. *Circa pastoralis*, May 29, 1566.

Besides these, for lawfulness those things are to be observed which were established by Pius IX for admission to the habit and to profession, and which are contained in the Acts of the Sacred Congregation on the state of Regulars, Rome, 1862, from the printing house of the Reverend Apostolic Camera, and in Bizzarri, *Collect.*, appendix 2. E. M.

278. **Can someone leave religion whenever he wishes because of nullity of profession?** Response: negatively. For he must make his claim in the first five-year period, unless he is restored in full by the Holy See. But the cause of nullity must be examined by his own prelate and by the local Ordinary. While an appeal is pending, he cannot leave after the first sentence. Trent, sess. 25, c. 19 *de Reg.*; Benedict XIV, C. *Si datam*; Ferraris, v. *Professio religiosa*, n. 65ff.; Bouix, *De Iudic. eccles.*, part 2, section 5, c. 4.

279. **Can a superior expel some religious?** Response: affirmatively, provided however that he has this power, either proper or delegated, according to the various constitutions of religious orders. For generally speaking, besides the major superior, other inferior superiors do not have this power. Bizzarri, ed. 1855, p. 856. But a canonical process and judgment, and a legitimate cause, are required. Such a cause is: to have kept silent about an essential impediment or a defect harmful to the community; to have committed "a grave, external, and public fault, and that the guilty person is also incorrigible" in grave sins. Sacred Congregation of Bishops and Regulars, Nov. 4, 1892. St. Thomas, *Quodlibet* 12, a. 36; Benedict XIV, *De Syn.*, l. 13, c. 11, n. 15ff.; Ferraris, v. *Apostasia*, n. 8; Lucidi, c. 5 *de Monial.*, section 8, n. 337; E. M.

V. On the Vow of Poverty

280. **What is the force of the solemn vow of poverty in relation to ownership of goods?** A religious by force of the solemn vow of poverty is rendered absolutely incapable of dominion in particular, or personally, over any temporal thing estimable by price, even with the permission of the superior.

Absolutely incapable, that is, incapable perpetually and immutably, both on the part of the religious and on the part of the religion. **In particular or personally**, for the solemnity of the vow of poverty does not prevent the community from being able to acquire and possess goods, either by itself or through subjects, unless its constitutions stand in the way. Hence the well-known axiom of canon law: Whatever a monk acquires, he acquires not for himself, but for the monastery. **Of a temporal thing estimable by price**, because the religious retains dominion over spiritual goods, honor, reputation, and the like. Likewise he retains the right of electing, presenting, or conferring a regular benefice. **Even with the permission of the superior**, namely the regular superior; for this incapacity can be removed by the Supreme Pontiff without thereby impeding the solemnity of the vow. Cf. n. 248. **Of dominion**, that is, of both direct dominion and even only useful dominion. Therefore ownership of temporal goods, the right of enjoying, the right of using, and the right simply of retaining or possessing are opposed to the solemn vow of poverty; but by no means are mere factual use and retention opposed, that is, with the permission of the superior and not from one's own right and in one's own name; nor is mere administration opposed, for through this one acquires for himself no temporal advantage from which he would become rich or less poor. C. *Cum ad monasterium* 6 *de stat. monach.*; Trent, sess. 25, cc. 2, 3 *de Reg.*; Bizzarri, ed. 1885, pp. 276, 279, 335, 336, 384; E. M.

281. **You will resolve:** First, a solemnly professed religious is altogether unable to perform any act of ownership, of donation, sale, etc. Therefore he cannot make a testament.

Second, all gifts made to solemnly professed religious are by that very fact acquired for the monastery, not excepting legacies and inheritances. Trent, sess. 25, c. 1 *de Reg.*

Third, manuscripts are proper to religious. Thus most commonly they affirm, and more probably; for they are something spiritual, since they are the offspring of one's own intelligence.

Fourth, "to have one's own is said to be contrary to poverty, not because it is contrary to some special virtue, since there is none, but because it is contrary to the vow of poverty; and thus that sin is proximately against religion." Suarez, *De virt. Rel.*, tr. 10, l. 4, c. 14. L. 14, 22.

282. **What is the force of the simple vow of poverty in relation to exterior goods?** A religious bound by the simple vow of poverty can indeed have direct dominion of goods; but he cannot lawfully dispose of anything concerning them without the superior's particular or general permission. **Lawfully**, since a religious retaining direct dominion of goods can validly dispose of them without permission, since he is truly the owner of those goods. But the superior will be able to invalidate such a disposition because of the dominative power which he has over the will of his subject by force of the vow of obedience, provided however that no acquired right of a third party has already intervened. Yet the simple vow which formed coadjutors emit in the Society of Jesus also renders them incapable of dominion. Suarez, *De Relig.*, tr. 10, l. 4, c. 6, n. 12; Lugo, *De Iust.*, d. 3, n. 78; Bouix, vol. 2, p. 558; E. M.

283. **You will resolve:** A religious who is not solemnly professed has direct dominion: first, of temporal goods which he possessed before vows. The reason is that simple vows do not deprive one of dominion already had. Second, of the fruits or revenues of the same goods. The reason is that a thing bears fruit for its owner, and simple vows do not deprive one of the right of acquiring dominion. Third, of those things which come to him by law without a new

acceptance, such as paternal inheritance, legacies, etc. The reason is clear from what has been said. Fourth, of all goods which he receives from parents, relatives, or friends with the permission of superiors, if nevertheless those donations are made specifically with regard to the private person, and not insofar as he is religious; otherwise the donations come to the monastery. For that principle is also applied to these religious: Whatever a monk acquires, etc. Fifth, of all goods which he receives from parents, relatives, friends, etc., given with regard to the private person, without the permission of superiors. The reason is that since he has the right of acquiring, the defect of permission makes him acquire illicitly, not invalidly, just as the defect of permission makes him donate illicitly, not invalidly. Sixth, manual works, whatever they may be, which are produced by religious pertain to the community. Therefore private religious, even the craftsmen, cannot dispose of them, nor can they receive any profit from them. The same must be said of honoraria which are given to regulars for Masses or other spiritual ministries.

A religious bound by a simple vow acts illicitly if he receives, retains, consumes, exchanges, gives to another, lends for consumption, lends for use, or makes any contract in which an act of ownership intervenes, either at home or outside, even from those things which pertain to food and clothing, without the superior's consent.

He sins against the vow of poverty if he expends anything from the things conceded to his own use for another use, or culpably loses or destroys it. The reason is that in these things he has only factual use, and that precariously, for as long as it shall seem good to the superior; and to be able to destroy a thing at one's own judgment is an act of dominion.

He also sins against the vow of poverty if he hides or withdraws some thing from the superior's disposition; if he remits a debt; if he renounces an inheritance or legacy which would be in favor of the community. If he renounces a donation, he does not sin against justice or the vow, but he can sin against charity toward his convent. L. 19.

284. **What is required so that a religious may receive or give a thing?** In order that a religious may lawfully receive, give, etc., a thing, the permission of the superior is required and suffices, at least reasonably presumed or interpretative.

Presumed or interpretative permission is distinguished from express and tacit permission. Permission is called **express** when it is openly granted by word or writing; and this can be express formal permission, or virtual permission. Thus if he says, "I grant you permission to call a physician," this will be express formal permission in order to consult the physician, and virtual permission in order to employ the prescribed remedies. Permission is called **tacit** when, from custom, signs, or other circumstances, it is reasonably concluded that the superior approves the matter. Permission is called **presumed or interpretative** when, because of some occurring necessity or another just cause, it is believed or presumed that the superior would consent or give permission if it were sought in these circumstances. **Reasonably presumed**; otherwise there is no permission, since it is contrary to the will of the superior.

Now, for acting against the vow of poverty, it is required that the religious act in his own name and independently of the will of the superior. But one who acts from the consent of the prelate according

to prudent interpretation does not act in his own name and independently. Therefore, St. Alphonsus, n. 18, calls this opinion more probable, and St. Thomas expressly teaches it, II-II, q. 32, a. 8, ad 1, and IV Sent., d. 15, q. 2, a. 5, q. 4.

V. On the Vow of Poverty

285. **You will resolve:** First, if a prelate gives or permits images, rosaries, etc., to be given to a subject, knowing that he does not need all of them for his own use, he is judged tacitly to grant the faculty of giving them to others.

Second, if a definite quantity is assigned to a religious for his sustenance in such a way that neither is the monastery held to furnish him anything else, nor is he himself held to render an account, then, whether he dwells within the cloister or outside it, whatever he withdraws for himself from that portion he will be able to spend at his own good pleasure, provided he spends it for an honest use. But it is otherwise if no definite quantity is assigned to him, but all necessary things are supplied by the monastery, because then it is not presumed, as in the first case, that the prelate grants permission.

Third, by authors religious are permitted, because of the same presumed permission, to give some moderate alms, and likewise to make light gifts to conciliate the love of others toward religion, as a sign of due friendship or due gratitude. And here attention must be paid to the constitution *Religiosae* of Clement VIII, moderated by the decree *Nuper* of Urban VIII, which prohibits religious from bestowing gifts unless they are from causes which of their own nature contain an act of virtue and merit, modestly and discreetly, and with the permission of superiors. By this prohibition even convents and their chapters are included; and those who receive are held to restitution. L. 17, 21, 23; E. M.

286. **Note:** Permission asked but unduly denied does not excuse from transgression of the vow, unless there is danger of grave harm in delay. For then the consent of the higher superior is presumed to be present. Thus St. Alphonsus, n. 33, and it agrees with the doctrine of St. Thomas, I-II, q. 106, a. 6; II-II, q. 120, a. 1.

287. **What is grave matter in transgression of the vow of poverty?** It is difficult to hand down any determined rule concerning the quantity required for grave sin, as is clear from the very multiplicity of opinions concerning this matter.

Generally speaking, that matter is to be held grave which constitutes grave sin in theft. For an act of ownership which is grave against justice is also grave against religion when the vow of poverty is added. But some say that only that matter is grave which is grave in thefts of children under paternal power, which others more probably deny.

This grave matter, according to diverse circumstances, can be greater or lesser, as in theft. More is required for rich convents than for others less opulent. More is required if a religious usurps the things of the monastery for his own use, or for others of the same community, than if he spent them on outsiders; for in the former case the thing remains at home. More is required if the thing is not from money, but from clothing, books, and the like. It is not mortal to steal foodstuffs on several

occasions, even if they come to a great quantity, provided they are not reserved by the religious, and provided the damage to the convent is not excessive and in an extraordinary and more precious matter. More is also required in small thefts which, with a notable interval intervening, do not coalesce into grave matter, than in other ordinary thefts.

Furthermore, more is required in sins committed against religion alone, or against the vow alone, than in sins committed at the same time against justice; for in the former case the act of ownership is, as is clear, less. Hence also in the same case of sin against religion alone, more is required for sinning gravely when gifts are received from outsiders to be distributed to others than if these were retained for one's own uses. Finally, more or less is required according as the act participates more or less in ownership. And thus, generally, a religious does not sin gravely by secretly taking for his own use some thing from the community, or if he lends for consumption or lends for use to another a thing conceded to him for use. L. 24, 25, 27; l. 3, n. 545; H. A., tr. 3, n. 10; Lugo, d. 3, n. 170ff.

288. **Is it lawful for religious to have a peculium, that is, a temporal good destined for their own uses and by no means for the common uses of the monastery?** It is certain that such a peculium with independent use of it is illicit; for it is against poverty and against Trent, sess. 25, c. 2 *de Reg*. But it is controverted whether peculia with dependent use were prohibited by Trent, sess. 25, c. 2 *de Reg*.

From custom and the permission of the Apostolic See, the use of a peculium and life allowance still perseveres in many monasteries, and it is lawful.

All agree that in those convents in which common life is not observed because of poverty, or because of the negligence of superiors in supplying necessary things to subjects, peculia can be granted at the nod of the prelates. The reason is that Trent then commands religious to observe common life when from the convent "nothing which is necessary is denied."

A regular cannot refuse common life if the superiors wish to establish it. The reason is that this would be against the vow of poverty, for it would be to have goods independently of the will of superiors. L. 15; E. M.

289. **Does one sin against the vow of poverty who receives money from an outsider to be spent at will on pious works?** Response: negatively, if the pious works are determined by the donor himself. For then no act of ownership is had. The religious is only executing another's commission.

But if the works are in no way determined by the donor, Fr. Gury, n. 157, affirms, because he would perform an act of ownership. But Vasquez, *In Decal.*, l. 7, c. 30, denies. The reason is that, while he distributes that money not in his own name but in another's, he performs no act of ownership.

290. **Are religious by the vow of poverty prohibited from receiving another's thing in deposit without the prelate's permission?** Response: affirmatively, if it is by force of a contract of deposit, because then there is a true right and obligation from justice. Negatively, if it is only for faithful custody, for then no right and obligation from justice is had.

VI. On the Vow of Chastity

291. **What is the object of the vow of chastity?** The object of the vow of chastity includes two things: namely, those things which are already prohibited by natural and divine law, and also those things which can lawfully be done in legitimate marriage.

292. **What is the gravity of sins committed against the vow of chastity?** Response: The gravity or lightness of sin against the virtue of chastity and against the vow is exactly the same in those things which are prohibited by the virtue; and in these two sins are given if the vow is violated. One single sin is committed in that which is forbidden by the vow alone. But the gravity or lightness must be taken from the virtue of chastity itself, if namely it would also be opposed to that virtue.

293. **What is the difference between the solemn and simple vow of chastity?** The solemn vow of chastity invalidates betrothals and subsequent marriage, and likewise betrothals, and also an antecedent ratified but non-consummated marriage. And note the difference from the vow of chastity in the reception of sacred orders, for this latter indeed invalidates betrothals and marriage contracted afterward, but it does not invalidate a marriage contracted beforehand, although not consummated.

The simple vow of chastity by common law does not invalidate marriage, whether subsequent or antecedent. **By common law**, because the Supreme Pontiff can decree that a simple vow of chastity dissolves marriage, just as if it were solemn. And thus it has in fact been established, as to subsequent marriage, for the simple vows of scholastics of the Society of Jesus.

Furthermore, through the simple vow of perpetual chastity subsequent betrothals are invalid, for then the promise of marriage concerns an illicit thing. More probably antecedent betrothals are also dissolved. The reason is that the promise of betrothals is always judged to have been made under the tacit condition: unless a better state is chosen. C. *Rursus* 6 *Qui cler.*; Trent, sess. 24, cc. 6, 9; L. l. 6, nn. 812, 958, 1059; Lucidi, ed. 3, pp. 93, 148.

294. **What is to be said of enclosure?** For the greater custody of chastity, enclosure was introduced, by force of which nuns cannot leave the monastery except by permission of the Pontiff or bishop, which can be given only in extraordinary cases. Religious men, however, cannot be absent from the house without the prelate's permission.

Nor can women enter into the enclosure of male regulars, nor can persons of whatever sex or age enter into the enclosure of nuns. Likewise frequent access to nuns is prohibited, and to regulars, as is fitting, more severely than to others, whether secular clerics or lay persons. Trent, sess. 25, cc. 4, 5 *de Reg.*; Benedict XIV, decretal letter *Gravissimo*, Oct. 31, 1749; C. *Quamvis iusto*, Apr. 20, 1749; Clement VIII, C. *Nullus*; Ferraris, v. *Moniales*, a. 3; commentary on C. *Apostolicae Sedis*, n. 56ff.; E. M.

295. **What kind of sin is it to leave the monastery without permission?** For nuns living within enclosure it will always be grave, since the Church prohibits this under a most grave penalty, namely excommunication.

For religious men it will be grave if it is done more often with scandal, or furtively at night; but only venial if someone once or twice, or only from time to time during the day, goes out. Clement VIII, *De Ref. Reg.*, prohibited a general from giving permission, or permission without a companion; but it is not certain whether all the ordinances of Clement VIII are preceptive, or whether at least some are directive. Cf. Salm., tr. 15, c. 5, n. 163. Nevertheless one can stand by legitimate custom and by the constitutions of each order approved by the Holy See. The prescription of a companion is still in force from the practice of the Sacred Congregation of Bishops and Regulars in the approval of more recent institutes, especially as regards nuns. L. 37; Suarez, *De Relig.*, tr. 8, l. 1, c. 6, n. 8.

296. **What is to be said of the obligation of wearing the habit?** In those institutes in which a definite habit is enjoined to be worn as a sign of religious profession, speaking per se, the formal laying aside of the habit, that is, by changing the habit so that one is not recognized as a religious, if it is done rashly, is a mortal sin. C. *Ut periculosa* 2 *Ne clerici vel monachi* in 6; Bouix, vol. 2, p. 585ff.

VII. On the Vow of Obedience

297. **What is the object of the vow of obedience?** A religious by the vow of obedience is obligated to all things which the superior commands according to the rules and constitutions of the order, whether directly and expressly, or indirectly and implicitly. This is clear from the very nature of the vow of obedience made in such a religion; for the object of this vow is this: to obey the superior commanding according to the rules of such an order. For a religious superior has no power above or against the rules; the former power would exceed the limits of the promised obedience, and the latter would tend toward the destruction of religion. Suarez, *De Relig.*, t. 3, l. 10, c. 8; St. Thomas, *Quodlibet* 10, a. 10; II-II, q. 88, a. 5, ad 3; q. 104, a. 5, ad 3; E. M.

298. **You will resolve:** The superior generally does not have the right of imposing that which is not commanded by the institute under sin. He can do this only when a special reason is given, in certain particular cases. L. l. 1, n. 141.

299. **Note:** "Unless the prelate explains the mandate, for example by saying, I command, I enjoin, etc., the subject is not held to obey. And when the prelate says, I command, I enjoin, etc., the subject would not even then be held to obey under grave obligation unless there is added: In the name of the Lord Jesus Christ, or in virtue of obedience, or unless the penalty of excommunication is added, not only one to be imposed, but also one *latae sententiae*."

"Those things which pertain indirectly to the rule, Sylvius and others extend to those which conduce to fuller observance of it; Sanchez, however, narrows them to things very necessary, without which the rule cannot conveniently be observed, otherwise the superior could command any bodily mortifications whatever, for they are ordered to fuller observance of the rule." L. 38, 39, 40; St. Thomas, II-II, q. 104, a. 5, ad 3; II Sent., d. 44, q. 2, a. 3; Bouix, vol. 2, p. 429ff.

A religious gravely disobedient more probably sins gravely both against the virtue of religion and against the virtue of obedience. L. 46; Lugo, *De Poenit.*, d. 16, s. 4, section 4; *De Iust.*, d. 36, nn. 90, 92; L. l. 6, n. 313; Ithur., cas. 9; Escobar, t. 5, l. 43, s. 2, dub. 17-20; E. M.

300. **Can an abbess command nuns in virtue of obedience, obligating in conscience?** Response: affirmatively. The reason is that through the vow of obedience nuns are obligated to obey all their legitimate superiors. But an abbess must be called a legitimate and truly superior in her own monastery. This is clear both from the very nature of society and community, which certainly exists in a monastery, and from the approval of the constitutions by the Holy See. For the Holy See, in approving constitutions, certainly approves the order of superioresses and subjects, the superiority of the former and the subjection of the latter. Otherwise, how can the monastery and regular observance be preserved? L. 52; Bouix, vol. 2, pp. 402-404, 455ff.; E. M.

301. **Can merely internal acts be commanded by force of the vow of obedience? And what also of the other vows?** Nearly all agree concerning the vow of poverty that it touches only exterior acts of ownership as its proper object. This does not exclude, as is clear, that someone can sin against the vow of poverty also by an internal act, for example by a desire of exercising an act of ownership; for that desire is specified by such an object, which by hypothesis is against the vow of poverty.

As to the vow of chastity, Salmanticenses, tr. 15, c. 6, n. 20; Sanchez, *In Decal.*, l. 5, c. 6, n. 9; Busembaum in St. Alphonsus, n. 37; Gury, n. 165; and many others affirm that its object is both exterior acts and interior acts, because, they say, the vow of chastity is commonly understood in this way. But this does not demonstratively prove the assertion; since in several constitutions of orders and congregations this explanation is not found, and religious who vow very often have not devoted themselves to theological studies so as to be able to have knowledge of this matter. They are content to vow as the rest vow, according to the mind of the Church approving the constitutions of the order and congregation. Nor, indeed, can they have another intention.

Hence there are not lacking those who think that the vow of chastity touches only external acts and is violated by them. For they say that the Church is not accustomed to command merely internal acts; and therefore neither do vows of religion, approved by the Church, extend themselves to merely internal acts. But it is answered, and thus at the same time the common opinion is sustained, namely, that the vow of chastity in religion is certainly more perfect than a vow outside religion. Now the vow of chastity outside religion, since it is understood as a vow of perfect chastity, includes both internal and external acts; for chastity extends itself to both.

As to the vow of obedience, there are various opinions. Some think that the vow of obedience touches only exterior acts and the exterior execution of the superior's command, which Gury, n. 169, also holds. Others, on the contrary, judge that this vow extends itself even to merely internal acts.

St. Thomas, II-II, q. 186, a. 5, ad 4, although he says that this vow of obedience has a certain universality, nevertheless says that it does not extend to all particular acts; and he seems to exclude, besides others, also internal acts, which are treated in the objection, for he refers himself to q. 104, a. 5, where he positively excludes acts of this kind from obedience to be offered to men. The Angelic Doctor indeed has these words in the aforesaid q. 104, a. 5: "In those things which pertain to the interior movement of the will, man is not held to obey man, but only God." And there, ad 3, he says of religious: "As to those things alone they are held to obey which can pertain to regular manner of life." And q. 186, a. 7, corpus, he says that through the vow of poverty the good of exterior things is offered to God, through the vow of chastity the good of one's own body, and through the vow of

obedience one's own will. And there, ad 1, he says: "The vow of religion is ordered, as to its end, to the perfection of charity, to which all interior acts of virtues pertain ... And therefore the interior acts of virtues ... do not fall under the vow of religion, which is ordered to them as to an end." Lugo, *Resp. Mor.*, l. 6, d. 7; E. M.

302. **If the rule of an order obligates under sin, is its transgression against the vow of obedience?** Suarez, *De Relig.*, tr. 8, l. 1, c. 2, denies. For the vow does not obligate one to observe the rule, but to obey superiors according to the rule. And therefore the proper obligation of the rule, as such, is not from the vow of obedience, but from its own character as law.

Busembaum, in St. Alphonsus, n. 41, affirms, because such a rule is no less preceptive than the voice of the superior. Nevertheless, in order that there be a sin not only against obedience, but also against the vow, it is required either that someone by a special vow, or by a special reason, has promised observance of the rule containing true law and precepts, or that in the rule the precept of superiors be expressed by force of the vow of obedience. For then it is in truth the same whether the precept is imposed on all orally or in writing through the rule in virtue of the vow of holy obedience. And this seems to agree with the doctrine of the Angelic Doctor, II-II, q. 186, a. 9. Suarez, tr. 7, l. 10, c. 6, n. 6; c. 7, nn. 1, 6, 8.

303. **How does the solemn vow of obedience differ from the simple vow?** The simple vow of obedience indeed renders illicit an obligation which is contracted by a subject independently of the superior's consent, but by no means makes it invalid of itself, unless perhaps the superior, by force of dominative power over the will of the subject, wishes to invalidate an obligation of this sort.

But the solemn vow renders invalid of itself every obligation undertaken by a subject wholly independently of the will of the superior, unless nevertheless there is question of a matter which is by no means subject to the superior's power, as can be seen in the secret of confession, in a secret entrusted, etc. Suarez, *De Relig.*, t. 3, l. 2, c. 13, n. 8ff.

On the Sacraments in General

I. On the Nature of the Sacraments

304. **What is a sacrament?** As to the force of the name, *sacramentum*, in Greek *mysterion*, is the same as a sacred, hidden thing. As to the thing, a sacrament, insofar as it includes the sacraments of the Old Testament and of the New Testament, is defined: a visible sign of invisible grace. But insofar as it is restricted only to the sacraments of the New Testament, it is defined: a sensible sign which, from the institution of Christ, has the force of signifying and causing grace.

Hence the sacraments of the Old Testament differ much from the sacraments of the New Testament. For the former did not cause grace, but only figured that grace was to be given through the passion of

Christ; but ours both contain grace and confer it on those who worthily receive them.

Sacraments are distinguished from sacramentals, which are certain sacred things or sacred actions instituted by the Church, which do not have force of themselves to cause grace, but only to excite pious movements in us; such are holy water, the Agnus Dei, consecrations, blessings, etc. Florence, decree for the Armenians; Trent, sess. 7, cc. 1, 2, 5, 6, 7, 8; Roman Catechism, nn. 2-14; St. Thomas, III, q. 60, aa. 1-4; suppl., q. 29, a. 1; L. 90-94; La-Croix, n. 218ff.; Ferraris, v. *Peccatum*, n. 52ff.; Voit, nn. 112-117; E. M.

305. **How many are the sacraments of the New Testament?** They are seven: Baptism, Confirmation, Eucharist, Penance, Extreme Unction, Order, Matrimony. Namely, just as in bodily life we are born, grow, are fed, are healed when sick, are armed against enemies, are governed, and are multiplied, so also in the spiritual life. For through baptism we are spiritually reborn; through confirmation we are increased in grace and strengthened in faith; through the eucharist we are nourished by divine food; through penance we are spiritually healed from the sickness of sin; through extreme unction we are strengthened in agony against the devil; through order the Church is governed; through matrimony it is multiplied. Florence, decree for the Armenians; Trent, sess. 7, c. 1; St. Thomas, III, q. 65, aa. 1-3.

306. **Were all the sacraments instituted by Christ, and when?** Response to the first: affirmatively, and this is of faith from Trent, sess. 7, c. 1. Moreover, it is much truer that all were instituted by Christ immediately, by himself, and not mediately, some through the Apostles or the Church.

To the second: Christ more probably instituted baptism before his passion, John 3:5; penance after the resurrection, when he gave the Apostles the power of remitting sins, John 20:22-23; Trent, sess. 14, c. 1, canon 14; the eucharist at the Last Supper, Trent, sess. 13, c. 1; order at the Last Supper, when he conferred on the Apostles the power of consecrating, 1 Cor. 11:24-26; Trent, sess. 22, c. 1, canon 2, and after the resurrection when he gave them the power of remitting sins, John, loc. cit.; matrimony at the wedding of Cana, or when he established its indissolubility and perpetuity, Matt. 19:5, 6, 9; for the matter is not certain. Nor likewise is it clear at what time he instituted confirmation and extreme unction. St. Thomas, III, q. 64, aa. 2-4.

307. **Do all sacraments, and always, confer grace?** All sacraments of the New Testament contain grace, and have the force of conferring it on those who place no obstacle, and they always give it to all who receive them rightly. Trent, sess. 7, cc. 6, 7. An obstacle is had if the necessary dispositions are lacking in the recipient. It is also called fiction, because it impedes the sacrament from effecting what it signifies. St. Thomas, III, q. 60, a. 3; q. 69, a. 9, ad 3.

Hence sacraments are called formed or unformed according as they produce grace while they are received, or, when an obstacle intervenes, suspend their effect, namely grace, until the obstacle is removed. Hence it appears that sacraments can be at the same time valid but unformed; and that they can at the same time be received validly but illicitly. Validly, when nothing is lacking of those things which pertain to the essence of the sacrament; illicitly, when, from fault, something is lacking from the necessary dispositions in the recipient.

308. **Do unformed sacraments revive after the obstacle is later removed?** For a sacrament to revive is to furnish the grace which it would have furnished from the beginning if there had not been an obstacle. But the obstacle is removed by supplying those necessary dispositions which were lacking from the beginning; for example, imperfect contrition, if there is question of baptism received by an adult without any contrition for his own sins, and if meanwhile he has not committed a new grave sin. Otherwise there is required either perfect contrition with the desire for the sacrament of penance, or imperfect contrition with the sacrament of penance itself. And then baptism deletes original sin, and at the same time all actual sins committed before baptism. But the sacrament of penance deletes sins committed after baptism, and the sin of fiction, or of the bad disposition with which the sacrament of baptism was received, at least insofar as this bad disposition persevered after baptism.

Now baptism revives, because it cannot be repeated. St. Augustine, l. 1 *Contra Donatistas*, c. 13; St. Thomas, III, q. 69, a. 10, and others commonly. Consequently the same must be said of confirmation and order. St. Thomas, IV Sent., d. 49, a. 2. The same also, with proportionate reason, must be said of extreme unction and matrimony, which likewise cannot be repeated during the same illness and the same marriage.

But concerning penance and the eucharist it is much disputed. The reason for doubting is that if attrition is lacking in penance, the matter of the sacrament is lacking; and consequently the sacrament is neither formed nor unformed, since it is invalid, namely since it is not at all. But the eucharist, from its institution, can frequently be repeated; therefore it does not seem that there was need to attribute to it this efficacy, in order to aid human frailty.

Yet St. Thomas, IV Sent., d. 17, q. 3, a. 4, q. 1, speaking of a penitent who has made a valid but unformed confession, says: "although he does not then perceive the fruit of absolution, nevertheless when the fiction recedes he will begin to perceive it; as also happens in the other sacraments." But the general reason of revival is that it is only accidentally that they do not produce their proper effects of grace, namely because of the obstacle; and therefore those effects remain suspended while the obstacle remains, but when it has been removed, they must be applied to the soul. Lugo, d. 9, nn. 50, 55; La-Croix, n. 207; L. 6, 87, 444, 707; H. A., *Exam. Ord.*, n. 4.

309. **What grace do the sacraments cause?** Sacramental grace, which the sacraments cause, is not a grace entitatively diverse from common or non-sacramental grace; but it is sanctifying, habitual grace, insofar as it is given through such a sacrament, and gives a right to such special and more abundant helps, and includes these special helps themselves, actually conferred in their own time, according to the diversity of the end for obtaining which each sacrament was instituted. Florence, decree for the Armenians.

But the sacraments which from their primary institution cause first sanctifying grace are called sacraments of the dead, such as baptism and penance. Those which from their primary institution cause second sanctifying grace, such as the other five sacraments, are called sacraments of the living. Yet, since all sacraments of the New Testament contain and confer grace on those placing no obstacle, Florence, decree for the Armenians; Trent, sess. 7, cc. 6, 7, sacraments of the dead accidentally confer second grace if someone receives them already in the state of grace; and this is certain. Sacraments of the living, on the contrary, accidentally confer first sanctifying grace if someone, simply attrite,

receives them in a state of grave sin, in good faith falsely thinking that he has been rightly absolved or perfectly contrite; and this again is certain concerning extreme unction, and very probable concerning the others. St. Thomas, III, q. 62, aa. 1-4; q. 72, a. 7, ad 2.

310. **Do the sacraments cause equal grace in all?** The sacraments cause grace by force of the sign itself, or *ex opere operato*, not by the merit of the minister or of the recipient, or *ex opere operantis*. Hence of themselves they effect grace equally in all; yet accidentally this grace can be greater from the greater merit and better dispositions of each, as happens in the effects of other causes which act physically and necessarily. St. Thomas, III, q. 69, a. 8.

311. **Do all the sacraments imprint a character?** Only three sacraments imprint a character, and for that reason are usually called characteristic: namely baptism, confirmation, and order, by which we are made subjects, soldiers, and ministers of the Church. A character is a certain spiritual sign, distinctive from others, impressed on the soul and indelible. Hence these sacraments cannot be repeated without grave sin of sacrilege. For they would be repeated in vain, and consequently not without grave irreverence, since it would be to mock Christ himself, who instituted the sacrament.

The sacramental character is not incompatible with grave sin; therefore sacraments, even unformed ones, although they do not produce grace, nevertheless imprint the character on the soul. The remaining four sacraments do not imprint a character, and admit repetition. Hence sacraments are divided into unrepeatable and repeatable. Penance and the eucharist are simply repeatable; extreme unction and matrimony are indeed repeatable, but not in the same illness and the same marriage. Therefore they hold a middle place between the unrepeatable and the repeatable, and cannot be repeated without grave sacrilege. Florence, decree for the Armenians; Trent, sess. 7, c. 9; St. Thomas, III, q. 63; Lugo, *De Poenit.*, d. 16, n. 558.

312. **Are the sacraments necessary?** Baptism for the non-baptized, and penance after baptism for those fallen into grave sin, are necessary by a necessity not only of precept, but also of means, in reality or in desire. Florence, decree for the Armenians; Trent, sess. 5, decree on original sin; sess. 14, cc. 1, 4, 5, canons 1, 2, 6, 7. The eucharist is necessary by necessity of precept. Trent, sess. 13, c. 9. The sacraments of order and matrimony are altogether free to individuals. Trent, sess. 7, c. 4. But whether confirmation and extreme unction are necessary by precept is not certainly clear, as will be explained in its own place. St. Thomas, III, q. 61.

313. **By what things are the sacraments perfected?** "All sacraments are perfected by three things, namely by things as matter, by words as form, and by the person of the minister conferring the sacrament with the intention of doing what the Church does; if any of these is lacking, the sacrament is not perfected." Florence, decree for the Armenians.

Things and words are required so that they may intrinsically constitute the sacrament, or the sensible sign signifying and causing grace, as matter and form. But, since proximate matter and form, which is contained in words, do not exist by themselves, but are contained in human actions, therefore a minister is furthermore required for the sacrament to be substantially perfected, and indeed with the intention of doing what the Church does. For by this intention the signification of that sign is finally completed. For even when the thing and word, or matter and form, are posited, that whole action still

does not have perfect sacramental signification; for it can still be a sacramental action, or some action, for example a mocking action of the sacrament itself, depending on the intention of the agent. But the sacraments "effect that which they figure" and signify, St. Thomas, III, q. 62, a. 1, ad 1; and therefore if they signify nothing, they effect nothing.

II. On the Matter and Form of the Sacraments

314. **What is the matter of the sacraments, and how many kinds are there?** The matter of a sacrament is a certain thing, or as it were a thing, or a certain action, determined by the institution of Christ for confecting the sacrament. St. Thomas, III, q. 60, a. 5.

This matter is distinguished into remote and proximate. Remote matter is the thing itself to be used in the sacrament, for example water in baptism; proximate matter is the application and use of the thing in the sacramental action, for example washing. A thing or action of this kind has the character of matter in a sacrament because it is more indifferent and has a less perfect signification, and therefore must be determined by something else for signifying.

315. **What is the form of the sacraments?** The form of the sacraments is certain words, determined by the institution of Christ for perfecting the sacrament by perfecting the signification of the thing or matter. For that which the thing shows more obscurely, the words signify more clearly. St. Thomas, III, q. 60, a. 6.

316. **Can a sacrament be confected without matter or without form?** Matter and form are altogether necessary for the validity of a sacrament; therefore, if either is lacking, the sacraments cannot be confected. The reason is that a sacrament has its being and force from the institution of Christ. Therefore it cannot be confected except in the way in which Christ instituted it. This is furthermore clear from Florence, decree for the Armenians, from tradition, and from the practice of the Church. C. *Non ut* 5 *de Bapt*.

317. **Must matter and form be certain?** In confecting a sacrament, outside the case of necessity, certain matter and form must be used, insofar as they can be had. The reason is that probability of validity does not remove the danger, which is both against the reverence owed to the sacrament, and often against charity toward neighbor, and often also against justice. This is furthermore clear from the first proposition condemned by Innocent XI.

Outside the case of necessity. For, since the sacraments are for men, they can and must be conferred, although certainty about the validity of the sacrament is not had, whenever there is present not only extreme necessity, but also grave necessity or utility, especially if it is prudently feared that, if the present occasion is passed over, they will not afterward be conferred again. The reason is that, since irreverence or contempt is situated in some human action of itself insulting, all irreverence and contempt of the sacrament certainly cease if there is present a cause which, in the common opinion of men, removes every appearance of contempt.

Insofar as they can be had. For where there is question, for example, of the disposition necessary for the sacrament of penance, scarcely any other judgment about it can be had than a prudent and probable one.

Often it is against charity and against justice to use uncertain form or matter; for it would be neither if the recipient consented. But although then harm to neighbor and any malice against charity and justice would be absent, nevertheless irreverence toward the sacrament would not be absent, nor sacrilege, both of the minister and of the recipient; for holy things are to be treated holily. But the harm which can be brought to a neighbor through uncertain matter or form can be most grave, as in the baptism of an infant; simply grave, as in extreme unction of a dying person; light, as in absolution of venial sins; and even none, as in the ordination of a woman.

But what has been said about doubtful matter and form must likewise be said about a subject perhaps incapable. The matter is settled concerning baptism and penance, and the truer opinion concerns confirmation and extreme unction. Roman Ritual, on the sacrament of baptism and of extreme unction; L. 28, 162, 432, IV, 449; Lugo, *De Poenit.*, d. 14, nn. 110, 111; La-Croix, n. 105.

318. **You will resolve:** When danger of death urges, baptism and penance can and must be conferred even with the lowest degree of probability. Therefore a dying person is to be baptized even with rose water, or on the foot, Roman Ritual, *De Bapt. parv.*, or on the fingers or hair. But confirmation and extreme unction can and must be conferred if it is truly probable that neither matter nor form is lacking, and scandal is absent; for scandal also must be removed, while preserving the eternal salvation of another.

From the Roman Ritual, *De Sacr. extr. unct.*, a sick person is to be anointed about whom it is doubted whether he still lives. From St. Alphonsus, n. 719, a child about whose use of reason there is doubt is likewise to be anointed conditionally. It is also lawful in that danger to confer extreme unction with oil of catechumens. It is likewise lawful in the same danger to confer confirmation with blessed oil without balsam. But it is not lawful by the imposition of hands alone, because of the novelty of the thing and the wonder and scandal of those standing by. And if the one about to die cannot confess and receive communion, it is lawful to confer even extreme unction on him with the lowest degree of probability, for example, if he was deprived of his senses in the act of sin, in drunkenness, or in a fight; since then the sacrament becomes one of necessity. L. 82, 103, 107, 111, 162, 702, d. 2, 408, 732, 751; St. Thomas.

Order, especially the priesthood, is never lawfully conferred with doubt about its value, because no necessity and utility of the recipient is had in it, and on the contrary there is the gravest danger to the Christian commonwealth. Cf. nn. 345, 348.

319. **Does a change of matter and form invalidate the sacrament?** A change in the matter and form of the sacraments can be twofold: substantial and accidental. There will be a substantial change in matter if it is physically corrupted, so that it seems to have lost its former nature; or if it can no longer serve its natural use; or if, according to the common estimation of men, it cannot be called the same as that which was determined by Christ. For example, if wine has become vinegar, if ink is made from water, if wine and water are mixed in equal quantity; for then it is judged neither wine nor water, but a mixture of water and wine, which can serve neither baptism nor the eucharist. But there will be an accidental change if the matter, speaking neither physically nor morally, loses its former nature, nor ceases to serve its natural use; for example, if in a small quantity you mix water with wine, or wine with water, the wine

does not invalidate the eucharist, nor the water baptism. St. Thomas, III, q. 66, a. 4; Lugo, *De Euchar.*, d. 4, n. 4; La-Croix, n. 261; L. 103, 207, q. 2.

There will be a substantial change in form if the sense of the words intended by Christ is so changed that it no longer signifies either the sacramental action which is performed by the minister or the sacramental effect; for example, if someone in baptism says: I absolve you; I wish to baptize you.

There will be an accidental change if the form still signifies the same thing, for example: This is my body, with grammatical corruption. Generally grammatical errors change the form only accidentally; for the signification is regularly judged the same.

Every substantial change in the matter and form of a sacrament invalidates it, because it is no longer the rite instituted by Christ, but another. But if it is voluntary, it constitutes grave sin; for it inflicts a grave injury on the author of the rite. No accidental change in the matter and form invalidates the sacrament, because the same rite still remains; nevertheless it induces grave or light sin according as it is notable or of small moment. La-Croix, nn. 40, 46; St. Thomas, III, q. 60, a. 8; q. 74, aa. 3, 4, 5; q. 77, a. 8; suppl., q. 29, a. 9, ad 3; IV Sent., d. 2, a. 2, qq. 2, 3, 4.

320. **In how many ways can the form be changed?** The form can be changed:

By addition; and the form is void if it changes the sense or contains an error against the form itself, for example: I absolve you from your involuntary sins; I baptize you in the name of the greater Father and of the lesser Son and of the created Holy Spirit. If the sense is not changed, and no error against the form itself is had, the form is valid, for example: I baptize you in the name of the Father and of the Son and of the Holy Spirit with this cold water, although it is warm. La-Croix, n. 64. If there is equivocation, the matter depends on the intention of the one pronouncing it; for example: I baptize you in the name of the Father and of the Son and of the Holy Spirit and of the Blessed Virgin Mary. If the name of the Blessed Virgin Mary is added from mere devotion, the form is valid; but if it is added so that baptism is conferred also in her name, it is not valid. St. Thomas, III, q. 60, a. 8.

By subtraction; and the form is again void if words are subtracted which signify the sacramental action, for example these words, I baptize you; or the subject, for example by saying, I baptize. But it is otherwise if the pronoun of the minister is omitted, for it is tacitly present, for example: I baptize you in the name, etc.

By corruption of words, which also voids the form, unless perhaps it happens either from a natural defect, for example in those who lisp, or from some natural haste, or from lack of skill, provided however that it does not altogether remove the sense. For in these cases corrupted words are accepted and understood by common usage as whole; for example: I baptize you in the name of the Fathera and the Sona and the Holy Spirita, which form is valid because it does not remove the sense and is accepted as right, since it is understood as corrupted, not as different. But: I baptize you in the name of the Mother and of the Daughter and of the Holy Spiritess is not valid, because it altogether removes the sense and is accepted as another, altogether different form. Thus also it is not valid if it is said: I am baptized you, etc. St. Thomas, III, q. 60, a. 7; L. 110; *De Cons.*, dist. 86.

By transmutation of words, which, if they are wholly synonymous, leaves the form valid; if they are not synonymous, the form is not valid; if they are doubtful, the form will also be doubtful. Thus in

baptism, I wash or I cleanse in place of I baptize, is valid, for it is a synonymous word; but I anoint is not valid, because it is not synonymous; I regenerate likewise is not valid, or is doubtful, for it is not plainly synonymous, since it signifies the sacramental effect but does not also signify the sacramental action. In penance, I cleanse you, in place of I absolve you, more truly is not valid, for it is not synonymous. Likewise, Christ baptizes you, etc.; Christ absolves you, etc., more truly seems not to be valid, because the action of the minister is not expressed.

By translation of words from one language into another, which does not render the form void; for the signification is wholly the same, even if various idioms are used in one and the same form, for example, *io ti battezzo*, in the name of the Father and of the Son and of the Holy Spirit. L. 109; La-Croix, n. 30.

By transposition of words, which of itself makes only an accidental change, for the wholly same signification remains, for example if you say: You I baptize in the name, etc. L. 110. Yet transposition of words can wholly pervert the sense or render it doubtful, and then the form will be invalid or doubtful, as in the consecration of bread: My is this body; this body is my; this my, is body; this body, is my. Yet the form would be valid if it were said: This, body is mine. St. Thomas, III, q. 60, a. 8, ad 3; Lugo, d. 2, n. 112.

By interruption of words, which, if notable, harms the form, St. Thomas, III, q. 60, a. 8, ad 3; if small, does not harm it, St. Thomas, ibid. What is a long and what is a brief interruption must be judged by prudent estimation. Lugo, d. 2, n. 112; Sporer, n. 91. Commonly a brief interruption is estimated as one Our Father or Hail Mary.

But concerning a brief interruption of syllables of the same word, some judge that it harms the form, others that it does not harm it, others that it harms if the interruption was made by interjecting another word, but by no means if it was made by interjecting some action, for example breathing, coughing, yawning. L. n. 11; La-Croix, n. 33.

By substitution of other signs in place of words, for example nods, writing, etc., which, with the exception of matrimony, which consists in a contract, voids the form; for the form is in words. Florence, decree for the Armenians; St. Thomas, III, q. 60, a. 6; La-Croix, n. 37.

321. **You will resolve:** The form is valid, although it is not lawful, if the interruption is small, for example: I baptize you, and there is interposed: this water is too cold; or: sacristan, turn the page; in the name of the Father, etc. L. 11.

322. **What kind of union must there be between matter and form?** In order that a sacrament be valid, there must be between matter and form, for example between the pouring of water and the pronunciation of the words, such a conjunction that, according to the moral estimation of men, with the nature of each sacrament inspected, one is understood to be referred to the other. The reason is that from matter and form one sign must coalesce. But in a moral composite, such as a sacrament is, moral unity suffices, except for the eucharist, which altogether requires physical simultaneity, since the pronoun this cannot be verified here unless the matter is present. Nor indeed does it matter which is placed first, except in penance. L. 8.

In baptism, confirmation, extreme unction, and order, it suffices if, when one of them has been posited, whether matter or form, the other is placed immediately or soon after it; for example, if in

the conferral of the order of priesthood someone touches the chalice and paten after the bishop has pronounced the words: Receive the power, etc. Lugo, *Resp. Mor.*, l. 1, d. 33, n. 2. **Soon after**, for a brief delay interposed does not harm, namely a delay shorter than one Our Father. L. 8. Cf. Lugo, *De Sacr.*, d. 2, n. 99. In matrimony the consent of one can follow the consent of the other for as long as the latter is judged morally to persevere, as in other contracts. Busembaum, n. 10. In penance absolution can be deferred for a rather long time, as in judgments a sentence can follow after examination of the case. Busembaum, ibid.; Roman Ritual, on the form of baptism; St. Thomas, III, q. 60, a. 6, ad 2; Suarez, d. 2, s. 2.

323. **Note:** If a sacrament consists of several parts, such as the eucharist, extreme unction, or order, when a notable delay is interposed between them, so that the action of the minister can no longer seem one, in the eucharist one must altogether cease; in extreme unction one must repeat from the beginning; in order one must always cautiously supply what was incautiously omitted. L. 724; St. Thomas, suppl., q. 29, a. 2, ad 3. Cf. n. 336.

324. **Must matter and form be united and applied by one and the same minister, and toward the same subject?** Response: affirmatively. The reason is that if one were to place the matter and another the form, or if he were to apply the matter and form to one subject and another, the words of the form would be false: I baptize you, etc. For while another poured the water, he himself would not baptize; or while he himself poured the water on one person, he would nevertheless assert that he was baptizing another. L. 119; St. Thomas, III, q. 67, a. 6.

325. **What if several ministers confect a sacrament, or a sacrament is conferred on several subjects?** Response to the first: If two ministers, for example, place the whole matter and form, whether of the whole sacrament, as if they baptize or consecrate simultaneously, or of part of the sacrament, if the sacrament consists of several parts, as are the eucharist, extreme unction, and order, the sacrament is valid, because nothing is lacking in the being of the sacrament. But in the former case he confects the sacrament who first completes the sign; and if each completes the sign at the same moment of time, each, as far as is in himself, confects the sacrament. L. 120; St. Thomas, III, q. 67, a. 6; q. 82, a. 2. But this is grave, except in the ordination of priests. In the latter case also it is grave, except in grave necessity.

To the second: A sacrament which one and the same minister confers on several at the same time is without doubt valid, because then the form is virtually multiple. This has place, for example, in baptism and in penance, namely when someone under one form baptizes several or absolves several. It is indeed lawful in a case of extreme necessity, for example in fire, shipwreck, etc., Roman Ritual, *De Bapt. parvul.*; but in other cases whether it is grave or light is disputed, for a notable change does not certainly appear. "Nevertheless all say that one would not be excused at least from venial sin" without necessity. L. 29.

326. **How are the words of the form to be pronounced?** Since sacraments are signs, and by signifying grace they effect and sanctify, the words of the form are consequently to be pronounced in a consecratory mode, in the present time: whether indicative, as in baptism; imperative, as in ordination; or deprecative, as in extreme unction. If the words are uttered in another mode, namely merely historically, or promissorily, or interrogatively, or in the manner of preaching for instructing or stirring up, the form is void. And thus this form is not valid: you

are absolved from your sins; I will absolve you from your sins; do I absolve you from your sins? *Theol. Wirceburg.*, n. 109ff.; St. Thomas, III, q. 78, a. 1.

327. **Are the sacraments to be repeated in doubt about the valid application of matter and form?** A threefold rule must be established as to practice:

First, sacraments can be repeated whenever there is a prudent doubt about their value. The reason is that if perhaps the sacrament were not valid, those who approach to receive it would be deprived of its fruit. But that prudent fear of so great an inconvenience is a sufficient reason why the sacrament be repeated is clear from the very well-known axiom: Sacraments are for men. Roman Ritual, *De Bapt. parvulorum*, c. 3, n. 3; Rubrics of the Missal, tit. 5, n. 2; L. 28, 136.

Second, sacraments generally cannot be repeated without grave sin when there is no prudent doubt about their value. The reason is that they would be repeated without cause, and therefore grave injury would be inflicted on them. Catechism of the Council of Trent, on Baptism, n. 57.

Third, sacraments must be repeated whenever, with a prudent doubt having arisen concerning their value, charity, justice, and religion demand it, that is, whenever by justice, charity, and religion they ought to have been confected or administered. The reason is that the nullity of the sacrament, if perhaps it were present, would redound to the harm of neighbor, and sometimes to contempt or irreverence of Religion. But then they are to be repeated only conditionally, so that care may be taken for reverence toward the sacrament. L. 27ff.

II. On the Matter and Form of the Sacraments

328. **You will resolve:** First, the more necessary sacraments, and those which are conferred only once, namely baptism and order, are more easily to be repeated, even if a much greater probability favors the value of the sacrament against reasons of the lowest degree of probability on the opposite side.

Second, absolution is to be repeated with a penitent guilty of mortal sin if there is prudent doubt about the due pronouncing of the form. But if the penitent has not brought the necessary matter of confession, it will not be necessary to repeat the form, since communion can be permitted to him even without absolution.

Third, a minister who doubts lightly and does not know why he fears, or only does not remember reflexively that he pronounced the words of the form, sins mortally of himself if he repeats the form, or even repeats one word three or four times. The reason is that he changes the form and introduces a new rite around the gravest action of all. Moreover, he presents Christ, whom he represents, as speaking ridiculously. In practice, however, scrupulous persons who repeat the form are usually excused from mortal sin, indeed often even from venial sin, because, too agitated by scruples, from perplexity or without advertence, they act so foolishly.

Fourth, if in Mass after consecration a doubt arises for you about the due pronouncing of the form, or about total omission, you neither ought nor can repeat anything, since otherwise you are not accustomed to omit these things; for judgment must be made from what commonly happens, unless nevertheless you doubt very probably, as the rubric says. L. 224; 107, q. IV.

329. **What is to be said in particular as to the celebration of Mass?** It must be noted from St. Thomas, "that although the priest does not recollect that he said some of the things which he ought to have said, nevertheless he ought not on this account to be disturbed in mind; for one who says many things does not recollect everything he has said, unless perhaps in speaking he apprehends something under the aspect of already having been said; for in this way something becomes memorable. Hence if someone attentively thinks of what he says, but nevertheless does not think that he is saying it, afterward he does not much recollect that he said it; for something becomes subject to memory insofar as it is received under the aspect of the past ...

"If, however, it is probable to the priest that he has omitted some things, then, if they are not of the necessity of the sacrament, I do not think that on this account he ought to resume by changing the order of the sacrifice, but he ought to proceed further. But if he is certain that he omitted something of those things which are of the necessity of the sacrament, namely the form of consecration, since the form of consecration is of the necessity of the sacrament just as the matter also is, the same thing seems to be done as was said in defect of matter, namely that he resume from the form of consecration and that the rest be repeated in order, lest the order of the sacrifice be changed." III, q. 83, a. 6, ad 5.

This doctrine of St. Thomas agrees with the rubric of the Roman Missal, *De Defectibus in celebratione*, tit. 5, *De Defectibus formae*, n. 2: "If the celebrant does not remember that he said those things which are commonly said in the consecration, he ought not on that account to be disturbed. If nevertheless it is certain to him that he omitted something of those things which are of the necessity of the sacrament, that is, the form of consecration or a part of it, let him resume the form itself and pursue the rest in order. But if he very probably doubts that he omitted something, let him repeat the form at least under tacit condition. But if they are not of the necessity of the sacrament, let him not resume, but proceed further."

Note the distinction which is had according to the rubric cited here for the twofold case, in which it is certain to the priest that he omitted something of those things which are of the necessity of the sacrament, or he only very probably doubts that he omitted something of this kind. For in the first case it is said that "he should resume the form itself and pursue the rest in order." In the other case, however, it is said, "let him repeat the form at least under tacit condition."

330. **Now as to the first case, in which the priest must resume the form itself and pursue the rest in order, a question can be raised:** First, whether he must resume and pursue the rest in order in the case in which it is certain to him that he omitted the form of only one consecration, or also in the case in which this is certain to him about both forms of consecration. Second, from where he begins to resume. Third, what is meant by this: let him pursue the rest in order; whether all things after the resumed form must be repeated in order, or whether he ought to pursue in order all things which remain from that point of the Mass in which the priest detected his error.

331. **As regards the first question:** If an essential defect occurs in the form of only one consecration, the consecration must certainly be repeated, even if that defect occurs from the malice of the minister and after the consumption of the species not rightly consecrated, with matter placed which was not consecrated, and, if it was from malice, by repenting of the

former fault. The reason is, first, that the sacrifice may be perfected; second, because the rubric must at least be understood of the case of an essential defect of one consecration; third, because the same reason holds for unsuitable matter as for matter without form.

Moreover, according to the rubric, tit. 3, nn. 5 and 6, it is said: "If the celebrant should notice after consecration that the host is corrupt or is not wheaten, even after the consumption of that host, after placing another, let him make the oblation and begin from the consecration, namely from those words, *Qui pridie*, etc.; but if this happens after the consumption of the blood, new bread and wine with water must again be placed, and after the oblation has first been made, the priest should consecrate beginning from those words, *Qui pridie*, etc., and immediately consume both and pursue the Mass, lest the sacrament remain imperfect." Likewise in tit. 4, nn. 4 and 5, it is said: "If the celebrant after the words of consecration notices that wine was not placed, but water, let the water be deposited into some vessel, and again let him place wine with water in the chalice and consecrate, resuming from the aforesaid words, *Simili modo*, etc. If he notices this after consumption of the Body or of water of this kind, let him place another host to be consecrated again, and wine with water in the chalice, offer both, and consecrate and consume, etc." Or, the rubric adds there, "if Mass is celebrated in a public place where many are present, to avoid scandal he will be able to place wine with water, and, after making the oblation as above, consecrate, and immediately consume, and pursue the rest." Therefore the same thing must be done if an essential defect occurred not by reason of matter, but by reason of form.

332. **If an essential defect occurs in the form of both consecrations**, and is noticed before the consumption of either species, it seems that both matters must be consecrated again. The reason is that the rubric says absolutely and quite generally that the form is to be resumed "if it is certain to him that he omitted something of those things which are of the necessity of the sacrament, that is, the form of consecration or a part of it," and no distinction is made between a defect of only one consecration or of both. Suarez thinks the same, *De Sacram.*, d. 85, s. 1, paragraph *Secundo etiam constat*, etc. "If the celebrant," says the eminent Doctor, before consumption "through defect of intention or form has consecrated neither species, he will be held secretly to repeat and consecrate before he consumes, and as soon as he can, not by force of the precept of perfecting a substantially begun sacrifice, because this does not in truth yet obligate; but by force of the precept of not feigning something false in this ministry, and consequently of not persevering in the begun fiction; nor of consuming drink and food by way of a sacrament which is not a true sacrament, nor of giving others occasion of adoring mere bread and wine."

But if the same essential defect of both forms is noticed after consumption, the consecration does not seem to be repeated. And indeed the reason which the rubric adduces for supplying a defect of one or other matter after consumption is "lest the sacrament remain imperfect," tit. 3, n. 6, "because the precept about the perfection of the sacrament is of greater weight than that it be consumed fasting," ibid., n. 5. Now when an essential defect has occurred in both consecrations, no sacrament was really made, neither perfect nor imperfect, but the whole was fictitious; and therefore then the precept of integrating or perfecting the sacrament does not obligate. On the other hand, the precept of not

receiving the Sacrament after the fast has been broken obligates. Therefore this precept in that case seems to be observed before the other. And the eminent Doctor affirms the same in the cited place.

333. **As to the second question proposed**, there are various opinions. But the more common opinion is that only those words are to be repeated which constitute the complete form, which, according to the rubric, tit. 5, n. 1, are: *Hoc est*, etc.; *Hic est*, etc. The reason is that the rubric says: let him resume the form itself. Yet the same rubric, tit. 10, n. 3, seems to indicate that one must resume from the words *Qui pridie*, etc., *Simili modo*, etc. Suarez, loc. cit., paragraph II, *Sed quaeres tandem*; Gavantus and Merati on the cited rubric.

334. **As to the third question proposed**, St. Thomas, loc. cit., seems at least to imply that the priest ought to pursue the rest in order in such a way that he repeats them in order. But according to the rubric, nothing seems to be repeated from accidentals which are not of the necessity of the sacrament. The reason is that the rubric does not say: let him resume the form and the rest in order, but distinguishes very carefully and says: let him resume the form, and pursue the rest in order, namely let him pursue from that point of the Mass to which he had come. And thus, if the matter happens immediately before or after consumption, as is said concerning defect of matter in the same rubric, so also in this defect of form he should consecrate and immediately consume, tit. 3, nn. 5, 6. Besides, the cited rubric says absolutely: "But if they are not of the necessity of the Sacrament, let him not resume, but proceed further." Therefore, whether only accidentals were omitted, or essentials and accidentals at the same time, it will suffice to repeat only the essentials. Suarez also thinks this, loc. cit., part *Sed quaeres tandem*, etc.

335. **Finally, note concerning accidental defects** that the general rule is: after they have already been committed, regularly speaking, they are not to be supplied by repeating something, or by saying or doing in reversed order what had to be done earlier. **Regularly**, because if sometimes the delay were so small that, with no other action interposed or prayer said, the priest notices the committed defect, then repetition could be made and the defect supplied. For in that case the order of the sacrifice is not inverted, but on the contrary care is taken that all things be done in due order.

But except from this rule an accidental defect indeed, but a very grave one, namely if the bread is leavened, or if water is not mixed with the wine; although after consecration this cannot be supplied, nevertheless before consecration it must altogether be guarded against. Rubric *De Defectibus*, tit. 4, n. 7; St. Thomas, III, q. 83, a. 6, ad 4; Suarez, *De Sacr.*, d. 83, s. 2; Reuter, *Neo-Confess.*, part 3, c. 13, n. 268; La-Croix, l. 6, part 2, n. 443ff.; Diana, tr. 1, *De Celebr. Missar.*, r. 236.

336. **These things which have been said about celebration of Mass can be adapted to the other sacraments.** Therefore, if someone does not remember that he omitted something, or if he does not remember that he said or did something from those things which were to be said or done, he ought not to be disturbed, and should pursue the rest in order. If certainly or very probably he remembers that he omitted something, if he does not remember immediately, it is not fitting to resume everything again, nor to supply anything in reversed order; but let him resume or supply what is substantial, and pursue the rest in order.

But if something has been omitted concerning which it is disputed whether it is substantial or accidental, what was incautiously omitted must be cautiously supplied. C. 3 in fine *de Presb. non bapt*. Are all things then to be repeated entirely from the beginning? It must be seen what part was omitted which must be supplied. If the part is separated and independent from the others, as the final imposition of hands in the priesthood, only this must be supplied, Sacred Congregation of the Inquisition, May 27, 1840. If it is not independent or separated from the others, as the second imposition of hands or the handing over of instruments in the priesthood, and the chrismation in confirmation, the whole essential rite must certainly be supplied. Sacred Penitentiary, March 31, 1888; Sacred Congregation of the Council, May 28, 1796; St. Thomas, suppl., q. 29, a. 2, ad 3.

III. On the Minister of the Sacraments

337. **Who is the minister of the sacraments?** Christ himself is principally acting in the sacraments; the ministers of the Church operate only instrumentally in the sacraments. St. Thomas, III, q. 64, aa. 4, 5. In matrimony the contracting parties themselves are the ministers. In the other sacraments, regularly, power of order and jurisdiction is required, except for the eucharist, in which no jurisdiction is regularly required. Without power of order no sacrament is valid, except baptism. Without power of jurisdiction the sacrament is valid, except the sacrament of penance, which is invalid; but it is conferred illicitly, and it is a grave sin if it is conferred without faculty, at least presumed or interpretative, for example if a simple priest who is not the pastor administers baptism, viaticum, or extreme unction, or if a bishop outside his own diocese confirms or ordains. Clementina 1 *de Privilegiis*; Trent, sess. 6, c. 5 *de R.*; sess. 7, c. 10.

338. **Is attention required in the administration of the sacraments?** Attention is the application of the mind to the things which are being done, or it is an act of the intellect by which a man considers what he is doing.

For the validity of the conferral of the sacraments no attention is required except that which is found in every truly human act. Therefore the sacraments can commonly be validly administered even by a distracted minister, or one thinking at the same time about other business. The reason is that the morality of the act proceeds not from actual attention, but from at least the virtual intention of the agent. Besides, attention often does not depend on the will of man; but Christ could not require a condition in the minister of the sacraments which would sometimes be impossible.

For the lawful conferral of the sacraments, such attention is required that every voluntary distraction be absent. The reason is that the reverence owed to the sacrament demands that it be treated with attention. But voluntary distraction ordinarily does not exceed venial sin, according to the common opinion of theologians, unless one exposes himself to the danger of gravely erring in the form. Yet more probably and more commonly they except the eucharist, in the confection of which they hold every voluntary distraction to be mortal sin because of the greater dignity of the sacrament. Nevertheless La-Croix, l. 6, part 2, n. 443; Mazzotta; and others deny this, not improbably. St. Thomas, III, q. 64, a. 8, ad 3; IV Sent., d. 6, q. 1, a. 2, q. 1, ad 4; L. 14; l. 4, n. 75.

339. **Is intention required in the administration of the sacraments?** Intention is an act of the will tending toward some end, or an act of the will by which someone intends to do or omit something.

For the validity of the sacrament there is required in the minister some true and serious will at least to do that which the Church does, namely the Catholic Church. Trent, sess. 7, c. 11. Hence St. Thomas, III, q. 83, a. 4, ad 7, says: "The efficacy of the sacramental words can be impeded by the intention of the priest."

Yet actual intention is not required, but virtual intention suffices. The reason is that actual intention, although best and to be desired, is sometimes morally impossible; but virtual intention sufficiently influences the action of the minister so that this can be called truly human and deliberate.

Habitual intention does not suffice, nor does interpretative intention. The reason is that for a human act some will is required by force of which the act is placed. Now neither habitual nor interpretative intention is of this kind. Not the first, because it is neither elicited actually by the will, nor, although sometimes elicited, does it endure in some effect or in a series of actions. Not the second, because it is neither actually elicited nor ever was actually elicited, but would only be elicited if the mind thought about the thing to be done. Suarez, d. 16, s. 2; Lugo, d. 8, nn. 28, 35.

"Even a coerced intention of the minister, or one extorted by fear, suffices, except in matrimony. Likewise, error of the minister concerning the person of the recipient does not invalidate the sacrament, except matrimony." L. 19; E. M.

340. **Note:** First, to cast aside scruples in this matter, it must be noted that implicit intention suffices. Hence St. Alphonsus, n. 18, says: "Viva and others rightly say that a minister who customarily places the actions required for a sacrament, unless he positively excludes the due intention, imprudently doubts about it, because at least he wills to do what he is otherwise accustomed to do, and what other ministers do. Add that, by the fact that he knows that action to be sacred and not to be placed in vain, he practically intends to place it according to its end. There is no need that the minister by mouth or heart reflexively say that he intends to confect the sacrament; it suffices that it be present to his mind, and that he attentively do what he does." And in n. 25 the same holy Doctor has these words: "One who brought smaller hosts to the altar, about which, while consecrating the larger host, he did not explicitly think and did not uncover them, ought not repeat the consecration."

Second, if someone intends to do what another schismatic or heretical Church does, if that Church truly makes a sacrament, the sacrament is valid, from Trent, sess. 7, on Baptism, c. 4; Sporer, n. 121; L. l. 6, n. 21.

Third, it is necessary that the intention precede the sacramental action, which takes its force from the intention; that is, it must be elicited before you begin to apply the matter and pronounce the form. And so, if someone without the intention of baptizing or confirming washes or anoints, and immediately after the washing or anointing, once this intention has been conceived, pronounces the form, he effects nothing. St. Thomas, III, q. 64, a. 8; IV Sent., d. 6, q. 1, a. 2, q. 1.

341. **Is internal intention required, or the intention of doing the rite which the Church intends?** One intention here is internal, another external. Internal intention is had whenever the minister, when he perfects the sacrament, wills to effect that which is to be effected by that sacrament. External intention is had when he performs the whole external rite seriously, and as a minister of the Church. Therefore if he has both wills, the sacrament is valid. If he has neither, it is not valid, as if he baptizes or absolves for the sake of a joke, Trent, sess. 14, on Penance, c. 9; or for the sake of example or devotion, as if a pastor washes a newly born infant, not so that he may baptize him, but so that he may teach the midwife the rite of baptizing; or if a nurse, while washing a child in the morning according to custom, says: I wash you in the name of the Father, etc. If he has only internal intention, it is still valid, as if someone washes the head of a dying infant, the child of unbelievers, as if doing a cleansing or medicine for him, and meanwhile says in a low voice: I baptize you, etc.

If he has only external intention, the question is not yet entirely settled. The first opinion denies. The reason is that from Trent there is not required in the minister an intention of doing what the Church intends, but only of doing what the Church does; and therefore it suffices that the minister seriously applies the due form to the matter, as the Church does. But the second opinion, common and to be held in practice, affirms. It is proved from Trent, sess. 7, c. 11, where the intention of doing what the Church does is required. Therefore an intention only of seriously applying form to matter, as the Church does, does not suffice; for in reality this intention, while the external action is placed, is inseparable from the action. But beyond this there is required the intention of doing the sacramental rite which the Church does; otherwise both Trent and Florence would have required in vain, besides matter and form, the intention of the minister of doing what the Church does. The Church does not perform only the external rite; and therefore a minister who uses only external action does not do what the Church does.

Consequently, if he has the purpose, for example, while consecrating, of consecrating only this one of two hosts and not that one; while ordaining, of not ordaining those who perhaps are not his subjects; if he absolves under this tacit condition, if you restore; he does not consecrate, does not ordain, does not absolve. Besides, this is clear by the same reason by which the necessity of the minister's intention for confecting a sacrament is proved. L. 23, 26; St. Thomas, III, q. 64, aa. 8, 10; Benedict XIV, *De Syn.*, l. 1, 7, c. 4, n. 9; l. 8, c. 11, n. 2; E. M.

342. **Does ignorance or error of the minister void the sacrament?** If the minister has at least an implicit and virtual intention of doing what the true Church does, the sacrament is valid, even if by error he thinks his own heterodox Church is the true Church; even if he does not have the explicit intention of confecting a sacrament, provided that he does not exclude this intention; even if he does not understand the form; even if he errs about the true signification of the form, for example if he thinks that these words, This is my Body, signify only the mystical presence of Christ; even if he falsely thinks that either the matter or the form is not suitable, for example, if someone, while consecrating bread, judges the words *which shall be given up for you* to be necessary and omits them.

The reason is that our ignorance or error does not change the truth of the thing. Therefore, if sacraments are perfected by three things, and only three, namely things, words, and the minister with

the intention of doing what the Church does, the truth of the sacrament stands notwithstanding the ignorance and error of the minister. Besides, if it were otherwise, it would follow that since Protestants do not believe that a sacrament is effected by matrimonial consent, their marriage would be null, which is false. L. 21, 22; E. M.

343. **Must the minister's intention be determined to certain matter and person?** Response: affirmatively. The reason is: as to matter, because otherwise it would remain in a state of indifference; for it cannot be drawn from that state and determined to a sacrament except through the intention of the minister. As to the person, because the effect of the sacrament cannot be applied in general, but to some subject; otherwise no application would be made.

Namely, according to the nature of the matter treated, the object or term of the action must be determined. For if, for example, you were to say, I give, but were not to determine what or to whom, you would have an act empty of all force.

344. **If the minister has two contrary intentions, which must prevail?** If those wills are simultaneous, the predominant one prevails, namely the one which would be chosen once the impossibility was known.

If among contrary wills one succeeds another, the later one is valid, unless the former has revoked, at least virtually, every subsequent will; for then the former will certainly prevails, provided it is not expressly revoked. But in these matters, if doubt still remains, the value of the sacrament will be doubtful. And this also holds for the application of Masses. L. 24, 784; l. 3, n. 700; Lugo, d. 8, nn. 121, 123. Cf. vol. 1, n. 18.

III. On the Minister of the Sacraments

345. **Is the conferral of a sacrament with conditional intention valid and lawful?** A condition can regard those things which in any way pertain to the value of the sacrament; the dispositions of the subject lawfully and fruitfully receiving the sacrament; or any other thing.

A condition regarding the value of the sacrament can lawfully, in a case of necessity, be placed, and ought to be placed, if there is doubt, for example, whether it is water with which someone is baptized; whether the dying person to be fortified by extreme unction is still living; whether the sacrament was invalidly received and therefore is to be repeated. The reason is that, as far as can be done, care may be taken for the reverence owed to the sacrament. And here it must be carefully noticed that, if besides this reverence owed to the sacrament there is something else to be guarded against which cannot be guarded against by the condition placed, it is not lawful to use that condition, and therefore it is not lawful to confect the sacrament under that condition. And thus it is never lawful to confect the eucharist conditionally with doubtful matter, because of the danger of material idolatry; it is never lawful to confer orders with the same doubtful matter, because of the very grave inconveniences of an invalid ordination. Outside the aforesaid case of necessity and doubt, to administer a sacrament under condition would often be grave, because it would not be without trifling in a grave matter.

A condition regarding the dispositions of the recipient can and must be placed in the sacrament of penance, when it is conferred from an urgent cause, lest the sacrament be exposed to nullity. But in the other sacraments generally it is not lawful; for if it afterward becomes clear that the dispositions were lacking, either someone would have to lack them perpetually, or the sacraments would be repeated not without scandal. Only in the article of death, when matters are desperate, will it be lawful to confer baptism, extreme unction, and, if this cannot be given, confirmation. L. 82, 732.

It is not lawful to place other conditions, and it would be grave. For if the condition is about the future, the sacrament is null. For it is not valid when the matter and form are placed, because intention is lacking; nor is it valid when the condition is verified, because then matter and form are lacking. Matrimony is excepted, which, after the likeness of all other contracts, can be celebrated under a condition about the future; when this is fulfilled, they are perfected, just as if from the beginning they had been entered purely and without condition. Nor therefore is the aforesaid inconvenience to be feared. For since consent is referred to the event of the condition, then in reality the contract is perfected, and therefore then the sacrament is made. But if the condition is about the present or the past, the sacrament is exposed to danger of nullity; indeed, it is null if the event of a condition of this kind cannot be known in a human way, since the sacraments certainly must be administered in this way; for example, if you are predestined. L. 25, 26, 431; E. M.

346. **Is the conferral of the sacraments with conditional intention always lawful when there is doubt whether they were validly conferred?** As to sacraments imprinting a character, it is certain that it is lawful. C. *De quibus* 2 *de Bapt.*, where this form is indicated in doubt about baptism conferred: If you have not yet been baptized, I baptize you, etc.

As to the other sacraments, it is also lawful if there is a sufficient cause for placing the condition. The reason is that the sacraments are for men, and by the conditional conferral of a sacrament care is taken, insofar as can be done, both for the good of those who receive the sacrament, if perhaps they are capable of it, and also for the reverence of the sacrament. L. 27, 28; E. M.

"It is lawful for a confessor prudently doubting whether he absolved a penitent to absolve conditionally. And Tournely and others say the same when a child is to be absolved about whom it is doubted whether he is capable of reason. But if someone, judging the penitent to be disposed, were to absolve him conditionally, saying: I absolve you, if you are disposed, they rightly say that he would not sin mortally, but would not be excused from venial fault, since this would be against the rite of the Church." L. 28.

"It is certain that, in the case in which the extreme necessity of a neighbor is present and no matter is had except doubtful matter, then the minister not only can, but is bound under grave obligation to minister the sacrament to him conditionally. Lugo notices, however, that if afterward certain matter is had, and there will be place for it, the sacrament must be repeated conditionally, if perhaps the first was invalid. Understand this of non-repeatable sacraments, such as baptism, confirmation, and order." L. 29. As to the other sacraments, there is no special difficulty, since of themselves they do not stand in the way of repetition.

347. **Must the condition be expressed in words?** Response: negatively. The reason is that it suffices for the reverence of the sacrament that it be conceived in the mind. Indeed, there is not

even need to have the condition explicitly and formally in the mind; but it is enough if it is had implicitly and virtually, as one has it who wished to hear confessions according to the institution of Christ or the intention of the Church; because in this way the reverence owed to the sacrament is still sufficiently preserved. Yet it must be placed orally and expressly where the rubric prescribes this, as in conditional baptism, especially if it is conferred publicly, lest those standing by believe that baptism is absolutely repeated; and in conditional extreme unction. Roman Ritual, *De Sacr. bapt.*, *De Sacr. extr. unct.*; L. 29; H. A., tr. 14, n. 3; La-Croix, n. 83; Gobat, n. 272; E. M.

348. **In conferring or receiving sacraments, is it lawful to use a probable opinion?** As to the conferral of the sacraments, where there is question of their value, generally speaking this is illicit from the first proposition condemned by Innocent XI. The reason is that irreverence would be done to the sacrament, and danger of harm would be present to the subject, especially in baptism because of its greatest necessity, and in order because of the public harm also of others.

Yet it is excepted: first, if necessity or grave utility is present on the part of the neighbor. The reason is that the sacraments are for men; nor indeed is there an obligation of rendering to the sacraments more than probable reverence. Second, if there is a probable opinion concerning the jurisdiction of the confessor, or concerning the validity of matrimony. The reason is that the Church then supplies by her authority as to conferring jurisdiction on the confessor, and as to convalidating the contract, if perhaps that contract is null because of an impediment which the Church removes by supplying. Third, when administration of the sacrament would become subject to too many scruples or difficulties. Otherwise an infant could not be baptized whom the parents assert not to be baptized, since such testimony is only probable; nor could a penitent be absolved concerning whose disposition only prudent probability can be had. L. 57, 633; l. 1, nn. 50, 51.

As to the reception of sacraments with a probable opinion, if again there is question of the value of the sacraments, the same must be said, for the same reasons. But in those things which do not pertain to the value of the sacraments, in sacraments either to be conferred or to be received, the same rule holds as in other laws. For if, probability standing, other laws are not contemned, certainly, with the same probability standing, the sacraments are not contemned. This holds especially as to the dispositions of those ministering and receiving. For in these, grave probability is held for certainty. Besides, both administration and reception of the sacraments would be continually subject to scruples and anxieties of conscience. Therefore it is enough to approach the sacraments, whether to confer or to receive them, with probable disposition. Lugo, *De Poenit.*, d. 14, n. 109; La-Croix, n. 105; L. l. 1, nn. 32, 48; l. 6, nn. 461, 475, 482, 560, 573.

349. **Are faith and probity of the minister required for the valid and lawful administration of the sacraments?** For the value of the sacraments neither faith nor probity, or the state of grace, is required in the minister. This is clear, first, from the practice and perpetual tradition of the Church, which never willed those baptized by heretics and the wicked to be rebaptized. It is clear, second, from the definition of the Church. Trent, sess. 7, canon 12 on the sacraments; canon 4 on baptism.

But for the lawful administration of the sacraments faith and probity are required in the minister, at least if he has been consecrated for conferring the sacraments and confects them solemnly, that is, with the whole rite prescribed by the Church. Therefore one who ministers the sacraments in mortal sin sins gravely; for a minister destitute of faith or wicked inflicts grave injury on God and Christ by treating holy things unworthily, and, as far as is in him, contaminating them. Besides, since the minister of the sacraments represents Christ the primary minister, who is the Holy of Holies, and bears his person, it is necessary that he also be holy. **At least**, etc., for whether the holiness of the office, or also the holiness of the thing, demands this is not sufficiently clear. L. 31, 32; St. Thomas, III, q. 64, a. 6; q. 82, a. 5; suppl., q. 36, a. 5; q. 38, a. 2; Lugo, d. 8, n. 150; E. M.

350. **Does a minister sin gravely who confers in mortal sin a sacrament for which he has not been specially ordained or consecrated?** Response: probably negatively, because the obligation in the minister of having holiness probably does not arise precisely from the very holiness of Christ and of the sacrament considered in itself, but from the consecration of the minister in order to confer the sacraments. Billuart, diss. 5, art. 4; St. Thomas, III, q. 64, a. 6; IV Sent., d. 5, q. 2, a. 2. Yet others affirm. St. Ligorius, n. 32, admits the probability of each opinion; nevertheless he inclines more to the affirmative. Cf. Sporer, n. 171; Roncaglia, c. 3, q. 6; Sanchez, *De Matr.*, l. 2, d. 6, n. 4.

"This question," as the same St. Alphonsus says in the cited place, "has place only in baptism and matrimony, for it is clear that the other sacraments cannot be ministered except by consecrated ministers." Hence those contracting matrimony in mortal sin probably sin gravely only by receiving the sacrament, not also by ministering it. L. 30; l. 6, n. 884.

351. **Does a priest, or consecrated minister, sin gravely when he ministers a sacrament in mortal sin, but not solemnly, for example baptism without ceremonies in a case of necessity?** It is controverted, as in the preceding question, and the same authorities and reasons are brought forward for each side. Hence it must probably be said that he does not sin gravely, because although he is of himself consecrated for ministering the sacraments, nevertheless he does not act as consecrated or from office, but only as a layman from charity for aiding his neighbor in necessity. L. 32, 884.

352. **Does a consecrated minister solemnly ministering in mortal sin sin gravely if grave necessity urges?** Response: negatively, rigorously speaking, namely if the danger is so urgent that time does not allow him to elicit an act of contrition. But this hypothesis must generally be denied. For it is enough by an interior act of the will to conceive sorrow and detestation of sin because it is an offense of God, which can be done immediately. Moreover, a minister conscious of grave fault is not to be excused from mortal sin if he can foresee a case of necessity, as a pastor and others who by office must minister the sacraments can, and who therefore are held by a special obligation habitually to remain in the state of grace. L. 33, 86, 617; Lugo, d. 8, n. 151; *De Euchar.*, d. 9, n. 8; Sanchez, d. 207.

353. **Does one who ministers the eucharist in mortal sin sin gravely?** Response: more probably affirmatively. The reason is that he inflicts grave injury on the most holy eucharist. For although he himself does not act as an efficacious cause in confecting the sacrament,

nevertheless he is its dispenser, specially consecrated for this, and performs a ministry which immediately cooperates with the sanctification of the soul.

Hence one celebrating and ministering in mortal sin commits four sacrileges: first, because he confects the sacrament; second, because he receives it; third, because he ministers to himself unworthily; fourth, because he ministers the eucharist in mortal sin. But it is only one action, and therefore it is enough to say that he celebrated in mortal sin. L. 35, and others commonly.

Yet Lugo, d. 8, n. 155; Salmanticenses, tr. 1, c. 7, n. 11; and others probably judge that he sins only venially, since he neither acts in the name of Christ nor himself sanctifies anyone, but as it were transfers the sacrament from place to place. Diana thinks this opinion probable not only if communion is ministered outside Mass, but also if it is ministered in Mass. Tr. 2, *De Praec. div. et eccl. sacr. comm.*, res. 25. St. Thomas, suppl., q. 36, a. 5, ad 4; L. l. 2, n. 46.

354. **Do those sin gravely who in mortal sin either mediately or immediately touch or carry the eucharist?** There is a threefold probable opinion. The first and more probable opinion affirms in both cases, because they treat the most holy thing, or the Body of Christ, unworthily. St. Ligorius, n. 35, calls this opinion very probable.

The second opinion denies, because no administration of the sacrament is present here, nor does the matter appear so grave that it induces mortal sin. Thus La-Croix, n. 101; Salmanticenses, c. 7, n. 1; Busembaum; and St. Ligorius says that this is not improbable.

The third opinion distinguishes in this way: those who immediately touch the most holy eucharist in mortal sin do indeed sin gravely, but not those who touch it mediately. The reason is taken from the very different degree of irreverence between the first case and the second. Thus Billuart. But if the opinion of Cardinal Lugo, about which in n. 353 here, is not without its probability, then every difficulty vanishes. St. Thomas, suppl., q. 36, a. 5, ad 4.

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355. **Do those sin gravely who exercise other sacred functions in mortal sin?** Response: negatively, because all other exercises of orders, apart from the confection and administration of the sacraments, do not seem to require holiness under grave obligation, since they are not proximately ordered to the sanctification of the soul. Thus commonly and more probably.

Therefore the following do not sin gravely: first, deacons and subdeacons who solemnly minister at the altar in mortal sin. Second, bishops in mortal sin confecting chrism or holy oil. Third, a bishop or priest who in mortal sin consecrates or blesses a church, blesses sacred vestments or corporals, assists at matrimony, blesses ashes, holy water, etc. Fourth, a preacher existing in mortal sin. L. 37-40, 747, 767, 889; Lugo, d. 8, n. 152ff.

356. **Is the minister held to confess before the confection of a sacrament if he is guilty of mortal sin?** Response: affirmatively, if there is question of celebration of Mass and he does not lack access to a confessor, because all the faithful who are about to receive communion must first make confession, from Trent, sess. 13, c. 7, canon 11.

But more probably negatively if there is question of the other sacraments, because he is obligated to confession by no law; and therefore it suffices that he elicit an act of contrition. Except, however, if it is clear to him that perfect contrition is lacking. L. 34, 617.

357. **Does one sin gravely who hears confession in mortal sin but does not absolve?** Response: more probably negatively, because by hearing confession the confessor does not confect the sacrament. L. 36.

358. **How many sins does a confessor commit by successively absolving several penitents in mortal sin?** The first opinion is that he commits as many sins as the persons he absolves. The reason is that the individual absolutions constitute so many distinct moral actions, so many complete judgments, and so many sacraments conferred in a state of sin, and therefore so many sins. Thus L. l. 5, n. 50, with others.

The second opinion is that he commits only one sin. Thus Salmanticenses, *De Censur.*, c. 1, n. 172, with others whom they cite; and Lugo, *De Poenit.*, d. 16, n. 558, calls this opinion probable. The same must generally be said of one who successively but continuously confers several sacraments, for example baptizes, confirms, or ordains several. And indeed, if the sin is taken from the holiness of the office, it is truer that one sin is committed, because one ministry of baptizing, confirming, etc., is exercised. Busembaum, n. 617.

359. **How many sins does one commit who ministers the eucharist to several in mortal sin?** Response: more probably only one, because he places one moral action; for the individual distributions are had by way of one thing and constitute one administration and one banquet. L. 30, 35; l. 5, n. 50. Cf. n. 353, where the twofold opinion about the gravity of this fault was brought forward.

360. **What is to be said of the obligation of ministering the sacraments?** Those having care of souls are held under grave obligation from justice to minister the sacraments to their subjects who reasonably ask. For by undertaking the care of souls they obligated themselves to this, a tacit contract having been entered with the subjects from whom they receive support or at least honor.

Therefore they are held if the common precept of receiving those sacraments urges, or if the private necessity or utility of the one asking requires administration; for example, if the one asking foresees some danger, or is engaged in temptation and needs the grace of the sacrament, or if he wishes to exercise devotion fitting to his state or gain an indulgence, etc.

Others not having care of souls are not held to minister the sacraments from justice; nevertheless sometimes they are held from charity, namely in the grave necessity of a neighbor. L. 58, 623, 728, 729.

361. **Who here are judged to have care of souls?** All those who by office, or by a special title of spiritual jurisdiction or delegation, ought to feed or care for some part of the flock of Christ. Therefore such are bishops, pastors, and anyone who has subsidiary care of souls from a commission or public office, as are coadjutors or vicars of pastors, chaplains of soldiers,

hospitals, etc. Likewise with respect to regulars their proper prelates or superiors, and with respect to nuns their chaplains or confessors. L. 58.

362. **What sacraments must be ministered in necessity, even with danger of death, whether by those having care of souls or by others?** Those who do not bear care of souls are certainly held only to minister the sacraments absolutely necessary for salvation, namely baptism and penance, or extreme unction when someone can in no way confess. The reason is that they are not held except from charity alone to aid a neighbor in the gravest danger to salvation. But only the aforesaid sacraments are necessary for salvation.

Even those bearing care of souls are very probably held to minister only the aforesaid sacraments with any danger whatever. The reason is that the other sacraments are not of such necessity that one is held to confer them with grave danger to life. Thus L. 233, 728, relying on the declaration of Gregory XIII, Oct. 12, 1576, and likewise on the declaration of the Sacred Congregation of the Council approved by the same Pontiff.

Nevertheless those who bear care of souls are held to expose life not only in extreme necessity, but also in grave necessity, while other ministers are obligated to this only in extreme necessity. La-Croix, l. 3, part 1, n. 755ff.; L. 58, 624; l. 2, n. 27; l. 3, n. 389; St. Thomas, II-II, q. 26, a. 5.

363. **Is one who is not a pastor held to expose his life to minister the aforesaid sacraments with only probability of success or necessity?** The first opinion affirms "from the law of charity, which obligates one in equal danger to expose temporal life in order to save the spiritual life of a neighbor." L. 624.

The second opinion denies, because it is too harsh to demand so heroic an act for aiding a neighbor unless there is moral certainty either of success or of necessity. Hence you are not held certainly to expose your life in order to baptize or absolve someone if you probably must perish before you can fulfill this, or if you probably presume that he is baptized, or is not in a state of mortal sin, or even can easily help himself by an act of perfect contrition.

St. Ligorius, n. 624, says that the first opinion is more pleasing to him, adding: "if nevertheless the priest does not know that he is in mortal sin, he is not held to absolve with danger to life." But l. 2, n. 27, he seems to adhere to the latter opinion; and l. 6, n. 728, he seems to require greater probability for the necessity of the neighbor.

364. **You will resolve:** First, those having care of souls sin gravely not only if without reason they deny their ministry, but also if they often show themselves morose and difficult; because thus they deter the faithful from the sacraments, and the matter falls back to the same as if they denied the sacraments.

Second, nevertheless it is not mortal to deny the sacrament of penance or the eucharist to one or another, or to the same person once or twice, when he asks apart from necessity, because the harm can easily be repaired, nor is the subject judged gravely unwilling on this account.

Third, if subjects ask unreasonably, there is no sin. Hence a pastor is not held daily to spend time with a scrupulous person or little devotees, since such frequent confession is not expedient for them,

nor do they have a strict right to such frequent absolution.

Fourth, if the pastor has suitable vicars, he will not be held so rigorously to receive the confessions of his subjects; nevertheless he ought to satisfy the faithful who ask for him by name, unless either he is impeded or the penitents would willingly approach another confessor.

Fifth, generally speaking, those bearing care of souls sin gravely who are unwilling to receive the confession of subjects except on a few determined days within the month, because they are the cause why the faithful remain long in the state of sin and are kept away from receiving the sacraments. L. 58.

365. **What is to be said of the obligation of denying the sacraments to the unworthy who ask?** The minister is generally held, and under grave obligation, speaking per se, to deny the sacraments to the unworthy, because the natural law obligates a dispenser to dispense the goods of the Lord faithfully and according to his will. Now the certain will of Christ is that the sacraments not be conferred on the unworthy, according to Matthew 7:6: Do not give what is holy to dogs, nor cast your pearls before swine. Roman Ritual, *De SS. euch. sacr., De Sacr. extr. unct*. Cf. Lugo, d. 8, nn. 164, 180, 193; Suarez, d. 8, s. 2.

Indeed, as St. Alphonsus, n. 43, notes, "in certain sacraments, in order that the minister show himself a faithful dispenser, it is not enough if he does not know that the petitioner is unworthy, but he is further held to have a prudent reason that he is worthy. For in the sacrament of penance, since in it the disposition of the penitent is altogether required for value, the minister, as a judge constituted for this, ought to render himself certain about it. Also in the sacrament of order, the bishop ought to have certain knowledge of the worthiness of the one to be ordained, since to order, as directed to the public good, no one has a right unless he is called by God as Aaron was. But in matrimony the assisting priest ought to inquire into impediments, since he is constituted for this by the Church. In the other sacraments, however, they are not to be denied to those who live as Catholics, unless the unworthiness of the penitent is clear ... The reason is that to these other sacraments all the faithful have a right, and the ministers are not judges, but dispensers; hence in them they do not have the right of inquiring, but only the duty of dispensing to all who ask, provided these are not positively unworthy."

To a public sinner, whether secretly or publicly asking, the sacrament must be denied, because no reason is present why an exception should be made to the general rule; indeed grave scandal of the faithful would follow from concession of the sacraments. St. Thomas, III, q. 80, a. 6; L. 44. But in a case of doubt whether someone has sinned, it must be conceded; in doubt whether he has done penance, it must be denied. L. 48. "Yet a sinner constituted in the article of death is excepted," L. 44, because anyone is then presumed to wish to dispose himself rightly, and necessity removes scandal, as does the hidden penance of the dying person, to be made public by the minister if the sacraments are to be ministered to him publicly. La-Croix, n. 143. The case in which denial of the sacraments extends even to penance is very rare. But the obligation is always present, as to penance itself, of denying absolution to the indisposed.

To a hidden sinner asking secretly, the sacrament must likewise be denied, because reverence toward the sacrament and charity toward neighbor demand this in these circumstances. St. Thomas, III, q. 80, a. 6; L. 50. The case is excepted in which the crime was known from confession; for then it is not

even lawful for the minister to warn the sinner. And this is forbidden even if the confessor could deny the sacrament under the pretext of other causes. L. 50, 51.

But to a hidden sinner asking publicly, the sacrament must not be denied. The reason is drawn from the inconveniences which would follow from denial of the sacrament; for scandals and disturbances would arise in the Church, and especially the faithful, brought into suspicion lest they be prohibited from the sacraments, would withdraw from them. St. Thomas, III, q. 80, a. 6; L. 49, 50; Lugo, d. 8, n. 176; Roman Ritual, *De Euch. sacram.*; E. M.

366. **When is a sinner judged public or notorious, or hidden; and when is he secretly asking for the sacrament?** A public sinner is one whose crime or very bad life is commonly known. But if his infamy has not yet come into common knowledge, yet is so known that it can no longer be hidden, he is called a notorious sinner. But if the danger is absent that the wickedness become known, he is called a hidden sinner.

A sinner secretly asking is one who is found alone with the minister or with a few others of whom deservedly no account is taken, such as little children, etc. Otherwise he is judged to ask publicly.

367. **Is the sacrament to be denied to an unworthy person asking publicly, whose crime is indeed notorious but not yet public?** Response: negatively, according to the more probable opinion, because he cannot yet be called a public sinner; besides, denial would be subject to various inconveniences. Indeed, more probably the sacrament is not to be denied even if most of those present know the crime, since it is not simply public. L. 45.

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368. **Must a sacrament be denied to a sinner when his crime is not public where he asks, but is public elsewhere?** Response: negatively, at least more probably, because on the one hand, by ministering the sacraments to him no scandal of others is present; and on the other hand, if they were denied, those inconveniences and harms would arise which come from denial made to a hidden sinner. But it must be said otherwise if knowledge of that crime will easily arrive in that place shortly. L. 46.

369. **What is required so that the eucharist can be ministered to a public sinner?** "Laymann and others require, besides confession, some time of good conduct for removing scandal. Possevinus and others say that confession before several suffices, provided, Bernal adds, that the penance is shortly to be publicly manifested. And Croix rightly adheres to this opinion when the sinner does not have a proximate occasion of sinning; because one who has publicly confessed is judged publicly amended. It is otherwise if the occasion is present and he has not abandoned it. But as to one who asks secretly, it suffices that he has secretly done penance." L. 47; Roman Ritual, *De Euch. sacram.*; E. M.

370. **Must the sacrament of order be denied to a hidden sinner publicly asking?** Response: affirmatively. "The reason is certain, because one who thrusts himself into public offices for which he is not fit must be repelled even with infamy, because the public good must be preferred to the private. And that an unworthy cleric, although because of a hidden crime, can

and must be repelled is clear from Trent, where in sess. 14, c. 1 *de R.*, it is said that a bishop can prohibit a cleric from ascending to further orders; and the cleric is held to obey him, even if the ascent was forbidden by his prelate 'from whatever cause, even because of a hidden crime, in any manner, even extrajudicially.' And it is added that 'no permission granted contrary to the will of the prelate himself for having himself promoted shall assist him.'"

And it must especially be noted that in that case the bishop is not held to manifest the cause why he repels him from ordination, according to the declarations of the Sacred Congregation of the Council, March 21, 1643, and April 21, 1668; Benedict XIV, *De Syn.*, l. 11, c. 2, n. 16. But that the bishop not only can but must repel the unworthy, although hidden, manifest reason persuades from the same Trent, sess. 23, *de R.*, cc. 5 and 7, where it is expressly prescribed that the ordaining bishop diligently investigate and examine morals. "For why ought a prelate investigate and examine the morals of clerics, unless to repel those whom he knows to be unworthy?" L. 52, 69; St. Thomas, suppl., q. 36, aa. 1, 3, 4.

371. **Note:** "Concerning this matter," says the same holy Doctor, n. 803, "bishops in seeking this proof ought not be content with the simple attestation of pastors ..., but further ought to be made certain by others worthy of trust, after secret information has been taken, not only that the one to be initiated has not been bad ..., but also that he is positively good, etc." Cf. Benedict XIV, C. *Ubi primum*; St. Thomas, suppl., q. 36, a. 4, ad 3.

372. **Can a pastor assist at the marriage of those who are public sinners?** Laymann, Croix, and Lugo affirm. The reason is that the pastor is not the minister of the sacrament, but only a witness; hence on the one hand, since he is a public minister, he cannot deny his assistance; and on the other hand, he can lawfully assist, since his cooperation is merely material.

But others deny, among whom is St. Alphonsus, unless there is a grave and proportionate cause, both because by natural law no one can cooperate in the sin of a neighbor, and because the pastor is held from justice, from the contract entered with the community from which he receives a stipend, to attend to the spiritual salvation of his sheep by turning them away from sins. And soon the holy Doctor adds, "what we say of the pastor must also be said of witnesses; who nevertheless would be sufficiently excused from sin if they assisted compelled by grave fear, since they are held only from charity to impede sin. But the pastor can also be excused in order to avoid death, or other graver evils of the community or of the contracting parties themselves, for example lest they persevere in sin." L. 54; E. M.

373. **If one of the spouses is publicly unworthy, can the other enter marriage with that person and consequently minister the sacrament to him or her?** Response: negatively, if the person is unworthy because he or she is an excommunicated person to be avoided, as is clear.

Affirmatively, if the person is unworthy because excommunicated, but tolerated; for the Council of Constance conceded indistinctly that the faithful can communicate with tolerated excommunicates.

Affirmatively, if the person is unworthy because of some sin, and the other spouse could not withdraw from the marriage without grave inconvenience. Thus more probably and more commonly.

The reason is that the aforesaid administration is from them as ministers not consecrated for this. L. 55; H. A., tr. 14, n. 6. Hence one who contracts with an unworthy person is excused from mortal sin; for he does not sin as ministering to the unworthy, because he is a minister not consecrated for this; nor as asking from the unworthy, because charity alone forbids that, and grave inconvenience excuses, which is scarcely absent, or not even scarcely. Lugo, d. 8, nn. 226, 230; L. l. 2, n. 60.

374. **What if a sacrament cannot be denied to an unworthy person without danger to life?** It is not lawful to give it if it is sought in contempt of Religion or in hatred of the faith, or if it cannot be given without offense to others and scandal. Once these are removed, some still deny, because it is the highest irreverence to give what is holy to dogs; others affirm, because in so great a crisis of things irreverence ceases.

Others settle the matter by another way; for they teach that it is lawful to simulate administration of a sacrament, except the priesthood: not formally, but materially; namely, by substantially changing the matter or form, for example if he says: I by no means absolve you, or I will absolve, or Do I absolve? scandal always being removed.

But to confer sacraments on the unworthy is not evil of itself. Surely Christ communicated Judas; who would say that Christ did a thing materially evil? But charity alone forbids cooperating with the sacrilege of the recipient; and charity does not obligate with grave inconvenience. L. 49, 59; Lugo, d. 8, nn. 180, 181; Suarez, d. 67, s. 1, in fine; Viva on proposition 29 condemned by Innocent XI, n. 11; Cardenas on the cited proposition, n. 53. Cf. n. 375.

375. **Is simulation of a sacrament intrinsically illicit?** Simulation, taken most broadly, is the placing of a sign indifferent of itself to several meanings, with foresight that someone is to be deceived because he will take it in a sense which is not true. It is distinguished from dissimulation in that dissimulation is the omission of every sign when one deservedly ought to be placed.

One simulation is formal, by which the minister directly intends to deceive; another is material, by which the minister does not directly intend to deceive, but, acting from a reasonable and just motive, foresees the deception and permits it. Simulation of a sacrament can be either concerning a matter plainly indifferent with respect to the essence of the sacrament, or concerning a matter regarding the very nature of the sacrament. Simulation can be either merely concerning administration of the sacrament, or concerning the sacrament itself, namely when someone either places an action by which others can falsely believe the confection or conferral of a sacrament, or fictitiously places something which pertains to the essence of the sacrament.

Now formal simulation is not lawful not only in the sacraments, but in any other case, because it is a lie of deed. St. Thomas, II-II, q. 111, a. 1. Material simulation concerning a matter plainly indifferent with respect to the sacrament, that is, to the administration itself of the sacrament or to the essence of the sacrament, speaking per se, is not illicit, because it is not simulation of the administration of a sacrament or of a sacrament; nor is another vicious circumstance present, as is supposed. Material simulation concerning the administration itself of a sacrament, speaking per se, is not intrinsically illicit; for no action is placed which of itself pertains to the essence of the sacrament, and the action

which is really placed is an honest action, as is supposed, although an opinion of the conferral of a sacrament can be induced in others from it.

Material simulation concerning the sacrament itself, or an essential part of the sacrament, is altogether illicit. The reason is that it is grave irreverence toward Christ, whom the minister mocks by abusing sacred things instituted by him. Besides, this is proved from proposition 29 condemned by Innocent XI, in which there is special treatment of material simulation. And by the Holy Office, Sept. 6, 1628, before the Most Holy One, it was provided that priests who are compelled by Turks to baptize their children, not so that they may become Christians, but for bodily health, cannot baptize them by using matter without form. Benedict XIV, C. *Postremo mense*, section 21; L. 59, 62; La-Croix, nn. 150, 158; E. M.

376. **You will resolve:** First, "If someone unwilling to confess enters the confessional and, kneeling, speaks with the confessor about some business, he does not simulate the sacrament, nor does he sin with the sin of lying." L. 60. That action is indifferent of itself, and in it the matter and form of the sacrament are altogether lacking. L., ibid.

A confessor would sin gravely who pronounced the words of absolution without the intention of absolving, even if he did this in order to free himself more easily from an indisposed penitent urgently asking absolution, or even demanding it by most grave threats. Several say that in this case the confessor can say: I do not absolve you, pronouncing the not so softly that it is not heard by the penitent. St. Alphonsus, n. 59, indicates this as not improbable; but the confessor could then easily pronounce other words or prayers rather than the form of absolution. For the rest, this case seems almost chimerical.

But the confessor who recites prayers over an indisposed penitent, lest those standing by notice that he is dismissed without absolution, does not simulate the sacrament of penance. For it is clear to all that penitents are often dismissed with only a blessing, and sometimes approach the sacred tribunal without the intention of confessing or of completing confession. L. 59.

Second, a priest would sin most gravely who at Mass pronounced the consecratory words over bread and wine while excluding the intention of consecrating. Nor can those who, laboring under gross ignorance and celebrating in mortal sin, simulate consecration lest they become guilty of sacrilege, be excused by good faith, even if they altogether omit the words of consecration.

A priest sins gravely who offers an unconsecrated host as consecrated, even to one knowing and consenting, as sometimes happens with wretched priests and an accomplice who approaches the sacred table for the sake of preserving reputation. The reason is that thus an unconsecrated host is exposed to the adoration both of those standing by and even of the knowingly receiving person himself with external reverence, which constitutes external and material idolatry and therefore something intrinsically evil. L. 61; St. Thomas, *Quodlibet* 5, a. 12. "In the case in which someone cannot dispose himself for communion, he could sometimes agree with the pastor, in order to avoid infamy or scandal, that the pastor only say over him the words: May the Body of our Lord Jesus Christ preserve, etc.; and not offer the host, as Croix, n. 160, admits." L. 61.

Third, according to the common opinion, those who, compelled by grave fear, simulate entering marriage do not sin, at least gravely. The reason is that since voluntary consent is lacking, according

to the now certain opinion which holds that the spouses are the ministers of this sacrament, matter and form are lacking, and therefore there is not simulation of a sacrament, but only simulation of a contract. "For the same reason one would not sin with the sin of sacrilege who contracted marriage knowing himself to have a diriment impediment." L. 62.

377. **What is to be said about the mode of conferring the sacraments?** It is not enough if the minister diligently observes those things which regard matter and form; but he must studiously observe all the laws of Holy Church concerning administration of the sacraments. Trent, sess. 7, c. 13; Sacred Congregation of Rites, May 12, 1612. Therefore it is not lawful to omit the prescribed ceremonies, and of itself this is grave, with the case of necessity excluded. Roman Ritual, on Baptism, at the beginning. Moreover, each must use his own rite, whether Latin or Greek, and it is grave. Benedict XIV, C. *Etsi Pastoralis*, section 2; L. 202, 203; E. M.

378. **Is use of the Roman Ritual in the administration of the sacraments a matter of precept?** Response: affirmatively. For the Sacred Congregation of Rites has declared more than once "that only those books are to be used, and only those blessings are to be used in them, which are conformed to the Roman Ritual, and that others are not to be used, provided that it is not clear that they have been approved by this Sacred Congregation." Sacred Congregation of Rites, April 7, 1832; May 23, 1835; Jan. 10, 1852.

379. **What sacred vestments are required for the administration of the sacraments?** A surplice and over it a stole. Roman Ritual, on the administration of the sacraments, at the beginning; Sacred Congregation of Rites, Jan. 10, 1852. But in extreme necessity baptism and penance can be conferred without these; indeed also confirmation and extreme unction. La-Croix, l. 6, part 2, n. 2116; L. 184, 726. Indeed viaticum itself without sacred vestments, if it can be done without offense, is not illicit. L. 241.

But it is not grave not to use a stole in the sacrament of penance, and several deny that not to use it in the eucharist is grave; nor does St. Alphonsus, n. 241, disapprove. A rochet is not a sacred vestment to be used in the administration of the sacraments. Sacred Congregation of Rites, Jan. 10, 1852; E. M.

IV. On the Subject of the Sacraments

380. **Who is the subject of the sacraments?** The subject of a sacrament is said to be the one who receives the sacrament and is capable of the effect of the sacrament.

The subject of the sacraments is only man as a wayfarer, because, as is clear from Sacred Scripture and Tradition, the sacraments were instituted only for human wayfarers. Yet not all human beings are capable of all the sacraments. For neither can women receive the sacrament of order, nor can children not yet using reason receive the sacraments of penance and extreme unction.

The reason *a priori* why only man as wayfarer is capable of the sacraments is the will of Christ the Lord, the institutor of the sacraments. But the reason of fittingness is that according to the order of present Providence, only man as wayfarer is capable of first grace or of increase of grace. Such are not the Blessed, or souls detained in purgatory, for whom the measure of glory corresponding to the

grace which they merited in mortal life is already determined. Much less are the damned capable of grace, since they have already been separated from God for eternity. St. Thomas, suppl., q. 39, aa. 1, 2.

381. **What is required for valid reception of the sacraments?** For receiving the sacraments validly, no probity is required in adults, nor properly faith in the subject, if you except the sacrament of penance. This is clear from the practice of the Church, which never permitted heretics and wicked men rightly baptized and ordained to be baptized or ordained again. It is also clear, as to faith, from the express definition of Trent, sess. 7, canon 13 on baptism.

In infants or the perpetually insane, no disposition or intention is required so that they validly receive the sacraments of which they are capable, namely baptism, confirmation, order, and the eucharist, which was formerly ministered to them. This is clear from the practice of the Church and the common opinion. L. 80, 782; St. Thomas, suppl., q. 39, a. 2.

In adults some intention is required for valid reception of the sacraments, because it is not fitting that an adult be sanctified unless he wills it. But for most sacraments habitual intention suffices, even sometimes only confused or implicit intention, with the nature of each sacrament considered; because conferral of the sacraments is a certain donation and benefit, for accepting which habitual intention suffices. St. Thomas, III, q. 68, a. 7. Cf. Lugo, *De Euchar.*, d. 13, nn. 23, 26; *De Poenit.*, d. 14, nn. 46, 48. If the will of receiving the sacrament is lacking, the sacrament will be invalid, whether someone does not wish to receive it, or does not not wish it, having a neutral will. Benedict XIV, C. *Postremo mense*, sections 47, 48, 51; L. 81.

For validly receiving the other sacraments, reception of baptism is pre-required; therefore an unbaptized man is in no way capable of the other sacraments. The reason is that the other sacraments were instituted for the Church alone. But through baptism alone men are made members of the Church. Therefore. Florence, decree for the Armenians; E. M.

382. **Is attention required in an adult subject so that he may validly receive a sacrament?** Response: negatively. For intention suffices, even in sacraments which require virtual intention. The reason is that a human act proceeds not from attention, but from the will or from intention. Furthermore, most sacraments do not even require virtual intention; therefore a fortiori they do not require attention on the part of the subject. Besides, attention is not required in the minister for confecting a sacrament, as is clear from what was said above in n. 338; therefore a fortiori it is not required in the subject. Hence penitents are sometimes troubled by scruples in vain from the fact that they suffered distractions while they were being absolved, or that they were absolved without noticing it. Sporer, n. 157.

383. **What intention is required in adults for receiving each sacrament?** In baptism and order at least habitual will is required. The reason is that sacraments of this kind impose grave obligations to be fulfilled. But no one is judged to receive a grave obligation; rather, his positive will must be altogether clear. Lugo, d. 9, nn. 119, 127; L. 81, 82. The sacrament of baptism and of order is indeed invalidly conferred on those having only interpretative intention. Nevertheless Coninck, Sporer, Henriquez, and others in Croix, l. 6, part 1, n. 168, judge that for receiving baptism the implicit intention contained in contrition or attrition had by the

recipient suffices; or, as Lugo, d. 9, n. 130, says, in the will of giving one's name to the Christian Religion; or, if he is ignorant of this, of doing whatever things are necessary for salvation, as La-Croix has it in the cited place. Cf. L. 82.

In confirmation, extreme unction, and the eucharist, interpretative will is enough. The reason is that these sacraments bring many advantages and no disadvantage. But everyone is judged to will to receive advantages. Hence both confirmation and extreme unction can be conferred conditionally on a dying person deprived of his senses. Ritual, on Extreme Unction, section 6; L. 82. But if he had never in reality thought about receiving them, they would have to be repeated. "And if perhaps the sick person was deprived of his senses in the act of mortal sin, Viva says that probably, at least conditionally, extreme unction is then to be ministered to him, as we shall also say concerning the sacrament of penance in n. 480." L. 82.

For penance there is required actual intention or at least virtual intention; and therefore habitual intention does not suffice. The reason is that in that sacrament the acts of the penitent are required as matter, and these cannot be had without at least virtual will of receiving the sacrament. L. 82.

For matrimony likewise at least virtual intention is required. For "since each spouse is not only a recipient, but also a minister of the sacrament, in each of them there is certainly required such intention as is demanded in the ministers of the other sacraments." L. 82.

384. **Are sacraments validly conferred on those sleeping, drunk, or fallen into insanity, who previously had the intention of receiving them?** Response: affirmatively. Thus most commonly. The reason is that they are a capable subject.

But this would be done illicitly "unless in probable danger of death, or unless when the impediment of the use of reason is judged perpetual; otherwise one must wait for the time in which the recipient becomes capable of reason." L. 81, 139; St. Thomas, IV Sent., d. 6, q. 1, a. 2, q. 3, ad 2; III, q. 68, a. 12; Roman Ritual, on adult baptism.

For this reason, to the sick who are deprived of their senses, the sacraments are to be given, but only in danger of death, and unless they die impenitent and in manifest mortal sin. Roman Ritual, *De Sacr. extr. unct*. In doubt they ought to be given: namely baptism and penance, even with the lowest probability of disposition. But confirmation, the eucharist, and extreme unction are to be given when it is probable that they are rightly disposed. Indeed these can even be given if this can only be presumed. Lugo, d. 9, nn. 122, 126. Cf. nn. 318, 383; E. M.

385. **Can sacraments be conferred on those deaf and mute from birth who have not been instructed in schools?** Since it is very probable that they are like infants, baptism and confirmation can be given to them conditionally. But since it is not plainly beyond doubt that they are ignorant of those things which pertain to faith, absolution also can be given to them conditionally. The eucharist can also be given to those dying, as if to infants in the past, provided every danger of irreverence is absent. Nevertheless extreme unction is not to be given to them, since it is neither necessary nor probably valid. But they are permitted to contract matrimony. C. *Cum apud* 23; C. *Tuae fraternitati* 25 *de Spons.*; Sanchez, *De Matr.*, l. 1, d. 8, n. 13.

386. **What is required for lawful reception of the sacraments?** For receiving the sacraments of the living lawfully and fruitfully, besides the intention of receiving them the state of grace is pre-required. For these, from their primary institution by Christ, are ordered not to confer first grace, but its increase, since they suppose first grace already in the subject. Hence those who knowingly receive sacraments of the living in the state of mortal sin sin gravely, and indeed more gravely than those who unworthily minister or confect them. But the state of grace must be procured by confession if one must approach the eucharist; or at least by perfect contrition if there is question of other sacraments. Cf. n. 568. But it is safer, insofar as can be done, always to send confession before reception even of the other sacraments.

For the sacraments of the dead to be received lawfully by adults, at least implicit acts of faith and hope are required, according to the words of the Apostle, Heb. 11:6: One who approaches God must believe that he is, and that he is a rewarder to those who seek him. Nor indeed does it suffice to know only those things which are necessary by necessity of means, but it is also necessary to know those things which are necessary to be known by necessity of precept. Cf. vol. 1, n. 348ff., 356ff. There is further required an act of sorrow for sins, because remission of sins is given to no one without retractation or sorrow for sins committed. But in the sacrament of penance these things are necessary also for validity, because they pertain to the disposition of the penitent. Trent, sess. 14, c. 4. But attrition suffices, as will be said in its own place.

It is required that one be bound by no excommunication and no personal interdict. Roman Ritual, *De Extr. unct.*, c. 1, section 8. But if someone cannot abstain from the sacraments without grave inconvenience, he lawfully receives them, although for the present he cannot be absolved from the censure. L. 86, 265, q. 2; E. M.

387. **Is there a case in which it is lawful to receive a sacrament of the living in mortal sin?** Response: affirmatively; but it is very rare. St. Alphonsus enumerates two. The first is if a host would be profaned unless it were immediately consumed; then the host would be received not as a sacrament, but so that it may be snatched from that profanation, and therefore irreverence would cease. The other is if a layman already sitting at the rail of communicants and about to receive communion immediately were to remember a mortal sin, and because of the excessive shortness of time could not become contrite. But unless the time is altogether very brief, the special grace of God would not be lacking in such cases for immediately conceiving contrition. L. 86, 33; St. Thomas, IV Sent., d. 24, q. 1, a. 3, q. 5, ad 4.

388. **Is it lawful to ask for a sacrament from a bad minister?** Response: negatively, if the minister is an excommunicated person to be avoided, unless in extreme or very grave necessity.

Affirmatively, if he is a tolerated excommunicated person, and precisely insofar as tolerated; because the Council of Constance absolutely conceded to the faithful that they could communicate with the tolerated. L. 88; St. Thomas, III, q. 82, a. 9.

If the minister is simply bad because of mortal sin, it is lawful from a reasonable cause of necessity or grave utility to receive the sacraments from him. The reason is that, when such a reason stands, the sin of another is lawfully permitted, which "nevertheless he could put away, because in an instant a man is amended by divine grace." St. Thomas, IV Sent., d. 24, q. 1, a. 3, q. 5, ad 3. Besides, "one who

approaches the sacraments receives the sacraments from a minister of the Church, not insofar as he is such a person, but insofar as he is a minister of the Church; and therefore as long as he is tolerated by the Church in the ministry, the one who receives a sacrament from him does not communicate in his sin, but communicates with the Church, which offers him as a minister." St. Thomas, III, q. 64, a. 6, ad 2; C. *Vestra* 7 *de Cohabit. clericor.*

From a reasonable cause, because charity demands that we impede the sin of a neighbor which we can easily impede. But it is certain that any minister is presumed worthy unless the opposite is clear. "Hence it is probably inferred that a sacrament can still be sought from one who is known to have sinned a little while before, because he must be presumed already to have disposed himself at least by contrition, unless it is clear that the minister is habitual in sin or is in a proximate occasion of sin, understand voluntary." L. 89. "Thus likewise I think," says St. Alphonsus, ibid., "that it is illicit without grave cause to serve a priest celebrating unworthily." L. l. 2, nn. 47, 79.

On Baptism

I. On the Nature, Effects, and Necessity of Baptism

389. **What is baptism?** The word baptism or baptisma signifies the same as immersion and washing; hence baptism is also called a laver, because it washes away sins. Baptism is defined: "The sacrament of regeneration through water in the word." Roman Catechism, n. 5; St. Thomas, III, q. 66, a. 1.

390. **How many kinds of baptism are there?** Baptism is threefold. For from the sacrament of baptism, or baptism of water, so called from its proper matter, are distinguished baptism of the Spirit and baptism of blood. St. Thomas, III, q. 66, a. 11.

391. **What is baptism of the Spirit?** "Baptism of the Spirit is perfect conversion to God through contrition, or love of God above all things, with the explicit or implicit desire of true baptism of water, whose place it supplies as to remission of fault, but not as to imprinting the character, nor as to removing every debt of punishment. It is called of the Spirit, because it is done by the impulse of the Holy Spirit, who is called *flamen*. But it is of faith that men are saved through baptism of the Spirit." L. 96; E. M.

392. **What is baptism of blood?** Baptism of blood is the shedding of blood or death endured for the faith, or for another Christian virtue. But this baptism is equated to true baptism because, as if *ex opere operato* after the likeness of baptism, it remits fault and punishment. **As if**, because martyrdom does not operate as strictly and properly as the sacraments, but from a certain privilege by reason of real imitation of the passion of Christ. Therefore martyrdom profits even infants. The Church venerates the Holy Innocents as true martyrs. L. 97.

For the martyrdom of an adult to be such as is required for salvation, five things are required: first, the infliction of death; second, acceptance of the same from a pious cause; third, that one not resist the tyrant; fourth, that by faith he hold the truth for which he suffers; fifth, legitimate disposition for grace. But what such disposition is, is controverted. The first opinion teaches that true contrition,

proceeding from love of God above all things, is necessary. The second holds that the will of suffering for Christ suffices, and that there is no need of another penance, even if the man remembers his sins. The third asserts that at least attrition is required if the man is conscious of sin.

Now contrition can be required for the fruit of martyrdom in two ways: first directly, as a necessary disposition; second indirectly, as a work necessary for avoiding new sin. If one to whom martyrdom is imminent is in mortal sin, contrition is necessary for him for the fruit of martyrdom indirectly, or at least attrition which is thought to be contrition, as a work necessary for avoiding new sin, which would impede the fruit of martyrdom. The reason is that if the precept of contrition ever obligates, it does so especially in danger of death.

Nevertheless contrition is not necessary per se and directly as a disposition for the fruit of martyrdom, but attrition is required and suffices. The first reason is that the Fathers equate the martyrdom of adults with baptism in the force of blotting out sin. Here it must be noted that the endurance of death itself according to itself is compared with baptism, and no lesser force is attributed to it in washing away sins than to baptism; nor is this force attributed to internal contrition, but to the external work. Therefore just as baptism does not require contrition in order to confer grace, so neither does martyrdom. The second reason is that it is certain that for remission of fault some penance is always required in adults, from Trent, sess. 14, c. 1. *Theol. Wirceburg.*, n. 57ff.; Suarez, d. 29, ss. 1, 2; L. 95; St. Thomas, *Quodlibet* 6, a. 4; II-II, q. 124, a. 1; III, q. 66, a. 12, ad 2.

393. **Note:** "Concerning those who die from charity in service of the plague-stricken, the Roman Martyrology on Feb. 28 says: 'Religious faith has been accustomed to venerate them as martyrs.'" L. 100.

394. **What are the effects of baptism?** Baptism is spiritual regeneration. Hence through the infusion of sanctifying grace: first, it deletes every fault; second, it remits every punishment due to sins. Therefore it is grave to impose satisfactions on the baptized. Finally, third, it imprints a character; hence it cannot be repeated.

As to the first, this is clear from C. *Maiores* 3 *de Bapt.*, etc.; Trent, sess. 5, decree on original sin; sess. 14, c. 2. As to the second, from Trent, sess. 5, cited decree; sess. 6, c. 14, and from Florence in the decree for the Armenians. As to the third, from Florence, ibid., and from Trent, sess. 7, canon 9 on the sacraments.

Therefore baptism is, as it were, the gate of the Church and of the kingdom of heaven. Hence if someone has not been validly baptized, he can validly receive no other sacrament. C. 1, 3 *de Presb. non bapt.*; Florence, decree for the Armenians; St. Thomas, suppl., q. 35, a. 3; Trent, sess. 7, cc. 1, 6-11, 13, 14; Roman Catechism, n. 42ff.; St. Thomas, III, q. 69; q. 68, a. 5; E. M.

395. **Is baptism necessary?** Baptism of water, in reality or in desire, from divine institution is altogether necessary for salvation by necessity of means. This is clear from the words of Christ, John 3:5: Unless one is reborn of water and the Holy Spirit, he cannot enter the kingdom of God. And from Trent, sess. 6, c. 4; sess. 7, canon 5: If anyone says that baptism is free, that is, not necessary for salvation, let him be anathema. Roman Catechism, nn. 21, 31; St. Thomas, III, q. 68, aa. 1, 2; commentary *De Necessitate medii*.

II. On the Matter and Form of Baptism

396. **What is the remote matter of baptism?** The valid matter of baptism is only true and natural water, fit for washing. This is clear from the words of Christ, John 3:5, and from the Councils, especially from Florence in the decree for the Armenians, and from Trent, sess. 7, canon 2. Roman Catechism, n. 7ff.; L. 103; St. Thomas, III, q. 66, aa. 3, 4.

The lawful matter of baptism, outside the case of necessity, is only blessed or consecrated water, and mixed with chrism according to the rite of the Church, at least for solemn baptism. This is clear from the Roman Ritual and the practice of the Church. But one certainly sins gravely with the sin of sacrilege who, without grave necessity, uses impure, turbid, or muddy water, although this matter is valid. L. 102; E. M.

397. **Note:** In danger of death, if matter certainly valid cannot be had, doubtful matter can and must be used under this condition: If this matter is sufficient. But then even the lowest degree of probability concerning the value of the matter suffices, because in necessity a neighbor must be helped in the best way possible. But if one baptized in this way survives, once matter certainly valid is available, he must be baptized again under this condition: If you are not baptized, I baptize you, etc. C. *De quibus* 2 *de Bapt.*, etc.; L. 103.

398. **You will resolve:** First, valid matter is: water of fountains, wells, rivers, the sea, ponds, marshes, lakes, cisterns; water melted from ice, snow, or hail, because it preserves the same substance, although accidentally changed as to color, taste, or smell; sulphurous or mineral water; water collected from vapor or dew, or flowing in stormy weather from a wall, leaves, etc.; turbid water mixed with another substance, provided that water is the truly and certainly predominant matter, so that according to the use or estimation of men it can still be called water.

Second, invalid matter is milk, blood, tears, sweat, saliva, spittle, urine; wine, oil, beer, thick broth from fat, etc.; mud, ink.

Third, doubtful matter is very thin broth, lye, weak beer, water from dissolved salt, liquid flowing from the vine and other plants. L. 103, 104; St. Thomas, III, q. 66, a. 4; C. *Non ut* 5 *de Bapt.*, etc.; E. M.

399. **Is water made by chemical art, distilled, or poisoned, suitable matter for baptism?** Response: affirmatively. For it is true water. L. 104, 106.

400. **Is ice or snow that has not been melted suitable matter?** Response: Some deny, others doubt, "therefore they say that in necessity it can be used conditionally." L. 104.

401. **What is the proximate matter of baptism?** The proximate matter of baptism is washing, which can happen in three ways, namely by immersion, sprinkling, and pouring, according to the practice of the various Churches, so that by the moral judgment of men the baptized person is judged to have been washed. This is clear from the words of the form and the perpetual practice of the Church, and also from Paul to the Ephesians 5:26: Cleansing by the washing of water in the word of life. St. Thomas, III, q. 66, aa. 7, 8.

402. **Can an infant in danger of death be baptized in the womb of the mother?** "If the infant," says the Roman Ritual, "has put forth the head, and danger of death is imminent, let him be baptized on the head; and afterward, if he escapes alive, he is not to be baptized again."

If, on the contrary, he is entirely closed in the womb and is baptized through washing of the mother's body, "it is certain that the baptism is not valid, because the infant is a person distinct from the mother."

If the womb can in some way be penetrated, and the child, wrapped in the afterbirth, is touched by means of some instrument, he is probably validly baptized, because that is held as a part of the infant. If, by means of some instrument, the afterbirth is torn and the body itself of the infant is touched by water, it is still truer that baptism is validly conferred. The reason is that such an infant, since he already exists as man on the way, can indeed receive baptism. L. 107, 123; Pignatelli, *Consult.*, 153, t. 1; Benedict XIV, *De Syn.*, l. 7, c. 5; St. Thomas, III, q. 68, a. 11; E. M.

403. **Is baptism valid if someone throws an infant into a well or river and pronounces the form?** The first opinion denies; the second opinion affirms. "Each is probable." L. 106; La-Croix, n. 265.

II. On the Matter and Form of Baptism

404. **Is it lawful to throw an infant into a river in order to baptize him?** Response: negatively, "although he is about to die shortly without baptism, because it is never lawful for any cause whatever directly to kill an innocent person ...

"But although it is not lawful to cast a child into a river, nevertheless it is lawful to baptize a child about to die shortly with water, even icy water, if no other can be had, even if it is feared that death is to be hastened from this." L. 106. For the action is indifferent of itself, having a double effect, and for obtaining eternal life, a small loss of temporal life can rightly be neglected. Elbel, nn. 13, 14.

405. **Is baptism conferred by the application of a wetted hand valid?** Response: negatively. The reason is that washing is not had, which is the proximate matter of baptism.

406. **Is baptism valid if the one baptizing washed a part of the body of the one to be baptized by the movement of a wetted finger?** Several affirm, because washing is sufficiently had. Yet there are not lacking those who judge the baptism doubtful, because that washing is very imperfect. Hence baptism is also doubtful if someone is baptized with two or three drops of water. Sacred Office, Nov. 8, 1770; L. 105; IV, 107, q. 6; Elbel, n. 16.

407. **Is baptism valid by applying cotton soaked with water to the forehead?** Response: affirmatively, if the water successively flows over the forehead, as can easily happen by pressing the cotton a little; for then true washing is had. Negatively, if there is a mere contact of water on the forehead; for then washing is by no means had. Sacred Office, Nov. 8, 1770; Suarez, *De Sacr.*, d. 20, s. 2.

408. **Is baptism valid if the pastor or another minister places the infant under falling rain?** Response: affirmatively, for in that way he truly washes the infant. Nevertheless it would be

better to collect water in the hollow of the hand and to wash the head of the infant with it. On the contrary, baptism conferred by snow, ice, or hail applied to the head and dissolved by natural heat would be invalid; for washing would not be had from the action of the minister himself. L. 106.

409. **Is triple washing required for baptism?** It is certainly not required for validity, for one washing suffices so that someone is judged truly washed. St. Thomas, III, q. 66, a. 8. But it is required for lawfulness, and indeed under grave obligation, where this triple pouring of water is prescribed, as in the Roman Ritual. Yet these things seem to be understood of solemn baptism.

410. **Is baptism valid if the water touches the clothing or hair of the one to be baptized?** If the water touches only the clothing, baptism is certainly invalid, because in this way no one would say that the man is washed.

But more probably it is valid if the water touches the hair. Yet in practice the safer part is to be followed. Hence if the one to be baptized has hair, the priest should either part the hair with the fingers of his left hand while pouring water with his right, or baptize him on the forehead. Lugo, *Resp. Mor.*, l. 1, d. 1; L. 107, q. 3; *Collectanea* of the Sacred Congregation for the Propagation of the Faith, n. 642.

411. **Is baptism valid when conferred on another part than the head?** Response: affirmatively, more probably, especially if baptism is conferred on some more principal part, for example on the breast, shoulders, etc. Nevertheless, if necessity has compelled this, afterward, if it can be done, baptism should be repeated conditionally. L., ibid., q. 4. "By precept, however, the head is to be washed, which the practice of the Church has." L. 105. For the head is the principal part of the body. Sacred Office, Nov. 8, 1770; St. Thomas, III, q. 66, a. 7, ad 3.

412. **What is the form of baptism?** The form of baptism is: I baptize you in the name of the Father and of the Son and of the Holy Spirit. But among the Greeks it is said: The servant of Christ is baptized in the name, etc. CC. *Si quis* 1, *Non ut* 5 *de Bapt.*; Florence, decree for the Armenians; Trent, sess. 7, c. 4. Several theologians, among whom is St. Alphonsus, judge that omission of the word Amen at the end of the form of baptism is venial, although that word is not found in the Roman Ritual. Therefore it is asked whether it is to be used or omitted. Response of the Sacred Congregation of Rites: "Strictly in the case, the Roman Ritual is to be observed." June 9, 1853. Ferraris, v. *Baptismus*, n. 1ff.; E. M.

413. **Note:** First, five things are signified in the pronouncing of the form, according to which its value must be weighed: first, the person baptizing, at least implicitly, which is not neglected in the form of the Greeks, since "is baptized" is equivalent to "let him be baptized by me"; second, the act of baptizing, because otherwise the form would not have connection with the matter and would not determine it, since washing can be referred to various ends; third, the person to be baptized, because just as the washing, so also the form must concern a certain person, Sacred Congregation for the Propagation of the Faith, Sept. 11, 1841; fourth, the unity of the divine nature, which is done by the phrase in the name; fifth, the Trinity of Persons, and this explicitly and distinctly in common words, L. 108, namely the expressed invocation of the

three divine Persons. Sacred Congregation for the Propagation of the Faith, June 23, 1830; Florence, *De variis formis dubiis*. Cf. L. 108-112, 119, 120, and C. *Debitum* 4 *de Bapt*.

Second, "And therefore no one can baptize himself." St. Thomas, III, q. 82, a. 4, ad 2.

Third, it is expedient that midwives baptize in the common and vernacular language. But they say these forms are valid: *io ti abbattezzo* ... Sacred Congregation of the Council, May 12, 1753; *Ego te baptismo* ... Holy Office, May 22, 1871; *Io ti battesimo ..., Io ti battezzo nome di Padre ...,* same Sacred Congregation, Sept. 12, 1801; or *dei nome dei Padre ...,* or *in domine Patris ..., in nom.* abbreviated *Patris ...,* L. 110; *Mi te abbattezzo in nome ...,* Sacred Congregation of the Council, May 12, 1733.

Fourth, the form would be invalid if someone said: I wish to minister to you the sacrament of baptism of sins, in the name ... Sacred Office, June 23, 1840. If someone for I baptize says I immerse or I dip, St. Alphonsus, n. 109, thinks it valid, because they are synonymous words. But I immerse does not seem to signify the sacramental action, but only the material action, if baptism is ministered by immersion. But I dip properly signifies to imbue something with color.

414. **Is baptism valid if in the form the pronoun I, the particle in, or the particle and before only the invocation of the Son, or also before the invocation of the Holy Spirit, is omitted?** Response to the first: affirmatively, for it is implicitly contained in the verb; but it is venial.

To the second: there are not lacking those who deny that it is valid, because when the preposition in is omitted, the signification is varied; for then the sense is not that he is baptized in invocation of the Trinity, but that he is baptized by the authority, power, and command of the Trinity. Yet more probably it must be affirmed that it is valid according to the nature of the Latin language, in which the preposition in can be omitted; all the more because, even when the preposition in is expressed, that phrase in the name remains equivocal and can signify both in invocation and in power, as Christ signified when he said: In my name they shall cast out demons, etc., Mark 16:17. But it is determined by the intention of the minister.

To the third: it is valid, because the distinction of the Persons is sufficiently explained. Sacred Office, Aug. 3, 1889.

To the fourth: several say it is valid, because again the distinction of the Persons is sufficiently explained. For on the one hand the character of the Latin language altogether admits that omission; on the other hand, those names Father, Son, Holy Spirit, as mutually opposed relatively, already signify the distinction of the Persons. Yet several others say it is not valid; for since the name Holy Spirit of itself is not notional, but belongs both to the Father and to the Son, unless the particle and is expressed at least before the last name, the distinction of the three Persons is not sufficiently expressed. L. 111, 112.

415. **Is baptism valid when conferred with these forms: I baptize you in the Father; with the Father; on the part of the Father; in the virtue of the Father, etc.; in the name of the Father through the Son and the Holy Spirit?** Baptism is not valid, or at least is doubtful, because in these forms there is not had the invocation of the Most Holy Trinity and the unity of the divine nature, although the distinction of the Persons is had. Scavini, Milan 1874, vol. 3,

n. 59, reports that the Sacred Penitentiary and the Sacred Congregation of the Council, indeed Benedict XIV himself, Dec. 7, 1741, responded that the form with the name of the Father, of the Son, etc., was valid; but D'Annibale, 3rd ed., part 3, n. 272, observes that as long as these things are not authentically clear, one ought not depart from the common opinion.

416. **Is baptism valid with this form: I baptize you in the name of the Father, in the name of the Son, in the name of the Holy Spirit; or in the name of the Father, and in the name of the Son, and in the name of the Holy Spirit; or I baptize you in the name of the Father, I baptize you in the name of the Son, I baptize you in the name of the Holy Spirit?** Response: affirmatively, by far more probably, because the expressions are altogether equivalent if they are considered grammatically. Yet since the unity of the divine essence is less rightly expressed if the theological signification and mystery are attended to, they could seem at least doubtful, although all those expressions are theologically true and contain Catholic truth. Cf. Roman Ritual, *Ordo Commendationis Animae*. Nevertheless, the Sacred Congregation of the Council, May 4, 1641, declared the second form valid; the Holy Office, Jan. 11, 1882, declared the third proposed form valid. Hence it follows that the first also must be held as valid. L. 111; Suarez, d. 21, s. 3, paragraph *Sed quid*.

417. **Is the form of baptism valid if you say: In the name of the Begetter and the Begotten and the Breathed or Proceeding?** St. Thomas, III, q. 66, a. 5, ad 7, denies, because "as water is taken for baptism because its use for washing is more common, so for signifying the three Persons in the form of baptism those names are assumed by which the Persons have more commonly been accustomed to be named in that language." Yet baptism is valid in the name of the Father and of the Word and of the Paraclete Spirit, or Spirit.

418. **Is the form of baptism valid if it is said: I baptize you in the name of the Most Holy Trinity, or in the name of Christ?** Response to the first: negatively, at least more probably, because in such a form the individual Persons of the Holy Trinity are not expressed distinctly enough, since the word Trinity signifies the Persons only confusedly and implicitly; but Christ willed that they be expressed distinctly, as is clear from the last chapter of Matthew.

To the second: negatively also, a fortiori, because the Trinity is in no way expressed by "in the name of Christ." Thus all, at least now after St. Thomas, III, q. 66, a. 6, and it is clear from C. *Si revera* 30 *de Consecrat.*, dist. 4. L. 111, 112.

III. On the Minister of Baptism

419. **Who is the minister of baptism?** The minister of baptism is one thing ordinary and another extraordinary. The extraordinary minister is twofold, namely a minister of solemnity and of necessity.

Every priest, and only a priest, by force of his ordination is the ordinary minister of baptism. This is clear from Florence, decree of union, and also from the universal practice of the Church.

A deacon is the extraordinary minister and minister of solemnity, that is, able to baptize solemnly, but only from delegation of the pastor and for a grave cause. This is clear from the Roman Pontifical, the instruction of the bishop to deacons in ordination, etc.; C. *Diaconos* 13, dist. 93.

Any human being using reason, whether man or woman, whether Catholic or heretic, whether faithful or unbeliever, is an extraordinary minister of baptism, so that he can always baptize validly, and in necessity also lawfully. Florence, decree for the Armenians.

Although every priest by force of ordination has the power of baptizing, nevertheless he cannot lawfully use it, even privately, outside the case of necessity, unless he has ordinary or delegated jurisdiction. Florence, decree for the Armenians; Roman Ritual, on the minister of baptism. At present the minister is regularly the pastor, Roman Ritual, ibid., and the matter is grave. Clementina 1 *de Privilegiis*; L. 116, 236; St. Thomas, III, q. 67; E. M.

420. **You will resolve:** First, neither a pastor nor a bishop, without commission, lawfully baptizes subjects of another outside his diocese or within it. Therefore parents also sin who, without the permission of their own prelate, bring their offspring to another to be baptized, since they violate the right of the pastor. L. 114.

Second, an outsider can be baptized by the permission, whether express or reasonably presumed, of his own priest. L. 115.

Third, religious can baptize in a case of necessity, or with the permission of the pastor and of their own superior, since this is prohibited by no law. L., ibid.

Fourth, "A priest baptizing without permission outside necessity, even without solemnity, sins gravely." L. 115.

421. **If parents have domicile in one place and quasi-domicile in another, and the woman has given birth in this latter place, must the infant be baptized there?** The infant can be baptized in the place of quasi-domicile or domicile. The reason is that each is the proper pastor in order to receiving baptism and the other sacraments. C. *Significavit* fin. *de Paroch.*; L. 115.

"Children of a family, generally speaking, must be baptized and educated in the rite of the father," if the parents belong to diverse rites, such as the Roman, Ruthenian, Armenian, etc. Sacred Congregation for the Propagation of the Faith, Apr. 11, 1894.

422. **In what parish must an infant be baptized if the parents have neither domicile nor quasi-domicile, or are distant from it?** "Pilgrims, or those who do not have domicile (vagrants), can be baptized in the Church which they choose from cap. *Nec numerus*, q. 3 ... But if a woman happens to give birth in a village not her own, the offspring is to be baptized by the pastor of that village; nevertheless, if that village is little distant from the proper village, for example two or three hours, the offspring can also be baptized in his own Church." L. 114.

423. **Does a cleric who is not a deacon, and a deacon without commission, incur irregularity by solemnly baptizing?** Response to the first: affirmatively. This is clear from C. *Si quis* 1 *de Cler. non ord. min.*

To the second: some deny from the cited C. *Si quis*. But more probably others affirm from the same C. *Si quis*, according to the opinion which St. Alphonsus, n. 116, calls most common.

424. **Does a layman solemnly baptizing contract irregularity?** Response: negatively. For nothing is said in the law; indeed the contrary is suggested. L. 116, 754.

425. **What order is to be observed among ministers of baptism in a case of necessity?** In the Roman Ritual this is contained: "If a priest is present, he is preferred to a deacon; a deacon to a subdeacon; a cleric to a layman; and a man to a woman, unless for the sake of modesty it be fitting that a woman rather than a man baptize an infant not wholly born, or unless a woman knew better the form and mode of baptizing."

426. **Is it grave if the father or mother baptizes when another is present?** Response: affirmatively, by reason of spiritual relationship. Therefore an outside person, even a woman, is to be preferred to them. L. 117, 150; La-Croix, nn. 277, 358; Viva, q. 1, a. 5, n. 4.

427. **Does a layman sin mortally who baptizes in necessity when a priest is present?** Response: affirmatively. The reason is that he then truly usurps the right of the priest, to whom the office of baptizing has been committed from the power of order. Therefore the priest himself would also sin gravely if he yielded the administration to a layman. L. 117.

428. **When an excommunicated priest is present, is a non-excommunicated layman to be preferred?** Response: affirmatively. The reason is that if a layman is present, there is no longer any necessity why the excommunicated priest should baptize. L. 117.

429. **Does a layman baptizing before a deacon sin gravely?** It is controverted. The first probable opinion affirms, because the deacon by force of ordination is deputed for baptizing, although from the actual practice of the Church he cannot solemnly baptize except from a grave cause and with the permission of the pastor.

The second opinion, likewise probable, denies, because a deacon baptizing in a case of necessity without commission does not baptize from office, but in the same way as an inferior cleric or layman. L., ibid.

430. **Must the ceremonies prescribed by the Church be used under grave obligation?** Response: affirmatively, unless necessity excuses. Roman Ritual, *De Bapt.*, c. 1, section 2; Sacred Congregation for the Propagation of the Faith, Jan. 16, 1797; St. Thomas, III, q. 66, a. 10; q. 71; E. M.

431. **Must the rite of one's own Church, Latin or Greek, be observed?** Response: affirmatively, and indeed under grave obligation. Benedict XIV, C. *Etsi Pastoralis*, section 2. Cf. Roman Ritual, on Baptism, loc. cit. And this holds even if a Greek is among Latins, or a Latin among Greeks, namely if in that place there exists a Church of his own rite; otherwise he can use the rite which he prefers. L. 202, 203.

432. **Is it grave outside the case of necessity to baptize solemnly without consecrated water?** Response: affirmatively, because it is the omission of a very grave ceremony. "Generically speaking, omission of blessed water is mortal." L. 102; Benedict XIV, encyclical *Inter omnigenas*. In a case of necessity, "if baptismal water is not had and danger threatens, the priest should use simple water." Roman Ritual, *Ordo Baptismi parvulorum*, at the end. But care must be taken that it be done with blessed, or holy, water, on account of greater decency. Sacred Congregation for

the Propagation of the Faith, Sept. 8, 1869. And a decision of the Holy Office, June 22, 1883, is had: "When baptismal water is not had, blessed water is to be used, when it can be done, according to the formula in the new editions and in the appendix of the Roman Ritual; otherwise natural water is to be used." L. 102; E. M.

433. **Is it grave to baptize without the anointing of the oil of catechumens, or without the anointing of chrism?** Response: affirmatively, because these or other similar ceremonies, on account of their special and grave signification, constitute grave matter. L. 141; E. M.

434. **How is the prohibition of using old chrism, or chrism of another year, to be understood?** It is to be taken rigorously when new chrism is had. Therefore a priest would sin gravely who, setting aside recent chrism, used old chrism.

But in solemn baptism infants are to be anointed with oil and chrism of the preceding year while the recently consecrated oils are not had; nor is this ceremony to be omitted and later supplied when new oil and new chrism are received; nor for this cause should baptism be delayed to another time, however brief.

Likewise the blessing of the baptismal font on Holy Saturday must be made with chrism of the preceding year in complete impossibility of having holy oils from one's own cathedral or from nearer dioceses. But if by some accidental case the holy oils are delayed for a brief time, pastors who could not receive the holy oils before the blessing of the font will afterward be able privately and separately to put them into the water. Sacred Congregation of Rites, Apr. 12, 1755; Sept. 23, 1837; Aug. 12, 1854.

In churches where a baptismal font is present, its blessing must altogether be performed not only on Holy Saturday, but also on the vigil of Pentecost. Sacred Congregation of Rites, Dec. 7, 1844. And, if there is need, water can also be consecrated outside Easter and Pentecost. Roman Ritual, *Benedictio fontis baptismalis*; E. M.

435. **What if consecrated water and blessed oils seem to be running out, and other blessed ones cannot be had?** Another oil and other water not blessed can be poured in, in lesser quantity, and this as often as necessary, although a greater part is finally added to the pre-existing part. Roman Ritual, *De Materia baptismi*, *De Sacris oleis*.

436. **Is it grave, without urgent necessity, to baptize outside the Church?** Response: affirmatively. Clementina un. *de Bapt.*; Roman Ritual, *De tempore et loco administrandi baptismum*; L. 142.

437. **Can baptism sometimes be conferred outside the Church?** "It must be noted that infants are prohibited from being baptized at home, except those of kings or princes, as is had from Clementina un. *de Bapt*. And since here there is question of a grave matter, transgression will indeed be mortal ... Nevertheless, notwithstanding these things, where the custom has been introduced of baptizing the children of great persons at home, it is not easily to be disapproved." L. 118; Sacred Congregation of the Council, Jan. 20, 1894.

This will also be lawful if the infant cannot be brought into the church without danger of infamy of the parents. L. 142.

When baptism is to be repeated, "it can be given in any place whatever, if the solemnities have already been performed in the church." L. 136.

By canon law solemn baptism can never be conferred outside the church, and indeed the parish church, except in case of necessity, privilege, or special faculty to be obtained from the Ordinary. Therefore it is not lawful to baptize in other churches or chapels or oratories, whether private or public, except by the permission of the bishop alone; and this notwithstanding any custom whatever, as is clear from the declaration of the Sacred Congregation, Feb. 7, 1734; Gury, cases 221, 222.

Nor without a reasonable cause to be approved by the bishop is it lawful to confer baptism solemnly in the sacristy. Sacred Congregation of Rites, March 16, 1861.

If a priest in necessity baptizes outside the church, he must omit all ceremonies which precede baptism, even if the infant seems likely to live so long. But after baptism has been conferred as above, he must anoint the infant on the crown with chrism, if he has it, impose the white garment, and give the lighted candle. But when the infant has recovered, he is to be presented in the church, and there, and never outside the church, the omitted ceremonies which precede baptism are to be supplied. Sacred Congregation of Rites, Sept. 23, 1820. St. Alphonsus, nn. 136, 143, has these words: "After someone has been privately baptized, the customary ceremonies and rites must be supplied in the church ... And these ceremonies must be supplied under mortal sin." Cf. Roman Ritual; E. M.

438. **What is to be said about names to be imposed on the baptized?** As to names to be imposed on the baptized, what the Roman Ritual provides is either a counsel or a light precept. L. 145. And if the one who brings the child to be baptized altogether refuses that he be baptized unless the name of some impious person is imposed, it is not for this reason right to defer baptism for the infant; but he is to be baptized, with the name of some saint added in a low voice. Holy Office, June 1883; E. M.

439. **Can the questions which, according to the rubric of the Roman Ritual, are to be asked of sponsors be made in the vernacular language?** Response: negatively, but all things must be done as they stand in the Roman Ritual. Sacred Congregation of Rites, Aug. 12, 1854. For the rest, nothing prevents those things which pertain to the sacrament itself of baptism from being explained in the vernacular language. Holy Office, Apr. 30, 1808. But godfathers and godmothers can answer in their own language. Sacred Congregation for the Propagation of the Faith, June 1879; E. M.

440. **If baptism solemnly conferred is discovered to be invalid, must the ceremonies also be repeated?** It is controverted. There is a twofold probable opinion. Hence the ceremonies are not necessarily to be repeated; nevertheless it is to be advised that they be repeated if it can be done without scandal or infamy. L. 144; E. M.

III. On the Minister of Baptism

441. **Are sponsors to be used in baptism?** Sponsors, as spiritual parents, are those who lift the baptized person from the sacred font and receive him into their care. In solemn baptism, and also in confirmation, they must be used under grave obligation. Trent, sess. 24, c. 2 *de Ref.*

Matr.; Benedict XIV, C. *Inter omnigenas*, section 19; L. 159, 185. In private baptism they do not necessarily have to be used, but they can laudably be used. L. 147.

442. **Who cannot be sponsors?** They cannot validly be sponsors who are not in possession of themselves, such as infants, L. 146; the non-baptized, C. 102 *de Consecr.*, dist. 4; and in confirmation those not confirmed, cited C. 102 and Sacred Congregation of the Council, June 13, 1624, and it is grave. L. 186; Sanchez, *De Matr.*, l. 7, d. 60, n. 20.

But those cannot lawfully be sponsors who could not fulfill the office undertaken, such as the mute, regulars, unless a monk is to be confirmed, C. 103 *de Consecr.*, dist. 4; L. 156; La-Croix, nn. 355, 397; likewise those who are unworthy, such as heretics, criminals, infamous persons, etc., Roman Ritual, on sponsors, if they can be removed without grave harm, since the laws of the Church do not obligate with grave inconvenience. Sacred Penitentiary, Dec. 10, 1860; L. 156, IV. But a heretic is in no way to be admitted; and if he cannot be removed without grave inconvenience, he can be admitted as merely assisting and as witness, without touching the infant when he is baptized. La-Croix, n. 373. Cf. Kenrick, vol. 2, tr. 15, n. 47; Gury, case 231; *Collectanea* of the Sacred Congregation for the Propagation of the Faith, nn. 604, 606; A. S. S., vol. 26, p. 448.

Finally, spouses cannot be sponsors with respect to spouses, and parents with respect to children, C. 2 *de Cognat. spir.*; C. 7, caus. 30, q. 1; L. 156; nor the same person in each sacrament, but this is light. L. 187. Roman Ritual, on Baptism and Confirmation; E. M.

443. **Note:** "In private baptism given because of necessity, the father ought not receive or hold the infant as sponsor, since in this case there is no necessity of a sponsor; and therefore if he does this rashly either then or even in public baptism, he sins gravely." L. 158; E. M.

444. **Can two spouses lawfully receive another's offspring?** Response: affirmatively. The reason is that this has now been introduced by custom. L. 157.

445. **Can a father be sponsor in the baptism of his illegitimate child?** Response: affirmatively. The reason is that the prohibition made for the married was made lest someone have his own spiritual relative as wife. But such a reason does not militate in this case. Lugo, *Resp. Mor.*, l. 1, d. 5, n. 4.

446. **Can a father be sponsor in the baptism of the child of his wife by another husband?** Response: negatively. The reason is that the prohibition was made for married persons lest they contract spiritual relationship with their own spouse. But this reason would be altogether verified in such a case. Lugo, ibid.

447. **Can a father lawfully be sponsor in the baptism of his child if at that time his wife is already dead?** Response: affirmatively. For first, only married persons are prohibited from holding their own child or the child of their spouse in baptism. But in the present case he is neither married nor holding the child of a spouse, since he no longer has a spouse; for the bond of matrimony was dissolved by the death of the spouse. Second, the reason of that prohibition was lest someone contract spiritual relationship with his wife. But with one dead no spiritual relationship can be contracted. Lugo, ibid., n. 5.

448. **How many sponsors are to be designated?** It is not lawful under grave obligation to designate in baptism more than one man and one woman; and in confirmation only one and of the same sex. Trent, sess. 24, c. 2 *de Ref. Matr.* But to designate in baptism two males or two females is probably only venial. Thus La-Croix, n. 350, with Sanchez and others. "But Bonacina and others say it is mortal, and this seems truer to me if the sponsors were of a different sex from the infant, because thus relationships would be multiplied, which Trent wished to prohibit; otherwise if they were of the same sex." L. 155. But if in baptism a single sponsor is used, that person can be male or female, since in Trent it is said "whether man or woman." L. 155.

449. **What are the obligations of sponsors?** Sponsors have the obligation of teaching the baptized person those things which pertain to faith and morals if the parents do not provide this. Therefore they are exempted from this obligation if they prudently presume that the baptized person is diligently instructed by the parents. Roman Ritual, on sponsors; L. 147; St. Thomas, III, q. 67, a. 8.

Sponsors furthermore contract spiritual relationship with the godchildren and their parents, which constitutes a diriment impediment of matrimony. Hence the priest, after baptism has been conferred, must warn the sponsors about the obligations undertaken and the spiritual relationship contracted. Roman Ritual, *De Bapt. parvulorum*; St. Thomas, *Quodlibet* 12, a. 18.

450. **What conditions are required so that someone is truly a sponsor?** It is required that someone, otherwise capable, cf. n. 442, have the true intention of bearing the office of sponsor; that he has been designated by the parents, and in their defect, by the pastor or bishop; that in intention and in fact he receive the one to be baptized or confirmed while he is baptized or confirmed.

The pastor does not validly change sponsors rightly designated by the parents. For this right from Trent, sess. 24, c. 2 *de Ref. Matr.*, properly belongs not to the pastor but to the parents. But a pastor changing a sponsor sins gravely, because he usurps the right of the parents. Cf. n. 452; L. 146; E. M.

451. **What act is required in sponsors so that they contract relationship?** It is required that the sponsor either hold or touch the infant while he is baptized, or immediately lift or receive him from the sacred font, or from the hands of the one baptizing or of the midwife. Sacred Congregation of the Council, Feb. 27, 1601; Sacred Congregation for the Propagation of the Faith, Jan. 21, 1856; Ferraris, v. *Baptismus*, art. 7, n. 23; Sacred Congregation of the Council, Dec. 20, 1653, Dec. 18, 1688; Giraldi, *Expos. Iur. Pont.*, part 2, s. 112, nn. 6, 7. But it is commonly asserted that this touch must be physical, and that moral touch, or mere assistance, does not suffice. L. 148; E. M.

452. **Must sponsors be designated in order to contract relationship?** Several and grave theologians affirm. The reason is that Trent, sess. 24, c. 2 *de Ref. Matr.*, expressly requires designation, and therefore, when it is lacking, relationship is not contracted. But several other grave doctors deny. "For Trent did not establish designation as a form such that, when it is lacking, the fact is void; and Passerinus reports that this was declared by the Sacred Congregation of the Council in the Cremonese case." De Angelis, l. 4, tit. 11, n. 3. Therefore,

although Trent prescribes that the pastor ask the parents whom they have designated, and that he be punished if he does otherwise, nevertheless it does not say that receiving is null, nor does it void the ancient law, C. fin. *de Cognat. spir.* in 6, from which all who touch contract relationship.

But since Trent says, "If others beyond those designated have touched the baptized person, they shall in no way contract spiritual relationship, constitutions to the contrary notwithstanding," if designated sponsors are present, but another beyond them alone touches, then this one alone contracts relationship, "because the Council says that those who touch beyond those designated do not contract, but not those who touch besides them ... Conversely, it must be said altogether otherwise if one designated touches and another not designated touches, because this latter in no way contracts, as is clear from the words of Trent." L. 154.

If more than two are designated and they touch successively, only the first two contract relationship; but if all touch at the same time, more probably all contract, because Trent, although it forbids more than two to be used, nevertheless does not void the ancient law, except when more touch beyond the two designated, but not if more designated beyond two touch. L. 154.

And if either two males or two females have been used, each contracts relationship, since Trent innovated nothing about this matter.

Designation belongs to the parents, or to guardians, and when these are lacking, to the pastor. The consent of the pastor ought to accede to the designation of the parents. Sponsors designated by the parents and unjustly rejected by the pastor contract true spiritual relationship if they in reality hold the infant; otherwise, if they are justly rejected by the pastor. L. 154.

In confirmation nothing seems to have been changed from the old law, by which no designation of a sponsor was needed. Trent, sess. 24, c. 2 *de Ref. Matr.*, at the end. But whether the things which the Council established about baptism are to be drawn to confirmation, Sanchez himself doubts, *De Matr.*, l. 7, d. 57, n. 9. Cf. Barbosa, *Apost. Decis. Collect.*, 177, n. 10; Ferraris, v. *Baptismus*, a. 7, n. 13; La-Croix, n. 360.

453. **Does a father who is sponsor in the baptism of his illegitimate child contract spiritual relationship with his concubine?** Response: affirmatively, because ecclesiastical laws inducing this spiritual relationship between the sponsor and the parents of the baptized speak generally of all children, whether legitimate or illegitimate. Lugo, *Resp. Mor.*, l. 1, d. 5, n. 2; Schmalzgrueber, l. 4, tit. 11, n. 45.

454. **Is spiritual relationship contracted between the sponsor and the legal parents of an adopted child?** Response: negatively, because they are not true parents, that is, carnal begetters. Lugo, ibid.

455. **Who contracts relationship if someone receives an infant in the name of another?** It must be held without doubt that the one mandating contracts relationship, not the mandatary, unless nevertheless in the meantime the former has revoked the intention. La-Croix, l. 6, part 1, n. 365; Sacred Congregation of the Council, March 15, 1631; June 11, 1881. Hence it does not matter of what sex the mandatary is. Sacred Congregation of the Council, March 29, 1582;

Ferraris, a. 7, n. 19. Nor whether the baptized person himself is also confirmed. Benedict XIV, *Quaest. can.*, 227; L. 153; E. M.

456. **Does one receiving an infant in baptism conferred conditionally contract relationship?** Response: affirmatively if the doubt is negative, that is, if no solid reason is present for the prior baptism. Negatively, if the doubt is positive, that is, if there is a probable reason for the prior baptism; for then there will be a doubtful relationship and impediment, and therefore none. L. 151.

457. **Does one contract relationship who from error receives one infant for another?** Response: negatively. The reason is that there is no will of one who errs. But it is controverted among the doctors, and therefore, since it is a doubtful impediment, there will be no impediment. L. 146, 152.

458. **Do those contract spiritual relationship who exercise the office of godfather and godmother in supplying the solemnities of baptism?** Response: negatively, because baptism is not then had. Sacred Congregation of the Council, July 13, 1642; Sacred Congregation for the Propagation of the Faith, Sept. 11, 1779; E. M.

459. **Is spiritual relationship contracted in private baptism?** There is no doubt that the one baptizing contracts it. Concerning sponsors it is disputed. The more common and more probable opinion, from St. Alphonsus, n. 149, denies; for since the Council of Trent speaks of those receiving from the sacred font, it speaks only of solemn baptism. D'Annibale, part 1, n. 66; 3rd ed., part 3, n. 303; Gury-Ballerini, nn. 805, 806. But De Angelis, l. 4, tit. 11, n. 5; Gennari, *Monitore Ecclesiastico Conversano*, vol. 9, part 1, p. 92; and others affirm from a declaration of the Sacred Congregation of the Council. Yet Ferraris, a. 7, n. 20, asserts a contrary declaration of the Sacred Congregation of the Council. E. M.

IV. On the Subject of Baptism

460. **Who is the subject of baptism, and what are its necessary dispositions?** Response: the subject of baptism is every and only wayfaring human being not yet baptized.

As to dispositions, in infants Christ and the Church supply their will. But in adults, for receiving baptism validly there is required an intention at least habitual, explicit or at least implicit. In the same adults, for receiving baptism lawfully, faith and repentance are required. L. 139; St. Thomas, III, q. 79, a. 3, ad 2; IV, dist. 6, q. 1, a. 3, ad 5; E. M.

461. **Resolves:** 1. Infants are validly baptized, likewise the perpetually insane who have never used reason and therefore are judged to be of the same condition as infants. But if they have at some time used reason, baptism more probably is not valid unless before insanity they had sought it. In practice, however, they should be baptized conditionally, both because it is not entirely established that they did not ask for baptism, and also because according to several it is enough if someone had the will of receiving all things necessary for salvation. Cf. n. 383.

462. If there is doubt whether an infant is living, he is to be baptized conditionally. Hence theologians rightly judge generally that all aborted fetuses are always to be baptized

conditionally, if they are alive.

463. When it is doubted whether a monster is a human being, it is to be baptized absolutely if the head is human, although the limbs are animal; but conditionally if the head is animal and the limbs human. But if it has doubled human members, and it is doubted whether it is one human being or two, a double baptism is to be conferred, one absolutely, the other conditionally, on that part where the members appear more imperfect. Roman Ritual; L. 125.

464. **Is it lawful to baptize an unwilling adult?** Response: negatively, and this is grave. C. *Sicut* 9 *de Iudaeis et Saracenis*.

465. **Are infants to be baptized immediately?** "It must be noted that those sin gravely who defer baptizing an infant for much time. This is common among all ... and in the Ritual it is said: Let the pastor exhort that a sacrament so greatly necessary not be delayed too much for children, with danger to salvation ... More commonly and more probably there is not a grave delay unless ten or eleven days are exceeded." L. 118. The Salmanticenses judge that it is not mortal to defer to fifteen or even twenty days, even without an urgent cause. Indeed others with Suarez say that there is not a grave delay if it does not reach a month, although no cause is present; but with a cause present, if it is not extended to two months. Trent, sess. 5, decree on original sin; sess. 7, c. 12; Roman Catechism, n. 34; St. Thomas, III, q. 68, a. 3, 9; E. M.

466. **Are children rightly baptized when the parents are unwilling?** It is certain, first, that such baptism is valid; second, that this baptism is also lawful if it concerns the children of Catholics, since they are subject to the laws of the Church. Mgr. Gousset does not readily concede this if impious parents wholly refuse. Yet Gousset himself observes that the contrary is common. For this can be done cautiously without any danger; and since the child still lives among Catholics, perversion is not so greatly to be feared. But it is not expedient to resolve this question practically without the counsel of the bishop.

If it concerns the children of unbelievers, whether they may lawfully be baptized when the parents are unwilling, Scotus affirms. But the more common opinion, to be held in practice, which the Thomists defend, teaches that, generally speaking, the children of unbelievers are baptized unlawfully if their parents are, or are judged likely to be, resisting, although otherwise they are civilly subject to Christian princes. For either the baptized are taken away from the parents, and injury is done to them, since by natural right the child before he has the use of reason is under the care of the father; or they are left with the same parents, and injury is done to the sacrament, since it is exposed to irreverence. Hence it is also not lawful to baptize them, although they are offered voluntarily by both parents, whenever the same infants are to be left under the power and education of those unbelieving parents. This is confirmed from the practice of the Church and from Benedict XIV, both in the instruction *Postremo mense*, Feb. 28, 1747, and in the letter *Probe te*. Indeed, as to the children of the Hebrews, there is the Constitution of Julius III, who imposed on delinquents suspension and a penalty of one thousand ducats.

Generally speaking. For they will also be baptized lawfully: 1. If the parents are our slaves; for then they are subject to our right rather than theirs. 2. If either parent asks, because his just will is to be preferred to the unjust will of the other in favor of faith and of offspring; or if, the father being dead, the paternal grandfather consents, even with the mother resisting, since paternal power is with him.

It is necessary, however, that there be a reasonable hope that afterward the infant will be educated in a Christian manner. 3. If the infant is in danger of death, provided this is done without scandal, and therefore no greater hatred of unbelievers against the Christian religion and cruelty against Christians is aroused; for then the good of the offspring is provided for without injury being done to anyone, since by death he is to be withdrawn from all human power. 4. If, already master of his reason, he seeks baptism of himself; because in the matter of Religion he is already his own right, provided it cannot prudently be doubted that afterward he will fall away from the Catholic Religion. Benedict XIV, C. *Postremo mense*, section 22. But in doubt about the use of reason, the age of seven years suffices. In general, however, favor is to be given to the child rather than to the father. For the father is acting to avoid a light loss, namely of paternal power for a small time; but the child is acting to avoid a most grave loss, namely eternal damnation. Lugo, *Resp. Mor.*, l. 1, d. 4, n. 6. 5. If the child is placed outside the care of the parents, as if he had been exposed; for then they would be judged to have renounced their right. Likewise if the parents have been captured in war; for by the right of war captives belong to the victor. 7. If the father offers the child and afterward changes his plan; or if the parents abandon the child, even if afterward they protest; for the Church would already have acquired a right. Thus Benedict XIV, C. *Inter omnigenas*, Feb. 2, 1744; instruction *Postremo mense*; several decrees of the Sacred Congregation of the Council; *Collectanea* of the Sacred Congregation for the Propagation of the Faith, n. 540ff.; and the common judgment of doctors.

Yet if offspring has already been unlawfully baptized when the parents were unwilling, then Benedict XIV in the cited instruction *Postremo mense* forbids returning it to the parents because of the certain danger of perversion of the offspring and profanation of the sacrament.

The Church has the right of baptizing infants, the children of heretics, even when the parents are unwilling, and it can also "tear them away, so that they may be educated as Catholics." L. 127. Yet because of graver inconveniences the Church is not accustomed to use this right. But where the Church cannot execute a right of this kind, "the same thing seems to be said in that case about a heretic and about any other unbeliever, if there is the same moral danger" that they will not afterward be educated as Catholics. Sacred Congregation for the Propagation of the Faith, Apr. 17, 1727; Holy Office, Jan. 23, 1763. La-Croix, n. 297ff.; L. 128-132; St. Thomas, II-II, q. 10, a. 12; III, q. 68, a. 10; A. S. S., vol. 25, p. 247ff.; E. M.

465. **Can or must baptism ever be repeated?** It can and must be repeated conditionally whenever there is some non-negligible doubt about its validity; otherwise it cannot be repeated without grave sin, because the attempt to minister a sacrament to an incapable subject is sacrilege. L. 134; A. S. S., vol. 25, p. 258; Roman Ritual, on baptism of adults; E. M.

466. **Are exposed infants to be baptized?** Response: affirmatively, if they have been exposed without testimony that baptism was conferred, unless it is established from elsewhere that they were duly baptized. But if they are exposed with a note attesting that they have been baptized, it is controverted. The more common and truer opinion teaches that all these are to be baptized conditionally "whenever moral certainty about baptism conferred, and duly conferred, is not had," after diligent inquiry has been made. L. 135; E. M.

467. **Are infants baptized either by midwives or by laypersons to be rebaptized?** Response: negatively, unless there is a probable suspicion of error in the baptism conferred. Thus the very

common and true opinion, says St. Alphonsus, n. 136, where he recalls the decision of the Sacred Congregation. E. M.

468. **Must those baptized by heretics be rebaptized?** Response: it is certain by faith from Trent that baptism conferred by heretics is valid when all things required for the sacrament are applied. "But in the conversion of heretics, from whatever sect they come, inquiry must be made about the validity of the baptism received in heresy." Holy Office, Nov. 20, 1878. And so they are to be baptized absolutely, conditionally, or in no way, according as, after inquiry has been made, it is certainly established that baptism was not duly conferred, or the matter is doubtful, or it is certainly established that baptism was valid. E. M.

469. **What about the Caesarean operation in order to baptize an infant not yet born?** The Caesarean operation or section consists in this, that the uterus of a pregnant mother is opened so that the fetus may be extracted. A twofold principal question occurs, namely whether or when it can be done, or must be done.

470. **Whether or when can it be done?** When the mother is dead, it is certain that the Caesarean operation can be done, and indeed as soon as her death is established. For if anything would stand in the way, it would be the danger of the mother; but, by hypothesis, her death is certainly established; and otherwise the spiritual, and perhaps even the temporal, life of the infant can be saved. Yet the prefect or magistrate of the place is to be warned, and witnesses approved by him are to be used both for recognizing the death and for greater certainty about the matter, and especially lest the author of the operation be accused as guilty of homicide.

When the mother is living, the Caesarean operation can never lawfully be done whenever there is danger, either proximate or probable, of the death of the mother following from it, although, if it is not done, both the mother and offspring will certainly perish. The reason is that this would be the same as directly killing the mother, which is never lawful. St. Thomas, III, q. 68, a. 11, ad 3, says: "A man ought not kill the mother in order to baptize the child." L. 106. Hence the operation cannot be done when a very skilled surgeon is lacking, nor when the mother is so weakened by disease that the operation, otherwise not dangerous, would bring about proximate danger of death from the circumstances.

When the mother is living, the Caesarean operation can lawfully be done when these conditions are present: 1. If she cannot give birth naturally, or is going to die before she gives birth, with the greatest danger of the infant's death before he can be baptized. 2. If, according to the judgment of a skilled surgeon, proximate danger of the mother's death is absent. But such danger can be absent if the mother is robust. 3. If a very skilled surgeon is present. Elbel, n. 60. The reason is clear; for there is no danger, or at least it is very slight and remote, and therefore, if perhaps death follows, it will seem to follow only per accidens.

IV. On the Subject of Baptism

471. **Whether or when must it be done?** When the mother is dead, it certainly must be done under grave obligation, even when parents or relatives are unwilling or resisting, if it can be done; because from the law of charity the eternal salvation of the infant must be procured with

every care and labor. Thus St. Thomas, ibid., where he adds: "But if the mother has died, while the offspring is living in the womb, she ought to be opened so that the child may be baptized." So also the Roman Ritual establishes. This especially holds if the time of birth is imminent, because since the fetus is stronger, a greater hope of baptizing him shines forth. Moreover, careful diligence is to be used so that the region of the uterus of the deceased woman is kept warm until the operation has been done; otherwise the infant would more easily depart from life before he could be baptized.

In itself and speculatively speaking, the operation must be done even when the mother is living, if according to the judgment of experts the infant cannot otherwise be baptized and it can be done without proximate danger of death. The reason is that from the general law of charity each person is bound to suffer temporal inconvenience in order to save the spiritual and eternal life of his neighbor. In itself and speculatively speaking; for in practice the confessor must beware lest he urge the mother under grave obligation, because of the excessive danger that by denying consent she may die in a state of mortal sin; and thus, while he wishes to save the spiritual life of the infant, the mother herself would be damned. Therefore it will be enough to exhort her to consent to the incision. Moreover, since it is established that the fetus can survive the deceased mother, the hope certainly then shines forth of baptizing him after she has died, and therefore a lesser obligation of the incision presses.

But the mother is not bound to undergo the operation if, the operation being omitted, she alone is judged likely to perish; because no one is bound to preserve life by extraordinary and so arduous means. But if that hope of saving the offspring were altogether slight, the mother could, but would not be bound to, undergo the operation, because charity does not press so much in so great an uncertainty of outcome. L., ibid.; E. M.

472. **Note:** Certainly anyone, when the mother is dead, if the fetus is still living and this is established, must procure that he be baptized. Therefore, if with moral certainty he cannot be baptized in the womb itself, the uterus of the mother is to be opened by experts or even by others. But priests, at least regularly, are not held by this obligation, because of very grave inconveniences on the part of civil authority, and because of the scandal that would be had among the people. Hence from the decree of the Holy Office, Feb. 15, 1760, this prohibition in this matter was made for missionaries in China: "This extraction of the fetus from the womb of the pregnant and deceased mother, although it is to be made known and persuaded, nevertheless His Holiness expressly guards and prohibits that missionaries in particular cases involve themselves in demanding the section, much less in performing it." E. M.

On Confirmation

I. On the Nature, Matter, and Form of Confirmation

473. **What is confirmation?** It is a sacrament of the New Law, instituted by Christ the Lord, by which, through the imposition of hands and the anointing of chrism in the word, strength of

grace is given for professing the faith received in baptism. Trent, sess. 7, cc. 1, 2; Florence, decree for the Armenians; Roman Catechism, n. 5; St. Thomas, III, q. 72, a. 1; Supplement, q. 29, a. 3.

474. **What are the effects of confirmation?** It is strength for constantly professing the faith where there is need, and for defending it when an opportunity is given. Therefore it brings to the soul grace and helps by which it may do this. Moreover, since through the sacrament of confirmation people receive power and strength for spiritual combat against the enemies of the faith, it is necessary that by reception of it a character be imprinted. Florence, loc. cit.; Roman Catechism, nn. 2, 5, 20, 23; St. Thomas, III, q. 72, aa. 1, 5, 7.

475. **What is the matter of confirmation?** It is twofold: the imposition of hands and the anointing of chrism. The imposition of hands is not that which is done at the beginning of the sacred function over all those to be confirmed, but that which is had when the minister anoints each of those to be confirmed with blessed chrism. Chrism is made from olive oil and balsam of whatever region. Florence, decree for the Armenians; Benedict XIV, C. *Ex quo primum*; Sacred Congregation for the Propagation of the Faith, Aug. 6, 1840; Roman Catechism, n. 7; Roman Pontifical, on Confirmation; St. Thomas, III, q. 72, a. 2; E. M.

476. **Note:** On the adequate matter of this sacrament, St. Alphonsus says these things: "The first opinion holds that the essential matter of this sacrament is that imposition of hands which is had in the Roman Pontifical at the beginning of the rite, where the bishop, before he approaches the anointing of chrism, extends his hands toward those to be confirmed, pronouncing the prayer: Almighty everlasting God, etc. But it says that the anointing which afterward is used by the bishop is accidental matter, instituted not by Christ but by the Church ... The second opinion says that the essential matter is composed both from the imposition of hands which is done at the beginning and from the anointing which afterward is used by the bishop ... Finally, the third opinion, common or nearly common, which we defend and judge most certain with Bellarmine, holds that the adequate and total matter of confirmation is the anointing of chrism which is used for those to be confirmed through the imposition of the bishop's hand ... Therefore we admit that both anointing and imposition are required for the matter of confirmation, but only that imposition which is indistinct from the anointing ... But according to our opinion, that the total adequate matter of confirmation is the anointing of chrism performed by the bishop's hand, it must be noted that these things are of the essence of the sacrament: 1. That the anointing be done on the forehead, as is had from C. un. *de Sacram. unctione* and from the decree of Eugene IV, according to the common opinion ... 2. That the anointing be done in the form of a cross, according to St. Thomas, III, q. 72, a. 4, ad 3, whom the doctors also commonly follow ... 3. That the anointing be done by the hand of the ministering bishop himself." L. 164; St. Thomas, III, q. 72, a. 9; Roman Catechism, n. 24; Roman Pontifical, on Confirmation; E. M.

477. **Resolves:** 1. Confirmation would be invalid if the anointing is done by means of an instrument. Holy Office, Jan. 14, 1885.

478. It is likewise invalid if it is done on the mouth instead of the forehead.

479. Although it ought truly to be done with the right thumb of the bishop, nevertheless the anointing would be valid if it were done with another finger of the bishop, and even if it were a finger of the left hand. Yet the bishop would sin if he did this without necessity; for he would act against the universal practice of the Church, although it does not appear that an inversion of the said ceremony reaches grave fault. L. 165.

480. **Are olive oil and balsam necessary by necessity of the sacrament?** "It is certain that oil is of the necessity of the sacrament ... And it must be olive oil ... But whether balsam is also of the necessity of the sacrament, the first opinion denies ...; the second opinion, more common and more probable, affirms ... But it is certain that neither opinion is of faith nor certain; hence the sacrament must altogether be conferred with oil and balsam, and otherwise it would at least be doubtful ... And therefore, if given with oil alone, it would at least have to be repeated conditionally. Conversely, because the first opinion is sufficiently probable, in the article of death confirmation can well be conferred conditionally from oil alone, if chrism also made with balsam cannot be had; for the great usefulness of this sacrament would be a just cause of ministering it conditionally." L. 162. But it is certain that balsam is required by necessity of precept. L., *Homo Apostolicus*, tr. 14, n. 39. Florence, decree for the Armenians; Roman Catechism, nn. 7-9; St. Thomas, III, q. 72, a. 2.

481. **Must chrism necessarily be blessed?** It must be affirmed absolutely if the discussion concerns necessity of precept. L. 163.

It must also be affirmed altogether if the discussion concerns necessity of the sacrament. For the constant practice of the Church suggests this, and the decree of Eugene IV, in which it is read that the matter of confirmation is blessed chrism. L., ibid. And *Homo Apostolicus*, tr. 14, n. 39, says: "The remote matter of confirmation is chrism made from balsam and oil through the blessing of a bishop, unlike the oil of baptism and of the sick, as Innocent XI distinguished in C. *Cum venisset de Sacr. unct*. But whether one of these oils is valid matter for another sacrament, Suarez, Laymann, and Henriquez deny, but Bellarmine, Castro, Bona, and Barbosa more probably affirm." St. Thomas, III, q. 72, a. 3; E. M.

480. **Must chrism necessarily be of that year?** This is not required by necessity of the sacrament, because whether it is old or new, the matter is not changed; but it is required by precept of the Church. Hence a bishop who confirmed with old chrism would sin gravely. For to this end new chrism is consecrated on the Lord's Supper, the old having been burned. L. 163.

481. **What is the form of confirmation?** Just as the total adequate matter of confirmation is the anointing of chrism used by the bishop's hand, so the total form is the words which the bishop pronounces while anointing: I sign you with the sign of the cross, and I confirm you with the chrism of salvation, in the name of the Father, and of the Son, and of the Holy Spirit. Florence, decree for the Armenians; Roman Pontifical, on Confirmation; St. Thomas, III, q. 72, a. 4; L. 167.

482. **Which words of this form are essential?** For validity, the following are altogether essential: 1. The words I sign and I confirm, unless they are supplied by another synonymous word. 2. The expression of the Most Holy Trinity, as in baptism. 3. The word you, by which the subject of the sacrament is designated. 4. The words with the sign of the cross, and also the words

with the chrism of salvation. But to say I strengthen for I confirm, or of sanctification for of salvation, would be only an accidental change. Florence, decree for the Armenians; Roman Catechism, nn. 11, 12; St. Thomas, III, q. 72, a. 4; L. 168.

483. **Is the form used among the Greeks valid: The seal of the gift of the Holy Spirit?** Response: affirmatively, with the common opinion of theologians. For the sense is: by this sign the gifts of the Holy Spirit are given, with the verb omitted according to the manner of the Greeks. But while the invocation of the Most Holy Trinity in the Latin Church is had after the anointing, in the Greek Church it is had in the preceding prayer. Otherwise it would have to be said that the Greeks do not have the sacrament of confirmation, which is very harsh. It is further established from the declaration of Benedict XIV in the encyclical letter *Ex quo primum* to the bishops of the Greek rite, March 1, 1756. L. 164, 169.

II. On the Minister and Subject of Confirmation

484. **Who is the minister of confirmation?** The bishop alone is the ordinary minister of this sacrament. Thus Innocent III and Trent, sess. 7, c. 3, declared.

A simple priest can confirm as extraordinary minister from special delegation of the Supreme Pontiff. This is established from the practice of the Church. Greek or Oriental presbyters confirm in baptism itself, and they also validly confirm outside baptism. Confirmations of this kind are likewise held valid, although done by schismatics, for jurisdiction was not taken away from those who were, as it were, tolerated. Benedict XIV, C. *Eo quamvis tempore*; C. *Anno vertente*, June 18, 1759; A. S. S., vol. 25, p. 439. But the priest must use chrism blessed by a bishop. This is established from the decree of Eugene IV, where the matter of confirmation is said to be chrism blessed by a bishop. Roman Pontifical, on Confirmation; St. Thomas, Supplement, q. 38, a. 1; *Quodlibet* 11, a. 7; III, q. 72, a. 11; Benedict XIV, *de Syn.*, l. 7, cc. 7, 8, 9; L. 170; E. M.

485. **Can the Pope delegate also to a simple priest the power of making chrism?** It is controverted. Not a few affirm; but several others deny. The same controversy exists for the oil of extreme unction. But cf. Benedict XIV, *de Syn.*, l. 8, c. 1, n. 4. The blessing of a priest, in either sacrament, without delegation of the Pope, is invalid. L. 163, 709; E. M.

486. **Can a bishop confirm faithful who are not his subjects?** As to validity, he can confirm all, as follows from the power of order.

As to lawfulness, he cannot confirm except those who are found in his own diocese; and he would sin gravely by confirming even his own subjects in another diocese, because confirmation is an exercise of jurisdiction of the external forum, which cannot be performed without permission of the Ordinary of the place. But he can confirm strangers in his own diocese, which has been introduced by custom and the tacit consent of bishops. L. 173.

II. On the Minister and Subject of Confirmation

487. **When is a bishop bound to confirm?** He is bound to confirm those asking whenever he conveniently can, if he cannot defer them to another near time.

He is also bound sometimes to provide his subjects the opportunity of receiving this sacrament. Hence he would sin gravely if for a long time he abstained from conferring confirmation, for example for eight or ten years, and did not go around the diocese, at least through the principal places, unless he were excused by moral impossibility. "But if a just cause is present, one who defers for three or more years does not sin." L. 175. La-Croix, n. 388.

488. **Does a bishop sin gravely by omitting to confirm a dying person asking for the sacrament?** Since this sacrament is not necessary for salvation, not going to the dying to confirm them, because it is not without inconvenience, is light; and where this custom prevails, it is not even light. L. 175; La-Croix, n. 390.

489. **Who is the subject of confirmation?** It is every and only baptized human being not yet confirmed, even though lacking the use of reason. For confirmation perfects the spiritual life which is received in baptism, and was instituted, like baptism, for all.

Yet from the practice generally prevailing in the Church, children who have not yet attained the use of reason are not to be confirmed, unless a legitimate custom of places bears this, which for example prevails among the Greeks and in Spain. Benedict XIV, C. *Eo quamvis*, section 6. "It is certain among all that infants are lawfully confirmed if just causes accede, namely danger of death, absence of the bishop, etc." L. 178. "If the twelfth year does not seem to have to be awaited, it is certainly most fitting to defer this sacrament until the seventh." Roman Catechism, n. 18. "This sacrament is to be given even to those about to die ... Even children who die confirmed obtain greater glory, just as here they obtain greater grace." St. Thomas, III, q. 72, a. 8, ad 4. Speaking of the insane, Benedict XIV says that confirmation must altogether be ministered to them. L. 178. Even the perpetually insane are lawfully confirmed. L. 180. Roman Pontifical, on Confirmation; Benedict XIV, *de Syn.*, l. 7, c. 10, nn. 5, 8; St. Thomas, III, q. 72, a. 8; E. M.

490. **What necessity and obligation is there of receiving confirmation, and of what kind?** "It is not necessary for salvation by necessity of means, nor by necessity of precept per se. This is the common opinion of St. Thomas and others against Scotus and Sylvester. The reason is both because the Church does not urge its reception by any penalties, and because neither from Scripture, nor Tradition, nor the end or institution of the sacrament is such a precept gathered. And the canons which are brought forward to the contrary are sufficiently explained as concerning necessity for better being." Busembaum, n. 181.

"The precept which is had in Trent, sess. 23, c. 4 *de Ref.*, does not bind all, since it is hypothetical, but only those to be ordained or initiated with first tonsure. Henry, Valencia, Suarez, and Navarrus teach, against Tanner, that its omission is not mortal; Navarrus adds that not even a bishop sins mortally by ordaining someone not confirmed, or if he himself, not confirmed, ordains." Busembaum, n. 183.

According to St. Alphonsus, there is an obligation under grave matter from divine precept, at least in the course of life and when a fitting opportunity is given; and he proves this from the declaration of Benedict XIV, C. *Etsi pastoralis*, on the rites and dogmas of the Greeks, where he says, section 3, n. 4: "They are to be admonished by the Ordinaries of places that they are held guilty of grave sin if, when they can approach confirmation, they refuse and neglect it." These words of Benedict XIV do not seem to conclude for all, because the Pontiff is speaking only of those invalidly confirmed by Greek

presbyters, who therefore refused to approach confirmation again because they held the first as valid. Hence there was here a particular reason of obligating them to receive the sacrament of confirmation, namely that they might thus retract the error. And this is confirmed from Benedict XIV himself, *de Syn.*, l. 7, c. 10, n. 9, which work was published after that Constitution, c. 9, n. 4. Therefore the law is doubtful. Yet the opinion of St. Alphonsus is handed down in the Instruction issued by the authority of the Sacred Congregation for the Propagation of the Faith, March 21, 1773, and inserted into the Roman Ritual. St. Thomas, III, q. 72, a. 8; Supplement, q. 29, a. 3, ad 3; E. M.

491. **What is to be done in doubt whether someone has been confirmed?** He can be confirmed again conditionally. Cf. nn. 345, 346. But one is not bound to this if he truly and probably believes that he has already received the sacrament. L., *Homo Apostolicus*, n. 48.

492. **What dispositions are required in those to be confirmed?** 1. The baptismal character for the validity of the sacrament, and in an adult the intention of receiving the sacrament. Cf. n. 381.

493. The state of grace, because confirmation is a sacrament of the living. Therefore one conscious of mortal sin must have recourse to the sacrament of penance, unless he is perfectly contrite. The general custom is that no one be confirmed unless he presents a certificate signed by the pastor's signature.

494. That the one to be confirmed be imbued with the rudiments of Christian doctrine, especially those things which are of necessity of means and which regard the sacraments of penance and confirmation. Roman Pontifical, on Confirmation; E. M.

495. **Must the one to be confirmed be fasting?** Response: negatively, with attention to present custom. For the canonical laws which prescribed fasting for receiving confirmation have gone into desuetude. Therefore the use of conferring that sacrament in the evening time has also prevailed. Roman Pontifical, on Confirmation; L. 184; St. Thomas, III, q. 72, aa. 6, 7.

496. **What about the various prescriptions concerning the administration of confirmation?** "Confirmation can be conferred on any day whatever," L. 184, "and at any time whatever," L. 174. "But it can probably be ministered without grave sin in some decent place, even outside the Church," L. 174, 184, even in churches of Regulars. Benedict XIV, C. *Confirmandis*, section 6.

"The bishop ought to be clothed with an amice over the rochet, or with a surplice if he is a Religious, and with a stole, a white cope, miter, and staff ... More truly they say that it is mortal to omit all the aforesaid instruments ... otherwise if only one is omitted ... It must be noted concerning the staff that it suffices that the staff remain publicly displayed or be held by a cleric ... Likewise the Sacred Congregation declared that it suffices for the bishop to confirm without a miter, using only a stole ... It must be noted that omission of the slap, scandal being excluded, is never mortal ... they deny that omission of the candle can ever be mortal." L. 184.

Moreover, outside the case of necessity, a sponsor is required under grave obligation, and only one, designated by the parents or by the bishop in their defect, who must under grave obligation have been confirmed; moreover he must be different from the sponsor of baptism, at least outside necessity, and of the same sex as the one to be confirmed. The sponsor contracts spiritual

relationship with the confirmed person and with his parents, provided nevertheless that he touches him. He also contracts the obligation of instructing the confirmed person as to those things which pertain to faith and morals, if the confirmed person is not instructed and another is lacking.

But a religious cannot be sponsor, unless the one to be confirmed is likewise a religious.

As to the manner of receiving in confirmation, it is prescribed in the Roman Pontifical that the one to be confirmed place his foot over the right foot of the sponsor; but today the received custom has it that it suffices for the sponsor to place the right hand over the right shoulder of the one to be confirmed, and Concina testifies that this custom was approved by the Sacred Congregation of Rites, Sept. 20, 1749. L. 187.

The forehead of the confirmed person is to be bound with a linen band, marked with a cross, and so to remain until the chrism dries or is wiped away. But today from desuetude this ceremony is no longer in use in our regions, since immediately after the anointing the forehead of the confirmed person is wiped. L. 188. "The common blessing which is given by the bishop to those confirmed at the end is not necessary for the sacrament, but is a simple ceremony, as the doctors commonly say. Hence Tamburini probably says that the warning which is made, lest those confirmed depart before the aforesaid blessing, does not seem to obligate." L., ibid. Roman Pontifical, on Confirmation; L. 185-188; *Homo Apostolicus*, nn. 50-52; St. Thomas, III, q. 12, aa. 10, 12; E. M.

On the Eucharist

I. On the Nature and Effects of the Eucharist

495. **What is the eucharist?** It is the mystery of our Faith, by which, under the species of bread and wine, consecrated by the words of the priest, Christ himself is offered, contained, and received. Florence, decree for the Armenians; Trent, sess. 13, chapters 1, 3, 7, canons 1-4; sess. 22, chapters 1, 6. It has the nature of sacrifice and of sacrament: of sacrifice while it is confected; of sacrament while it is confected, remains, and is received. Trent, sess. 13, c. 4; sess. 22, c. 1; St. Thomas, III, q. 73, aa. 1, 4, 5; q. 75, 76, 77; q. 79, a. 5; L. 189, 190.

496. **How long does Christ remain really present in the eucharist?** He remains as long as the species remain intact; but he ceases to be beneath them as soon as the species are so corrupted that according to human estimation they do not seem to be bread and wine. But then, by the law established by God in the institution of this sacrament, the same matter is substituted for the species which would succeed to bread and wine once corrupted.

"The species are not to be retained in the mouth so long until they wholly perish, because then Christ would not be eaten, nor would the grace of the sacrament be conferred; as neither if you die while the host is still in the mouth." L. 226. For grace is given as soon as eating is verified, which is the vital passage of food from the mouth into the stomach, according to the words of Christ: He who eats my flesh and drinks, etc. St. Thomas, III, q. 77, aa. 4, 5; L. 225; La-Croix, n. 474; Lugo, d. 12, n. 40ff.; E. M.

497. **How long are the sacred species judged to remain intact after reception of the sacrament?** Some say after a minute, others after five minutes, others after half a quarter-hour. On this matter no general rule at all seems able to be handed down. For a shorter or longer delay is chiefly to be derived from the different digestive power of different people, and other circumstances both internal and external. But they remain longer in a priest, who in Mass communicates under both species and with a larger host, than in a layperson, who customarily receives only a small host. L. 225.

498. **Is the eucharist a single or double sacrament?** It is one sacrament in species, although there are several signs. For although there is a physical plurality of sign, there is nevertheless moral unity; for the sacrament of the eucharist, although it is composed of the physically distinct species of bread and wine, nevertheless is ordered to one spiritual refreshment in species as to the end and signified effect, just as material food and drink are ordered to one bodily refreshment. So in extreme unction there are several anointings, and nevertheless one sacrament is had, because those several anointings are ordered to one end and effect, namely to removing the remains of sins. St. Thomas, III, q. 73, a. 2; L. 191, 199.

I. On the Nature and Effects of the Eucharist

499. **What are the effects of the sacrament of the eucharist in the soul?** The principal ones are the following, namely:

500. Increase of sanctifying grace, which of itself constitutes the proper and principal effect of the eucharist. For according to the words of Christ, John 6:56, My flesh is truly food, this sacrament was instituted as spiritual nourishment; and nourishment supposes life in the one who receives it. Hence it happens that through this nourishment the very life of the soul, which consists chiefly in sanctifying grace, is strengthened and increased. Trent, sess. 14, c. 5; Lugo, d. 1, n. 7.

501. Attainment of eternal glory; for Christ promises this: If anyone eats of this bread, he shall live forever, John 6:52.

502. Most abundant bestowal of actual graces, which flow from habitual grace and infused habits.

503. Weakening of evil habits and correction of vices, especially of lust.

504. Remission of venial sins. Trent, sess. 13, c. 2, calls the eucharist an antidote by which we are freed from daily faults and preserved from mortal sins. Roman Catechism.

505. Remission of temporal punishment due to sin; not indeed of all of it, but according to the measure of devotion and fervor, as St. Thomas says, III, q. 79, a. 5.

506. Special union with Christ and his members, as is clear from John 6:57: He who eats my flesh and drinks my blood abides in me and I in him.

507. Preservation from future sins, both because, charity being increased through this food, the soul becomes stronger against corrupt nature, and because it is an efficacious memorial of the Lord's Passion, through which the demons were conquered. L. 268, 269; *Homo Apostolicus*, n. 5.

Florence, decree for the Armenians; Trent, sess. 13, c. 2; St. Thomas, III, q. 79; q. 73, a. 4; q. 74, a. 1.

508. **Can the eucharist ever destroy mortal sin?** Response: affirmatively, more probably; not indeed per se, but per accidens and mediately through the infusion of grace, namely when someone, ignorant that he is in a state of mortal sin, approaches the eucharist in good faith and with attrition for sins committed beforehand. Then nothing prevents the sacrament from producing its effect; but it cannot produce its effect while mortal sin stands. Therefore it must indirectly remove that sin. L. 268; St. Thomas, III, q. 79, a. 3.

II. On the Matter and Form of the Eucharist

501. **What is the remote matter of the eucharist?** Bread and wine are the remote matter of the sacrament of the eucharist. This is established, first, from the institution itself of this sacrament; for Christ at the Last Supper took bread and wine and consecrated them into his Body and Blood. Second, from the definition of the Church in the Lateran Council, chapter *Firmiter*, in Florence, decree of union, and in Trent, sess. 13, in nearly all the chapters. Third, to all these is added the unanimous tradition of both the Latin and Greek Church.

Wheat bread alone and wine from the vine alone are valid matter of the sacrament of the eucharist. This is established from the cited decree of Florence, where it is said: "The third is the sacrament of the eucharist, whose matter is wheat bread and wine from the vine." The perpetual tradition and practice of both the Latin and Greek Church also agree.

Wheat bread alone, namely that which is mixed from wheat flour and natural water, even sea water, toasted or baked by fire, and uncorrupted in its own species. But wheat is not any kind whatever of grain, but the noblest kind of grain. And as there are various species of wine, so also there are various species of wheat. Bread from barley, oats, or starch is altogether unsuitable matter. Wine pressed from raisins or dried grapes will be valid matter, unless they have been boiled, or too much water is admixed.

"Since the matter of this sacrament is determined by comparison to the use of the faithful absolutely, and the number of the faithful is indeterminate ... it cannot be said that the quantity of the matter of this sacrament is determined." St. Thomas, III, q. 74, a. 2.

But a very little water is to be mixed with the wine; and this not by necessity of the sacrament, but by ecclesiastical precept. The reason for the first is deduced from the perpetual practice of the Church and the universal tradition of the Fathers, and from the declaration of the Councils, especially of Florence, which declares that the matter of the chalice is "wine from the vine, with which a very little water must be mixed," and Trent, sess. 22, c. 7. The reason for the second is deduced from this, that Christ, in the institution of this sacrament, designated only wine, and the Councils, by making mention of this mixture, speak only of precept, as Trent does in the cited place. There is added the doctrine of the Roman Catechism, which, after it taught that this mixture cannot be omitted without mortal sin, adds: "Yet if it [water] is lacking, the sacrament can stand." This precept is grave; and "if this mixture has been omitted, and this is noticed before consecration, it is still to be done; otherwise

if after." L. 208. St. Thomas, III, q. 74; L. 198; Sacred Congregation for the Propagation of the Faith, Jan. 30, 1635; *Collectanea* of the Sacred Congregation for the Propagation of the Faith, n. 797; E. M.

502. **Is bread made from rye or siligo valid matter?** Rye (*segala*) is a kind of grain, and it is black, heavy, bitter. Therefore it certainly seems to be invalid matter. Siligo (*grano bianco*) is a kind of very light and very white wheat, from which most praised bread is made. Therefore it seems almost certainly to be valid matter. St. Thomas, III, q. 74, a. 3, ad 2; Lugo, d. 4, n. 3; La-Croix, n. 421; L. 200.

503. **Is bread made from spelt or far valid matter?** In various regions there are given diverse species of true wheat which come under the name of spelt. Hence it seems one must attend to the common estimation of people. For every bread made from grain which is truly established to be wheat, although it is named otherwise, is certainly valid matter. But spelt does not have the same signification in various regions and among various doctors. Spelt, according to Forcellini at this word, is a kind of grain which is thought to be the same as zea, which according to the same Forcellini at this word is said to be a kind of grain similar to far. But far is called the hardest kind of all grains, and now is distinguished from spelt, now is confused with it. St. Thomas, III, q. 74, a. 3, ad 2; IV, dist. 11, q. 2, a. 2, q. 4.

504. **Is both unleavened and leavened bread valid and lawful matter of the eucharist?** As to validity, affirmatively. The reason is that each is true bread, and is also simply so called in Scripture; and each is made from wheat flour and natural water. This is also established from the definition of the Church. For thus Florence, in the decree of union: "We define that in unleavened or in leavened wheat bread the Body of Christ is confected."

As to lawfulness, Latins are bound under grave obligation to consecrate in unleavened bread, and Greeks in leavened bread, each according to the rite of his own Church. This is established from the practice of both Churches, and from Florence in the cited decree, where it is added: "And priests ought to confect the Body of the Lord itself in either one, each according to the custom of his Church, whether Western or Eastern." St. Pius V, C. *Providentia Romani Pontificis*, 1565; Benedict XIV, Constitution on the rites of the Greeks, section 6; St. Thomas, III, q. 74, a. 4; E. M.

505. **Can a Latin in places of the Greeks celebrate in leavened bread, and a Greek in places of the Latins in unleavened bread?** The doctors agree that if among the Greeks there is found a church of the Latins in which the Latin rite is observed, a Latin priest must consecrate in unleavened bread, and so conversely.

If a Latin passes through Greece, or the contrary, the doctors commonly and most probably teach that each can celebrate either in leavened or in unleavened bread. The reason is that each can indeed follow the custom of the region where he is found; nevertheless he is not bound to this.

Simple faithful also, as to communion, ought to observe their own rite. But it is permitted to communicate in another rite when they cannot communicate in their own rite. L. 203; Benedict XIV, C. *Etsi pastoralis*, n. 10ff.; encyclical *Allatae sunt*, section 23; C. *Eo quamvis tempore*, section *Neque etiam*; Leo XIII, brief *Orientalium dignitas*, pridie Kal. Dec. 1894; *Collectanea* of the Sacred Congregation for the Propagation of the Faith, nn. 2000, 2004, 2005, 2007, 2017; E. M.

506. **In a case of necessity, in order to provide viaticum to a sick person, can a Latin priest consecrate in leavened bread?** Some affirm, but the common and more probable opinion denies. The reason is that the Church most gravely urges observation of the prescribed rite, which consequently in this case is to be preferred to the private utility of a neighbor, for whom such a sacrament is not simply necessary. L. 203.

Yet it would be lawful and obligatory to consecrate in leavened bread in order to complete the sacrifice, if it could not otherwise be completed, for example if the priest noticed that he had consecrated corrupt matter and could have no other lawful host.

507. **Does a priest sin gravely by consecrating in wine turning sour?** Response: affirmatively, although that wine is still valid matter of the sacrament. Indeed mortal sin is admitted, not only if the wine is close to vinegar, but also if it certainly begins to turn sour and to be corrupted, because then grave irreverence seems to be inflicted on the sacrament. This is established from the Rubrics, tit. 4, n. 2: "If the wine has begun to turn sour or to be corrupted, or has been somewhat acrid, or is must then pressed from grapes, or water has not been admixed, or rose water or water of another distillation has been admixed, the sacrament is confected, but the one confecting sins gravely." "Probably, however, when other wine is lacking, it is lawful without scruple, as upright men customarily do, to use wine a little turning sour, or not notably acidic." L. 207. Hence the Rubric does not seem to be taken with such rigor that it comprehends even all first degrees of acridity, but only those which proximately begin to constitute wine that is turning sour. "But when grave necessity urges, it would be lawful to use wine still notably turning sour, provided it is certainly wine." L. 207. L. 206, 207; *Homo Apostolicus*, appendix 3; *Exam. ordinand.*, n. 98; Benedict XIV, notification 77; St. Thomas, III, q. 74, aa. 3, 5.

508. **Is frozen wine valid matter?** Response: affirmatively, more probably. The reason is, first, because it remains substantially wine, since it retains the same color, taste, and odor; second, because from the Rubrics of the Missal the species of wine frozen after consecration must be liquefied by applying heated cloths, and then consumed, since it is a true sacrament. Rubrics *de Defect.*, tit. 10, n. 11. Therefore it supposes that the frozen species of wine retains the Blood of Christ. Therefore the sacred species are not changed substantially by freezing after consecration. Therefore neither before. Thus St. Alphonsus, n. 207, where he says that this is the truer opinion because of the reason deduced from the cited Rubric. But concerning the denying opinion he says in the same place: "I think it has no solid probability." St. Thomas, III, q. 74, a. 4, ad 4; Lugo, d. 4, n. 14.

509. **What quantity of water is to be mixed in the chalice?** A very little quantity of water suffices, as Florence says. Probably water can be poured in up to an eighth part of the wine, indeed up to a fifth part according to Lugo, d. 4, n. 38. Busembaum adds that it suffices that the water not exceed a third part. But in practice this last opinion is not to be admitted, although a third part does not corrupt the wine if it is strong. Generally the priest should be counseled not to exceed eight or ten little drops. But if by chance he has poured in too great a quantity of water, some quantity of wine can again be added. But one drop of water suffices, if it is sensible. L. 210; St. Thomas, III, q. 74, a. 8; q. 77, a. 8; E. M.

II. On the Matter and Form of the Eucharist

510. **What about the proximate matter, or the use of the required matter in the consecration itself?** For valid consecration, besides apt matter, it is required:

511. That the matter to be consecrated be physically present, because the demonstrative pronouns of the form, this, this, necessarily require this; otherwise the form would be false, because that which was not present would be demonstrated as present.

512. That by the intention of the minister it be determined in the individual; because just as the minister does not consecrate unless he intends to consecrate, so neither does he consecrate this matter unless he determinately intends to consecrate it. Yet actual determination is not required, but virtual determination suffices. L. 211-214.

For lawful consecration it is required:

1. That the priest in no way depart from the use of the Church, especially that determined by the Rubrics of the Roman Missal. Hence first of all it is necessary that the matter to be consecrated be decent and clean because of the reverence due to so great a sacrament.

2. That it be placed on the altar and on the corporal, indeed also on the altar stone, according to Benedict XIV, *de Sacr. Miss.*, sect. 2, n. 139.

3. That the ciborium or chalice to be consecrated be uncovered.

4. That it be done at the time of the Canon prescribed by the Rubric. Trent, sess. 22, cc. 4, 5, 8; L. 218, 219; St. Thomas, III, q. 78, a. 1, ad 4; q. 83, aa. 3, 4, 5.

5. It is certain that it is necessary by necessity of precept to consecrate the eucharist under both species. It is likewise certain and common among all that not even in the article of death is it lawful to consecrate one species in order to give viaticum to a sick person. L. 195, 196.

6. By precept of the Church the bread to be consecrated ought to be round in figure and whole. It is lawful also to celebrate privately with a smaller host, such as is given to laypeople, when another cannot be had and scandal is absent; indeed, if a cause urges, even publicly on a feast day, because there is no precept nor is there proof of a custom obligating under precept, and also for the sake of devotion, if scandal is absent. But it is not lawful to take the small one and leave the larger, unless the priest has also consecrated that larger one in the same Mass, because he must communicate from his own sacrifice. Therefore a pastor acts badly who, intending to renew the eucharist, himself consumes a host consecrated by another and places in the tabernacle or sacred pyx one consecrated by himself. L. 205; Diana, tr. 1 *de Celebrat. Missar.*, R. 234.

7. **Resolves:** 1. Hosts hidden under others, or otherwise covered, are validly consecrated. Likewise wine is validly consecrated in a chalice covered with a veil, pall, or in any way whatever; because for true presence of the matter it suffices that it can be demonstrated by the pronouns this or this.

8. The consecration is valid if the priest thinks that only one or two hosts to be consecrated are present, although there are several, placed either by himself or by another. The reason is that

the priest surely intends to consecrate whatever is present and decently consecrable. Hence if the celebrant notices after consecration that two hosts are joined together, let him consume both as consecrated. But if before consecration, after he has offered, he notices this, let him put one back, and after Mass let him or another consume it as blessed bread.

9. The same must be said if someone has brought several hosts to be consecrated to the altar, or before the sacrifice has been warned about hosts to be consecrated already placed on the altar, or has in a reasonable way noticed that they are brought by another so that they may be consecrated, even if while he consecrates he does not remember them so expressly, or even if he did not uncover them at the offertory, provided they are present on the corporal; because the preceding intention perseveres virtually.

10. Hosts placed even on the corporal without the priest's knowledge would not be consecrated, because the entirely unaware priest did not have a general intention of consecrating them, and therefore an intention which did not exist cannot persevere virtually.

11. If small hosts for communicating the people are brought to the priest a little after the offertory has been made, he can lawfully consecrate them, supplying the offertory mentally. Rubrics *de Defect.*, tit. 7, nn. 1, 2, 4; L. 212, 215, 216, 217; Elbel, nn. 35, 36, 48.

12. **Can hosts to be consecrated be brought after the Canon has been begun?** Theologians and skilled rubricists commonly deny. Yet several doctors of great weight permit this for a most grave cause. Thus Benedict XIV, *de Sacrif. missae*, l. 3, c. 18, n. 5: "The common opinion is, and confirmed by the consent of most, that particles cannot be consecrated when the Canon has begun to be recited, even if it were a matter of consecrating a particle which would have to be brought for viaticum to a sick person. For in that case some small particle could be taken from the host of the Mass and reserved for the sick person ... Anyone easily understands that the order of the Mass is overturned if particles to be consecrated are received after the Preface has begun. But if this is to be done, it ought not be done without a legitimate cause, of which kind it would be if a great multitude prepared to receive the eucharist would lack the sacrament."

St. Alphonsus, n. 217, seems to subscribe to this doctrine: "If small hosts for communicating the people are brought to the priest a little after the offertory has been made, Aversa adds before the Preface has begun, Diana, etc., teach that they are lawfully consecrated, the offertory having been supplied mentally. And this even if the Canon has begun, as Tamburini, etc. At least when several would remain without communion." Busembaum and St. Alphonsus, cited place. But it is certain that they can never be admitted after the consecration of the bread.

513. **What kind of sin is it to consecrate a broken or stained host?** Scandal and a reasonable cause being excluded, it is only venial, unless the stain or fracture is enormous. But if some fracture or stain is detected in the host after the offertory, such a host will be lawfully consecrated, unless scandal of the people is feared, because already through the offertory it has in some way been dedicated and sanctified to God. L. 204; La-Croix, n. 432.

514. **Can doubtful matter ever be consecrated?** Never at all, not even to avoid death, is it lawful to consecrate doubtful matter: namely because of the danger of material idolatry, and

moreover, if only one species is doubtful, because of the integrity of the sacrifice. But when this has been consecrated, to despise it or to expose it to adoration, each is grave; but after the consummation, before the purification, it is to be consumed. And the same must be said if you doubt whether you have consecrated matter otherwise apt; but this, if it can be duly consecrated again conditionally, is to be consecrated again. St. Thomas, q. 74, a. 3, ad 3; Rubrics *de Defect.*, tit. 3.

515. **What is to be done if unconsecrated particles are mixed with consecrated ones?** "If unconsecrated ones are mixed with consecrated ones, the whole heap is to be carried to the altar so that the priest may intend to consecrate the unconsecrated ones; or rather let him consecrate the whole heap conditionally, if they are not consecrated. And this is rather to be done, because in consecrating the unconsecrated hosts, true determination of the matter is lacking, nor can the word this be verified, whence all the hosts must be consecrated conditionally, so that they may be validly consecrated." L. 216. Lugo, d. 4, n. 136; St. Thomas, III, q. 77, a. 8.

516. **Is a ciborium left outside the corporal through forgetfulness to be judged consecrated?** It is controverted. The first probable opinion affirms. The reason is that a positive will of consecrating that ciborium was already present at the beginning of Mass, and that will was not retracted. Therefore it persevered virtually at the time of consecration.

The second opinion denies. The reason is that that intention of consecrating outside the corporal would have been a grave sin, and therefore the priest is not presumed to have had it.

The second opinion is called common and more probable by St. Alphonsus, n. 217, namely from the presumed intention of the celebrant, because it could not have been consecrated without mortal sin. This holds, moreover, if it was at some time certain to him that he did not wish to do anything in celebrating Mass which could not be done without mortal sin. Otherwise one would have to say that he too does not consecrate who celebrates unknowingly with a chalice not consecrated or with a corporal not blessed. And indeed, excluding this previous general will of not consecrating in such a case, that presumed will is nothing, since in reality it is not present because of ignorance of the matter, while on the contrary a will is truly present of consecrating the present matter.

Since the matter is not without doubt, especially because of the extrinsic authority of the doctors, "in practice those particles are to be consumed after the Blood." L., ibid. The Rubrics *de Defect.*, tit. 3, nn. 4, 5, speaking of a priest who consecrated a host either corrupt or not wheat, prescribe that "if he has not consumed it, let him consume it after the consumption of the Body and Blood." "But particles found outside the corporal, in doubt whether they are consecrated, are to be consumed even after the ablution." L. 251.

517. **Is a ciborium placed indeed on the corporal, but which through forgetfulness remained closed at the time of consecration, judged consecrated?** Response: affirmatively. The reason is, first, because hosts certainly can be validly consecrated in a closed ciborium. Cf. n. 511. Second, because the priest has an absolute intention of consecrating whatever, with his knowledge, is above the corporal, is honestly consecrable, and is had after the manner of a continuous thing.

518. **Are drops of wine adhering outwardly to the chalice judged consecrated?** Drops adhering outwardly are never judged consecrated. The reason is that the priest's intention is to consecrate that one thing which is consecrable within the chalice itself. L. 215.

519. **Are drops of wine consecrated which are separated in the chalice, when the priest has intended nothing about them?** Some deny, others affirm, and finally others affirm concerning drops nearby and deny concerning remote ones. More probably drops altogether separated from the greater quantity are by no means judged consecrated. The reason is that it does not seem to be the intention of the Church, and therefore neither of the priest, to consecrate anything except the wine which is drinkable after the manner of one thing and is found gathered in the chalice.

"La-Croix says that it is expedient for the priest to intend to consecrate them, lest there be wine in the chalice which is not consecrated. But it seems better to me, says St. Alphonsus, to intend this concerning drops near the bottom, but not concerning remote ones." L., *Homo Apostolicus, Ex. Ordin.*, n. 99.

"Gavanti commands that they be wiped away, which custom approves. Yet Tamburini teaches that one who omits this does not sin; indeed that it is not expedient if you notice them when, the chalice having been uncovered, you are already about to consecrate and the people await the elevation. But after consecration they are in no way to be wiped away." L. 219. If separated drops are near the whole mass, they can easily be joined to it by inclining the chalice a little. L. 215.

520. **Is the consecration of one species without the other valid?** No one doubts that it is valid if this happens by chance and contrary to intention. But whether the priest consecrates validly who has a positive intention of consecrating only one species without the other, the doctors commonly affirm. The reason is that in every sacrament, whenever the minister pronounces the form over the matter with the intention of doing what the Church does, the sacrament is perfected. L. 196; St. Thomas, III, q. 78, a. 6; Lugo, d. 19, nn. 102, 104; Suarez, d. 43, s. 2; Florence, decree for the Greeks and Armenians.

II. On the Matter and Form of the Eucharist

521. **What is the form of the eucharist; what is its power?** The form in the consecration of the Body is: For this is my Body; but of the Blood: For this is the chalice of my Blood, of the new and eternal Testament, the mystery of faith, which shall be poured out for you and for many unto the remission of sins. For the priest, speaking in the person of Christ, confects this sacrament.

By the power of the words themselves, the whole substance of bread is converted into the Body of Christ and the whole substance of wine into the Blood: yet so that the whole Christ is contained under the species of bread, and the whole under the species of wine. "Under every part also of the consecrated host and of the consecrated wine, when separation has been made, the whole Christ is present." Florence, decree for the Armenians.

Therefore the words ought to signify the transubstantiation of the present thing in an instant. In an instant, that is, not in successive becoming, but in accomplished fact: namely, the form does not signify what is being done, but what has been done: This is, This is. Florence, decree for the Greeks and Armenians; Trent, sess. 13, cc. 1, 3, 4; St. Thomas, III, q. 78; q. 75, a. 7; E. M.

522. **Resolves:** 1. The consecration is valid but unlawful if the one consecrating says: This food is my Body; This chalice, This drink is my Blood; This is my Blood; for it is the same thing, since those words This is the chalice, etc., are said by metonymy. Or if he says: This chalice is the New Testament in my blood, Luke 22:20; 1 Corinthians 11:25; or if the particle for is omitted. Likewise if you pronounce *Coipus* for *Corpus*; *meus* for *meum*; *es* for *est*; *calis* for *calix*; *Sanguis* for *Sanguinis*, etc. But one who does not use due diligence in pronouncing the words of consecration rightly cannot be excused from sin.

523. The consecration will be invalid if you say: This (adverbially) is my Body; This Body is mine; This Blood is mine, where Body and Blood hold themselves on the part of the subject, not the predicate; That is my Body; Behold my Body; This my Body; This bread is my Body; Let this become, This becomes, Let this be my Body.

524. The consecration is doubtful if you say: That is my Body; This is my Flesh. For although flesh in Sacred Scripture also signifies body, nevertheless commonly and from its proper signification it imports only a part of the body.

525. The words of the form must be pronounced in the person of Christ formally and assertively, or recitatively and significatively at the same time, but not merely historically: namely, the words of Christ are to be pronounced by applying their signification to the present matter, so that this may be transubstantiated into the Body and Blood of Christ. Hence the form is invalid if someone says, This is the Body of Christ. Yet there is no need to have scruple whether the words are pronounced in the due sense; for any priest is presumed to have the intention of doing what Christ did and instituted, and thus he sufficiently intends to pronounce the consecratory words in each of the aforesaid senses. St. Thomas, III, q. 78, aa. 1, 2; L. 220, 221.

526. **Is omission of the word for in the form of consecration grave?** The first opinion probably denies, because that word is not found in the words pronounced by Christ, and otherwise as to the precept of the Church it does not seem to constitute grave matter.

The second opinion affirms. The reason is that in so grave a matter there does not seem to be light matter in any deliberate change. L. 220; St. Thomas, III, q. 78, a. 2, ad 5.

524. **In consecration are those preceding words required as essential: Who the day before he suffered, etc.; In like manner, etc.?** Response: negatively, with the common opinion, which St. Alphonsus, n. 222, Lugo, d. 11, s. 3, etc., hold. The reason is that these words are pronounced only historically, and do not seem to have any sacramental efficacy. Nor indeed are they enumerated in Florence, decree for the Greeks and Armenians, where the form of the eucharist is explicitly handed down. St. Thomas, III, q. 78, aa. 2, 3.

525. **In the consecration of the chalice, are these words alone: This is the chalice of my Blood, of the essence of the form?** The first opinion affirms. The reason is, first, because the

words of consecration of the bread are these: This is my Body. Nor indeed are the other words essential: which shall be given for you. Therefore by parity the words of consecration of the wine are only these others: This is my Blood, or other equivalent words. Second, because those words alone of themselves express the presence of the Blood of Christ under the species of wine. Thus more commonly and more probably.

The second opinion denies, because the later words, which for you, etc., designate the power of the Blood poured out in the Passion, which operates in this Sacrament. It is confirmed from Florence, decree for the Greeks and Armenians, where those words are enumerated in the form of the words in the consecration of the eucharist, and from St. Thomas, III, q. 78, a. 3. St. Alphonsus, n. 223, says that the opinion of the Angelic Doctor is very doubtful. Cf. Luke 22:20; 1 Corinthians 11:25. And he adds: "Moreover each opinion is speculatively probable; but in practice it is certain that the priest would sin gravely if he did not pronounce all the words which are had in the consecration of the Chalice, and if perhaps he had said only the first words, he certainly ought to repeat the form entirely under condition." Thus indeed in the Rubrics *de Defect.*, tit. 10, n. 3, it is prescribed, where it is said: "If he [the priest] dies, the form of the Blood having been half-pronounced, then another is to continue the Mass, and over the same chalice repeat the whole form [understand: under condition, if perhaps he had already said the words: This is the Chalice of my Blood] from that place: In like manner, etc.; or he could pronounce the whole form over another prepared chalice, and consume the Host of the first priest and the Blood consecrated by himself, and then the chalice left half-consecrated."

III. On the Minister of the Eucharist

526. **Who is the minister of consecration and distribution?** Every and only priest, even though he is bad, is the minister for confecting the eucharist. This is established, first, from Scripture; for Christ, instituting the sacrament, said to all and only the Apostles reclining with him, and therefore to all and only those who were to succeed them in the priesthood: Do this in memory of me, Luke 22:19. Therefore all and only priests received this power from Christ. Second, from Trent, sess. 22, cc. 2, 3, and Florence, decree for the Armenians. Third, finally, from universal and perpetual tradition. St. Thomas, III, q. 82, aa. 1, 5.

Priests or presbyters alone are the ordinary ministers of the distribution of the eucharist. This is established, first, from Trent, sess. 13, c. 8, where it is said: "It was always the custom in the Church of God that laypeople receive communion from priests, but that celebrating priests communicate themselves." Second, from the universal practice of the Church. St. Thomas, III, q. 82, a. 3.

Deacons, by force of their ordination, are extraordinary ministers of the eucharist, so that the distribution of this sacrament can be committed to them. This is established, first, from the practice of the first centuries, in which deacons commonly, by commission of bishops or presbyters, either general or particular, ministered the eucharist. Second, from various Councils, for example Nicaea I, general, Carthage IV, etc. L. 237; St. Thomas, III, q. 82, a. 3, ad 1, ad 3; Trent, sess. 14, c. 10.

By ordinary right, only the pastor or his superior can distribute the eucharist. For this there is required jurisdiction, ordinary, delegated, or at least reasonably presumed, or privilege, or custom,

not indeed for the validity of the act, as in absolution, but for the due order of ministering. It belongs to proper pastors to feed, which is done chiefly through the sacraments. This moreover is established from the Councils, especially from Carthage I, can. 7, and from Milevis, can. 18, Clementine 1 *de Trivii*, etc., and from the universal practice of the Church. Hence one who without at least presumed permission of the pastor ministers the eucharist violates his right in a grave matter, and therefore sins gravely.

Yet when the pastor grants others permission to celebrate in his church, he is always judged to grant permission also to minister the eucharist, unless he expresses the contrary; this is also confirmed by common practice. Indeed custom has it that in whatever church a priest celebrates Mass, he can distribute the eucharist to the faithful, which corresponds to the desire of Trent, sess. 22, c. 6.

Nevertheless, permission is not so easily to be presumed if it concerns reception of the eucharist from obligation. Therefore as to paschal communion, by law and the universal practice of the Church, this is to be received in each one's own parish; likewise to minister viaticum outside a case of necessity without permission of the pastor is unlawful. Yet in each case reasonably presumed permission suffices.

"It is also probable that outside the article of death, from a grave cause, scandal being set aside, it is lawful for a priest to take a sacred host from the tabernacle, or one brought by a deacon, and give it to himself, for example if in a long illness he had not communicated for a long time ... Indeed Croix, n. 471, etc., say that for the sole cause of devotion, a priest can always communicate himself, because, scandal being set aside, there is no irreverence, nor is it forbidden anywhere, unless another priest is present." L. 238. Lugo, d. 18, nn. 19, 36; L. 230, 231, 234, 235, 236, 239; E. M.

527. **In order for a deacon to minister, must the necessity be extreme? In extreme necessity is it lawful even for a layperson to minister the eucharist?** Response to the first: negatively, with the common opinion; but grave necessity suffices, namely when no priest is present who can conveniently minister the eucharist. But for this the commission of the bishop or pastor is required. L. 236.

"But in extreme necessity, namely if another priest is absent, a deacon can and is bound to minister viaticum, even without the commission of the pastor; so likewise the common doctors. And the same runs in the administration of baptism." L. 805. But according to St. Alphonsus, n. 234, a deacon solemnly ministering the eucharist without the required commission incurs irregularity, which nevertheless others deny. Cf. nn. 419, 423; Lugo, d. 18, nn. 7, 27; Suarez, d. 72, s. 1, n. 8; La-Croix, n. 472; L., l. 7, n. 346.

To the second: in extreme necessity it is lawful not only for a deacon but also for a layperson, scandal being excluded, to communicate both others and himself. L. 237. When such necessity occurs, for example in time of plague, by the judgment of the bishop laypeople can well be permitted to minister the eucharist. L. 237; St. Thomas, III, q. 82, a. 3; IV, dist., q. 1, a. 3; E. M.

III. On the Minister of the Eucharist

528. **Whether and in what circumstances can religious minister the Most Holy Eucharist?** They can always minister the eucharist in their own churches, either by themselves or through

other priests, except on Easter day. This is established from the privileges of the Supreme Pontiffs. At Rome, Thursday in the Lord's Supper is also excepted.

They cannot on Easter day minister the eucharist in their own churches to secular persons who are not actually serving the monastery, and who do not reside within their enclosures and houses, and who do not live under their obedience, although they have already previously satisfied the precept of annual communion in their own parish. Thus the Sacred Congregation of the Council several times, apud Benedict XIV, *de Syn.*, l. 9, c. 16, n. 3. Cf. Q. *Magno cum*, section 22, of the same Benedict XIV; Lugo, d. 16, n. 62; d. 18, n. 50.

In other churches they cannot minister the eucharist except by at least presumed permission of the pastors or superiors; nor viaticum to secular persons except by express permission of the pastors, except in a case of necessity. Cf. nn. 526, 1197.

"Regulars lawfully give the eucharist ... if the sick person has satisfied the precept about viaticum, with the intention of fulfilling it; because administration of the eucharist is forbidden to regulars only when the precept of communion obligates. Yet never, without permission of the bishop or pastor, is it lawful for religious publicly to carry the eucharist through the streets, since this derogates from the right of pastors obtained by custom; therefore in that case, in the sick person's oratory or another honorable place of the house, if legitimate faculty is had, the eucharist is to be given privately after the sacred rite has been performed." L. 239, 240; Elbel, n. 57; La-Croix, nn. 624, 626; Benedict XIV, *de Syn.*, l. 9, cc. 15, 16.

529. **What about the obligation of distributing the eucharist?** A pastor, or any priest having care of souls, is bound from justice to minister the eucharist to subjects, not only at Easter and in death, but also whenever they reasonably ask, yet excluding the cause of a legitimate impediment. The reason is that it belongs to the pastor from quasi-contract to provide, not only that the faithful fulfill the precepts, but also that they not lack helps which greatly benefit spiritual progress. Roman Ritual, on the Most Holy Sacrament of the Eucharist, on Communion of the sick; L., *Homo Apostolicus*, n. 8.

Any priest, whether secular or regular, is bound, when the pastor is lacking, to minister the eucharist to one about to die; otherwise in other cases. The reason for the first is that anyone from charity is bound to assist his neighbor placed in such extremity through this salutary and most efficacious remedy. The reason for the second is that no obligation intervenes, either from justice, since there is no contract, or from charity, since a case of necessity is not supposed to be present.

530. **Is a pastor bound also to seek out sick persons who do not ask for the eucharist, so that he may minister it to them?** Response: affirmatively, at least if they are in grave danger of death. The reason is that it is the office of a good shepherd to care that means so useful and efficacious be supplied to sheep placed in so great a danger. It is gathered also from the Roman Ritual, on paschal Communion, on Communion of the sick, and from C. *Presbyter* 1 *de Celebr. miss.*

531. **Is a pastor bound to minister the eucharist to subjects by himself?** Response: negatively. For it suffices that he provide lest one asking for that sacrament opportunely, or gravely

needing it, lack the same. Therefore he can ordinarily fulfill his obligation also through others. From the Roman Ritual, on paschal Communion, on Easter day he himself, unless legitimately impeded, will minister this sacrament personally.

532. **Does a pastor sin gravely whenever he denies the eucharist to one reasonably asking?** Response: negatively. For if he does this rarely, for example toward one or another, scandal and grave sadness of those asking being excluded, he will sin only venially. The reason is that in these rare and particular cases there does not result grave injury, nor grave harm to the faithful asking; or if harm is present, it is easily reparable.

533. **Is a pastor bound to minister the eucharist even with danger of life, for example in time of plague or contagious disease?** Response: negatively, very probably with St. Alphonsus, n. 233. Yet several affirm, relying on the doctrine of Benedict XIV, *de Syn.*, l. 13, c. 19. The same must be said of extreme unction. For neither the eucharist nor extreme unction is a sacrament of absolute necessity. L. 728. Cf. n. 362.

534. **When is a pastor judged excused from ministering the eucharist to subjects asking from mere devotion?** He is legitimately excused:

535. When subjects, because of various circumstances, do not ask reasonably, for example if they ask before Mass with inconvenience to others.

536. If the pastor himself is impeded because of infirmity or other necessary occupations. Yet in this one must act cautiously, because from denial of this kind the faithful can easily take scandal, and indeed, having lost due confidence in the pastor, be kept away from receiving the sacraments more often.

537. **What is required for lawful distribution of the eucharist?** Besides jurisdiction, it is required that the minister be free from every excommunication, interdict, and suspension from sacred things; otherwise he would sin gravely and contract irregularity.

It is required that the minister be in the state of grace, because the most august and most holy Body of Christ ought not be handled by impure hands. L. 30ff. Cf. n. 353.

It is required that the minister distribute the eucharist according to the accustomed rite of the Church. Hence, generally speaking, the administration of this sacrament is to be omitted when it cannot be done in the manner prescribed by the Roman Ritual or the custom of the place. L. 241ff.; E. M.

536. **Resolves:** 1. A case of necessity being excluded, outside Mass it is grave to minister the eucharist without any sacred vestment, without surplice or alb. For there is grave indecency and irreverence from this, and it is against a grave precept of the Church. But without a light, without the Confiteor, indeed without a stole, the sin is light. For the irreverence appears light. But if a minister is lacking, the priest himself can perform all things. The versicles, Lord, hear, etc., The Lord be with you, etc., with the proper Prayer, are of precept. Sacred Congregation of Rites, Sept. 24, 1842. Similarly, it is held only venial to transfer the eucharist, without sacred vestments, from place to place, for example from altar to altar. Reuter, n. 168; L. 241.

It is not lawful without cause to hand over several particles, or larger ones, so that the devotion of the recipient may be satisfied; nevertheless this is light. Sacred Congregation of the Council, Feb. 12, 1679; L. 245. If particles are lacking and necessity is present, for example if another Mass is lacking, if the faithful cannot wait, consecrated particles can be divided into two or at most into three parts, because otherwise communion could scarcely be given with due reverence. Sacred Congregation of Rites, March 16, 1833; La-Croix, n. 508. Indeed, when smaller hosts are lacking, the priest can take a part of the larger host to be consumed by himself, whether in the case of viaticum to be carried to one dying, or if one or another of the faithful were going to communicate, who otherwise would have to wait for communion not without inconvenience. L. 217, 245. When smaller hosts are lacking, it is lawful to consecrate several larger ones and then distribute them divided into smaller parts. L. 245.

2. It is to be carried to the sick regularly, manifestly, and honorably. Roman Ritual, tit. 2, section 5. Regularly, since certain circumstances are excepted, for example places of heretics, where it cannot be carried manifestly. Likewise sometimes even in places of Catholics, if holy viaticum cannot otherwise be carried to the sick person without some inconvenience. Yet this should not be done without permission of the bishop where he can be consulted. From Benedict XIV, C. *Inter omnigenas*, it is had how the Most Holy Sacrament is then to be carried. "Let the priest," he says, "always have a stole, covered by garments; let him hide the pyx in a small sack or burse, which, hanging by cords from the neck, he places in his breast; and let him never proceed alone, but be accompanied by at least one faithful person, in defect of a cleric." "Some think," says St. Alphonsus, n. 241, "that if the habit cannot be had, or there is a storm, or a journey must be made, there will not be irreverence if the priest secretly carries the eucharist in a pyx, or wrapped in a corporal, in his breast. This seems more certainly lawful in places of heretics, where also from necessity and secretly, scandal being set aside, he will be able to give it without stole and surplice."

The eucharist is not to be carried to the sick at night, unless the necessity of the dying person urges; and in such a case it is lawful to carry it even on Friday of Parasceve, but privately, even without lights, even without sacred vestments, even running, provided scandal is absent. But it is never lawful, even to the dying, to minister under the species of wine, which is grave. So that viaticum can be carried by the pastor on horseback because of distance of places, difficulty of roads, or roughness of ways, the Sacred Congregation of Rites grants this, with the consent nevertheless of the bishop. Because of harsh weather it can also be carried with the head covered, but not within a city or town, and with the consent of the bishop, namely if he can be consulted. Cf. Sacred Congregation of Rites, Jan. 10, 1693. The eucharist is not to be carried to a sick person only for the sake of veneration, so that he may adore or kiss it, if he cannot consume it. For St. Pius V prohibited this; De Lugo, *Resp. Mor.*, l. 1, d. 11, L. 243, recalls this prohibition, and it is had in the Roman Ritual, on Communion of the sick. Trent, sess. 13, c. 6, can. 7; L. 241, 242, 243; *Homo Apostolicus*, tr. 15, n. 12.

3. It must be noted "that if the priest carries communion to a sick person in a hospital, and remnants remain on the paten or in the chalice, the priest can consume them if he is still vested in sacred vestments. But he can well also give them to the sick person immediately after the particle handed to him, because then it is judged morally one communion, as the same Tamburini, etc., rightly say, who testifies that usage so bears, that after the communion of the

sick person the pyx is washed, and the ablution is handed to him." L. 251. From the Roman Ritual, on Communion of the sick, the ablutions must be given to the sick person. Likewise from the same Roman Ritual, order of administering sacred Communion: "Let him [the priest] consume the ablution if he has celebrated, or hand it to be consumed by those who then communicated, or at least pour it into the sacrarium." But if the sick person cannot or does not wish to consume the ablutions, as is established in the Roman Ritual, the priest can then throw them into the fire at the sick person's own house, or carry them with himself to the Church, so that he may pour them into the sacrarium. He could also, foreseeing the difficulty of the matter, wash his fingers with a purificator previously moistened. E. M.

4. In private oratories, neither the pastor nor any other celebrant can provide sacred synaxis without permission of the bishop, although from an Apostolic Indult Mass can be celebrated in those oratories, as Benedict XIV declared in the encyclical *Magno*, June 2, 1751, sections 23, 24. L. 359. One must stand by the tenor of the concession, or permission must be sought from the bishop, which he can give.

III. On the Minister of the Eucharist

537. **When can the eucharist be ministered?** It can be ministered both outside Mass and in Mass. But in Mass it can be ministered whatever kind of Mass it is, even of the dead and in black vestments, either within the Mass, namely after the communion of the priest, even by bringing out the pyx, or immediately before, from a just and reasonable cause, or immediately after, the blessing being omitted in each case, and in paschal time the Alleluia being omitted, although the Prayer and Versicles of the time must be said. Roman Ritual; Sacred Congregation of Rites, Dec. 7, 1844; June 27, 1868; Nov. 26, 1878; Benedict XIV, *de Sacrif. Miss.*, l. 3, c. 18.

It can be ministered on any day whatever, except Friday of the greater week, as is drawn from the Rubrics of the Missal for Thursday in the Lord's Supper, which is prohibited under grave obligation; nor can it be given in the Mass of Holy Saturday, unless usage bears otherwise. But after Mass it is lawful, Sacred Congregation of Rites, Sept. 7, 1850, or, if custom bears this, after the Gloria has been sung, Sacred Congregation of Rites, Jan. 13, 1882. Likewise it cannot be given in the Mass of the Nativity of Our Lord which is celebrated at midnight, Sacred Congregation of Rites, June 27, 1868, outside a case of privilege or legitimate custom. Benedict XIV, *de Sacrif. Miss.*, l. 3, c. 18.

Likewise it can be ministered at any hour at which Mass is celebrated, indeed at any hour of the day. For no prohibition is had about this matter. But it is not to be ministered toward evening unless some special cause is present; and at night only in a case of necessity, both because of present custom and because scandal, or rather wonder, is to be avoided. This, as is clear, is not verified in Communities which reserve the Most Holy Eucharist in a domestic chapel, where it concerns communion of the sick. L. 252, 349; Suarez, d. 66, s. 5; E. M.

538. **Can communion, immediately after consecration and from some just cause, be distributed to the people by another priest from particles consecrated in the Mass before the celebrant communicates?** Some affirm, because just as particles of this kind can be not consumed by the priest or by other communicants, even if they are after the manner of one

victim, provided that the priest consumes another part of the matter then consecrated, so they can be carried by another priest to another place for the use of the faithful even before the communion of the priest, provided that enough remains for the integrity of the sacrifice. Others deny, because all the prayers and blessings following equally regard those particles, and it is not fitting that another participate in the sacrifice before the priest himself, who is principally offering. St. Thomas, III, q. 82, a. 4; Diana, tr. 1 *de Celebr. Miss.*, R. 232, 233.

539. **Can a priest laboring under infirmity in thumb and index finger minister the eucharist with other fingers?** It seems to be denied, at least more probably, excluding a case of very grave necessity. The reason is that although the whole hand is consecrated, nevertheless the index finger and thumb from the rite of the Church are specially destined for exercising this office. L. 244.

La-Croix writes thus about this matter, l. 6, part 1, n. 480: "It is probable that a priest lawfully distributes communion with the later fingers if he cannot with the first fingers because of gout in the hand or another impediment, as Toletus, Arriaga, Leander, and others with Gobat hold ... Because although only the first fingers are anointed, nevertheless the whole hand seems consecrated; hence Gobat infers that a priest would sin only venially who without cause touched the host with the last fingers."

But St. Alphonsus, n. 490, thinks it not improbable that viaticum can be given to the dying by means of an instrument, for example a spoon, in time, for example, of plague.

540. **What is to be done if the host falls on the ground?** The place on which the holy host fell is immediately to be covered with some clean thing and afterward washed. If it falls on the cloth or small linen with which the hands of the communicant are covered, the place is immediately to be marked with a small pin, and afterward washed in like manner. Thus the Rubrics *de Defect.*, tit. 10, n. 15, which nevertheless does not obligate under grave obligation according to the common opinion. Yet it would obligate gravely to wash the place on which the sacred species of wine fell, since it is imbibed by it; nevertheless it is not necessary that that into which they fell be burned.

Rubric n. 12: "If through negligence anything of the Blood of Christ has fallen, if indeed on the ground or on a table, let it be licked with the tongue, and let the place itself be scraped as much as is enough, and let the scraping be burned; but let the ash be placed in the sacrarium. But if it has fallen on the stone of the altar, let the priest absorb the drop, and let the place be well washed, and let the ablution be poured into the sacrarium. If on the linen of the altar, and the drop has reached another linen; if even to a third, let the linens be washed three times, a chalice being placed beneath, and let the water of ablution be poured into the sacrarium." And the same is said there if the Blood falls on the corporal, vestments, or carpet. And n. 13: "But if it happens that the whole Blood is poured out after Consecration, if indeed something, even little, has remained, let that be consumed, and concerning the rest of the Blood poured out let it be done as was said. But if nothing at all has remained, let him again place wine and water, and consecrate from that place, In like manner after he had supped, first nevertheless having made the oblation of the chalice, as above." St. Thomas, III, q. 83, a. 6, ad 7; L. 250; La-Croix, n. 484.

541. **What is to be done if the host falls on the face, beard, or clothing of the communicant?** In the aforesaid cases purification is to be omitted, because it is better to avoid wonder, disturbance, or offense of the people than to observe the Rubric, obligating only under light matter. L. 250.

542. **What is to be done if the host or its fragment falls into the bosom or within the clothing of a woman?** "It is fitting that not the priest, but the woman herself, seek the particle or fragment, and with her own hands put it into her mouth." Benedict XIV, *de Sacr. miss.*, l. 3, c. 20, n. 7. But the woman's fingers are to be washed, and the ablution cast into the piscina. If the woman cannot easily extract the host there, let her withdraw apart, for example into some chapel or into the sacristy.

543. **What is to be done if consecrated particles remain over, and there is no tabernacle in which they may be placed?** They are to be consumed by the celebrant before the purification and ablution, if this can easily be done, or if they are not in too great a quantity. Otherwise they would have to be carried to the nearest tabernacle with the accustomed rite; nor is it to be committed that several hosts be ministered to the faithful. But let the priest beware, insofar as the circumstances permit, lest he consecrate too great a quantity of particles.

544. **What is to be done about fragments of hosts which are found?** If the priest finds fragments of his present sacrifice, he must consume them, even after the ablution, whether they are small or large, because they pertain to the same sacrifice. Rubrics *de Defect.*, tit. 7, n. 2. But this is to be observed not only immediately after Mass, but also if the priest is in the sacristy, yet still vested in sacred vestments. But if the priest has already taken off the sacred vestments, he must place the fragments in the tabernacle, if one is present, or reserve them for another priest about to celebrate the same morning. If neither can be done, let him consume them himself.

But if the remnants were consecrated in another Mass, they are not to be consumed after purification and ablution, but must be placed in a decent place. The reason is that the Rubric permits a priest who is not fasting to consume only those remnants which pertain to the same sacrifice. Yet if this cannot be done, and grave danger of irreverence is present, then let the priest consume them, even after he has taken off the sacred vestments.

If a layperson finds fragments, let him warn a priest as soon as possible, if one is nearby, or summon him if he can be found. But the priest, reverently gathering the fragment, will place it in the ciborium, or in a decent and safe place if a tabernacle is lacking, so that it can be consumed in the next Mass. But if a priest cannot be had, let the fragment be reverently gathered by the layperson himself in paper or a clean linen by means of a small pin, and let it be placed within a corporal or in a decent vessel until a priest arrives. L. 251; Benedict XIV, *de Sacr. miss.*, l. 3, c. 17, nn. 5, 6.

545. **What is to be done if on the altar, or elsewhere, a host certainly or doubtfully consecrated is found?** If the host is believed certainly consecrated, and otherwise seems clean and recently consecrated, it is to be placed with the others in the ciborium. It can also be consumed by the celebrant before purification and ablution. But if it is not clean, or if it has been extracted from an unclean place, or is not recently consecrated, it is not to be mixed with the others; but the celebrant can consume it before purification and ablution. But if he

experiences excessive repugnance, he will place the host apart in the tabernacle in a clean vessel until it is corrupted, and once corrupted it is to be cast into the sacrarium. Rubrics *de Defect.*, tit. 7, n. 3; tit. 10, n. 14.

If it is doubtfully consecrated, it is to be consumed by the priest in Mass before purification and ablution. It cannot be consumed before; because if it is not consecrated, the natural fast would be violated. Nor afterward; because if it is consecrated, it would be consumed by a priest not fasting. It can also be kept apart in the tabernacle, so that in another Mass it may be consecrated conditionally. But if it provokes excessive nausea, it is to be placed apart in the tabernacle until it has been corrupted, as was just said. Rubrics *de Defect.*, tit. 3, nn. 4, 5; tit. 7, n. 3; tit. 10, n. 3.

546. **What is to be done if a priest or sick person has vomited the sacred species?** If the species appear intact, they are to be reverently consumed, unless nausea occurs. For then they must be carefully separated, gathered in a clean vessel, carried to the Church, and kept in a safe and well-closed place until they are altogether corrupted, so that they can be poured into the piscina without irreverence. But if they cannot be discerned, as being wholly mixed with filth, the mouth of the sick person is indeed to be wiped; but whatever has been vomited is to be gathered with tow; then, after the tow has been burned, the ashes are to be poured into the piscina. Rubrics *de Defect.*, tit. 10, n. 14.

547. **Can a priest ministering viaticum omit those words prescribed in the Ritual: Receive Viaticum, etc.?** Response: probably affirmatively, if the sick person would receive communion as viaticum with great sadness of soul. The reason is that to satisfy the precept the intention of satisfying is not required. But although all things in the Ritual would fall under precept, this in no way is grave; and that reason of sorrow is sufficient for excusing from a light precept. L. 285.

548. **What must a priest do if, arriving to a sick person with the Most Holy Sacrament and hearing his confession, he finds him indisposed?** First the confessor must take pains, as best he can, to bring the penitent to better fruit. If the matter does not succeed, and for example the sick person does not promise either to break off a proximate occasion of sin, or to make a grave and certainly owed restitution, he certainly cannot be absolved, and he must be earnestly induced, after the confession has been completed, to declare publicly that he does not yet wish to receive the eucharist. But if he makes this declaration, the difficulty now vanishes; for it is clear that the eucharist is not to be ministered to him. But if he refuses to declare this and wishes to communicate, the eucharist must be ministered to him, although he is indisposed, namely in order to preserve the seal of confession intact. Gousset, n. 237.

III. On the Minister of the Eucharist

549. **Where and how is the eucharist to be reserved?** In every parochial church or filial church of a parish and in every cathedral the eucharist is to be kept, so that it can always be given to those asking opportunely. Roman Ritual, on the sacrament of the Most Holy Eucharist. It can also be reserved by common law in churches of regulars who emit solemn vows. It is also permitted to be reserved "in churches of nuns living in enclosure ... But it is not permitted in

colleges constituted by the authority of the Ordinary alone, such as conservatories ... The Sacred Congregation decreed the same with respect to granges of regulars." L. 424, 428. But in other churches it cannot be reserved without special permission of the Pope. Benedict XIV, C. *Quamvis iusto*, Apr. 30, 1749, section 24. So also the Sacred Congregations of the Council and of Bishops and Regulars established. Ferraris, v. *Eucharistia*, a. 1, n. 45ff.

The eucharist is to be reserved in a clean tabernacle, placed in the middle of the altar, well closed, and in a decent pyx placed on a blessed corporal or pall, well closed and covered with a white veil. The tabernacle in which the Most Holy Sacrament is enclosed must be covered with a canopy made of silk cloth, or of hemp, wool, or cotton. Roman Ritual, on the sacrament of the Most Holy Eucharist; Sacred Congregation of Rites, July 21, 1855; Aug. 21, 1863. Let the color be white, or be changed according to times and feasts. Let it never be black; but if that time requires it, let it be violet. Sacred Congregation of Rites, July 21, 1855; Dec. 1, 1882. But the tabernacle ought to be adorned inside with silk cloth; but if it is gilded inside, that suffices. Sacred Congregation of Rites, May 16, 1871.

Nowhere is the eucharist to be preserved without a light, which must always burn. Roman Ritual, loc. cit.; Ferraris, v. *Eucharistia*, a. 1, n. 45. Benedict XIV, C. *Accepimus*, July 16, 1746; Sacred Congregation of Rites, Aug. 21, 1863, to the Bishop of Limburg; E. M.

550. **Can other sacred things be placed in the tabernacle?** Response: negatively. This is established from the Roman Ritual, on the sacrament of the Most Holy Eucharist. Hence neither relics, nor chrism, nor oil of the sick, nor empty sacred vessels already purified can be placed in it.

Relics of saints, and relics of the Most Holy Cross or of another instrument of the Lord's Passion cannot be placed upon the tabernacle in which the Most Holy sacrament of the eucharist is reserved, so that the tabernacle itself serves as a base. Sacred Congregation of Rites, March 12, 1836.

Nor is it lawful to place and keep relics, images, a vase of flowers, or anything similar before the little door of the tabernacle. Sacred Congregation of Rites, Sept. 6, 1845.

551. **Must the ciborium be consecrated and silver?** Response to the first: it does not necessarily have to be consecrated, but it suffices that it be blessed. This is established from the Roman Ritual, in which the blessing of the pyx is noted among those things which do not need anointing with chrism. Likewise from the Roman Pontifical, where only the blessing of the pyx is had.

Hence it is altogether fitting that even the pyx or ciborium, and the luna or small sphere of the monstrance, and any vessel containing and immediately touching the eucharist, and even the small vessel containing chrism, be blessed. But whether this is necessary, several and grave doctors, not improbably from St. Alphonsus, deny; nor is it necessary, they add, to put into the pyx a linen vessel blessed with the blessing of a corporal. The reason is that nowhere is there had an express precept about this; nor does the Pontifical make us certain, since there blessings are assigned also for bells and cases of relics, which nevertheless are blessed not by precept, but only by congruity. But others, more probably from St. Alphonsus, affirm that the pyx must be blessed by precept, because it is more

conformable to the Rubric and to reason, and therefore in practice it is to be counseled. L. 248, 383-385; St. Thomas, III, q. 82, a. 3; Rubrics of the Missal, tit. 2, n. 3.

To the second: nothing is established by common law. And indeed it would seem to be equated with the chalice and paten, which must be of gold, or silver, or at least of tin, if the Church is very poor. But it cannot be of bronze, nor of wood or glass, etc. *De Consecr.*, dist. 1, c. 45. Moreover if sacred vessels are not of gold, they must be gilded inside. The Sacred Congregation of Rites, Aug. 31, 1867, responded that a ciborium or sacred pyx made of gilded copper can be permitted, likewise a monstrance or ostensorium and the little luna which embraces the sacred host to be shown. Cf. n. 645; St. Thomas, III, q. 83, a. 3, ad 6; E. M.

552. **Does one who neglects to keep a light before the Most Holy Sacrament sin gravely?** Response: affirmatively, of itself, if the time is notable. For there is a grave defect of due worship. Notable, that is, if this is done for an entire day or for some entire nights. L. 248.

553. **Whether olive oil is required for feeding the lamp of the Church, or whether another oil from vegetables, for example from nuts, or from minerals, such as petroleum, suffices?** Generally olive oil is to be used; but where it cannot be had, another oil from vegetables, as far as circumstances allow, can be permitted by the bishop. Sacred Congregation of Rites, July 9, 1864. Therefore also petroleum, when necessity urges, can be permitted by the bishop. E. M.

554. **Whether or when is the ciborium to be renewed?** The ciborium certainly must be renewed, the old consecrated particles being wholly consumed, lest the consecrated species be corrupted. Indeed it is to be renewed frequently, Roman Ritual, on the sacrament of the Most Holy Eucharist, every eight or at least fifteen days. And this is the more common practice, although the Ceremonial of Bishops, l. 1, c. 6, prescribes that renewal of particles is to be done every eighth day, and the Sacred Congregation of Rites, Sept. 12, 1884, declared that this is to be observed. Trent, sess. 14, c. 6, can. 7; E. M.

555. **How is the ciborium to be renewed?** Renewal of the ciborium is to be done in the sacrifice of the Mass itself. The celebrant, after consuming the most precious Blood, will consume the old hosts, even if they are many. But the priest will throw the smaller particles found in the ciborium into the chalice, and after wine has been poured over them, will consume them. He can also pour wine into the ciborium in order to collect the smallest particles. Yet the wine will not be drunk from the ciborium, but poured back into the chalice.

If the priest by inadvertence had first consumed the ablution, he could still purify the ciborium and consume the remnants, because it is morally reckoned as one consumption. Thus La-Croix, nn. 486, 487; Elbel, n. 77; Tamburini, *de Communione*, c. 2, n. 54. "But after the ablution," says St. Alphonsus, "it is not lawful to consume particles of another sacrifice which are in the ciborium, in order to clean it out, as Suarez, Lugo, with the common opinion, teach, although Tamburini says that the contrary is probable, unless there is danger of irreverence." L. 288, 251; La-Croix, nn. 501, 502. Cf. n. 544.

556. **Note:** Particles to be consecrated ought to be fresh. It would be desirable that they not exceed fifteen days, or at most a month, from the time when they were made. Carelessness in this matter can constitute grave sin. The custom of consecrating hosts made three or six months

earlier is an enormous abuse, altogether to be removed; priests cannot use those hosts. Sacred Congregation of Rites, Dec. 16, 1826.

IV. On the Subject of the Eucharist

557. **Who is the subject of the eucharist?** Only a baptized human being can receive the eucharist sacramentally, because only the baptized person is capable of sacraments. Hence an unbeliever receiving the eucharist would receive it truly indeed, but only materially, not sacramentally. But a human being baptized but indisposed does indeed receive sacramentally, but not spiritually, or receives without fruit. But a baptized person disposed receives both sacramentally and spiritually, or with fruit. Trent, sess. 13, c. 8, can. 8.

558. **What is the obligation of receiving the eucharist?** It is certain that the eucharist is not necessary by necessity of means for obtaining first justification according to real reception. But whether it is necessary at least in desire by necessity of means is disputed. As to practice, however, the matter has no difficulty. For according to the opinion of all, a desire at least virtual and implicit suffices. "But adults have such a desire when they receive the sacraments of baptism or penance; little children have the desire not from their own will, but from the implicit will of the Church." L. 192. Likewise it is disputed whether in reality or in desire it is a necessary means for adults to preserve spiritual life. Suarez and others deny, because other means are not lacking. The Salmanticenses and others affirm, because the life of the soul cannot be preserved without spiritual food; and therefore it is necessary at least in desire, and indeed explicit desire in one who adverts to the necessity of this sacrament. Hence they hold that not even those who receive the eucharist once a year are excused from sin if they know that communion so rare does not suffice for them to persevere, account being taken of their own infirmity. L. 193.

Reception of the eucharist is necessary for adult faithful by necessity of divine precept obligating both in the article of death as viaticum and also more often in life. This is proved both from Sacred Scripture, and from the Council of Nicaea, can. 13, and Trent, sess. 13, c. 6, can. 9, and from the practice of the Church, and because the eucharist was instituted after the manner of food, whose use is more often necessary. L. 285, 290; Suarez, d. 69, s. 3; Lugo, d. 16, n. 27.

"Sometimes per accidens a person is held from this divine precept to communicate perhaps even more often in the year, if he judged this necessary for overcoming some grave temptation. Yet Suarez says this can happen very rarely, since other remedies, prayers, penances, etc., can suffice for this. But in the case in which communion would be necessary, by omitting it a person would not sin against that precept, but against the virtue against which he suffers temptation. Moreover it is certain among all that one satisfies this precept, speaking per se, by communicating once a year." L. 295.

Reception of the eucharist is also necessary from a grave precept of the Church once a year, at least at Easter, unless perhaps by the counsel of one's own priest one has judged that because of some reasonable cause he should abstain from reception of this kind. Lateran Council IV, C. *Omnis de Poenit. et remiss.*; Trent, sess. 13, can. 9.

Reception of the eucharist under both species is not only not necessary for laypeople, but is even prohibited; and this also in the necessity of receiving viaticum. For both the reverence due to this sacrament, since especially in the case of death there is danger of spilling, and that the error of heretics may be radically extirpated, who say that the whole Christ is not contained under each species, or that the use of the chalice is necessary and that the Church erred by ministering one species without the other, is a sufficient motive that the Church prohibit this with such rigor. Hence not even a drop of the consecrated chalice can be given to a dying person who cannot receive the species of bread for viaticum and could receive a drop of the Blood, because in a matter of such importance a door is not to be opened to other permissions, even if that man dies without viaticum. Trent, sess. 21, cc. 1, 2, 3, canons 1, 2, 3; sess. 22, decree on the petition for concession of the chalice; Roman Catechism, part 2, nn. 65, 66; Lugo, *Resp. Mor.*, l. 1, d. 10; Suarez, d. 71, s. 3; St. Thomas, III, q. 73, a. 3; q. 74, a. 1, ad 3; q. 80, aa. 11, 12; E. M.

559. **Resolves:** 1. Any faithful person in danger of life which he foresees is held under mortal sin to communicate. L. 291.

560. One who after having received viaticum has sinned mortally is not bound to communicate again. L. 293.

561. One who did not communicate in danger of death is not afterward bound to supply it. L. 293.

IV. On the Subject of the Eucharist

560. **When can or must children communicate?** "Because of the greater reverence of this sacrament, the Latin Church deservedly prohibited it from being given to little children." L. 301. And this holds even in danger of death of such little children who are still unable to use reason, both because the same danger of irreverence is present and because such is the usage of the Roman Church. And one who acted otherwise would sin gravely. L. 301; Trent, sess. 21, c. 4, can. 4.

But can and must children communicate as soon as they have the use of reason? "The first opinion affirms ... But the second opinion, very common and more probable, denies that they are bound ... But of those who defend this opinion some say that such infants are neither bound nor able to communicate; others, however, that they are not bound, but are always able when they know how to discern this heavenly food from profane food. The doctors commonly say that, regularly speaking, children are not obligated to communion before the ninth or tenth year; nor is communion to be deferred for them beyond the twelfth." L. 301. Certainly received custom has so interpreted this precept that children are not bound by it before they have a more perfect use of reason, so that they may receive the eucharist with greater reverence and fruit. "But when children already begin to have some use of reason, so that they can conceive devotion for this sacrament, then this sacrament can be conferred on them." St. Thomas, III, q. 80, a. 9, ad 3; IV, dist. 9, q. 1, a. 5, q. 4.

"But at what age," says the Roman Catechism on the Sacrament of the Eucharist, n. 63, "the sacred mysteries are to be given to children, no one will be able to determine better than the father and the priest to whom they confess their sins. For it belongs to them to examine and ask of the children whether they have received some knowledge and taste of this admirable sacrament." And this also

pertains to pastors, as to children who are presented to them by parents. Benedict XIV, C. *Etsi minime*, Feb. 7, 1744, section 4. E. M.

561. **Is someone bound to receive sacred viaticum when danger of death is imminent, if a few days earlier he communicated from devotion?** It seems to be affirmed, at least more probably. The reason is that this precept, from the interpretation of the Church, urges in danger of death, so that we may be fortified against spiritual enemies by this divine aid. Therefore it is not fulfilled by communion made before the sickness; because although one has fulfilled the prescribed work, nevertheless he did not fulfill it at the time when he was bound. L. 285.

Yet several with Lugo, d. 15, n. 39, deny. Their reason is that the precept of communion has already been fulfilled in substance. St. Alphonsus, in the cited place, says of this denying opinion: "The more common opinion denies, even if communion preceded by about eight days; Laymann, Lugo with the common opinion, as Roncaglia asserts with Concina, Angelus, Filiuccius, Tabiena, Henry, Molfesius, Suarez, hold this; Suarez with Soto and Paludanus holds it if communion was received three days earlier; and Palans and the Salmanticenses think it probable ... This opinion is sufficiently probable, at least if the danger of death happens naturally, because through that brief preceding time it already morally began to be imminent, although it was unknown." Indeed some apud Busembaum think that it is at least not mortal to omit communion, provided that you have received it at Easter. But St. Alphonsus, nn. 291, 297, at the end of the paragraph *Dicit*, by no means acquiesces in this opinion, and rightly.

562. **Is one who communicated in the morning from devotion bound or able, when danger of death urges, to receive viaticum?** The first opinion affirms that he is bound, because then viaticum must be received to fulfill the divine precept; since it was not yet urging at the time communion was received, therefore it could not be fulfilled by that reception.

The second opinion says that he is not bound, but can communicate: first indeed, that he is not bound, because the time in which he communicated is morally the same, since it is the same day; second, that he can, because although rigorously he does not seem to be bound, nevertheless he is not therefore prohibited, since favors are to be enlarged.

The third opinion contends that he is neither bound nor able to communicate. The reason is that since the precept obligates from the intention of the Church, the practice of the Church is that no one communicate twice in a day; nor is there a reason why this case should be excepted.

Benedict XIV thinks all three opinions probable, saying thus: "In so great a discrepancy of the opinions of the doctors, it will be open to the pastor to embrace that opinion which has pleased him more." *De Syn.*, l. 7, c. 11. St. Alphonsus, n. 285 and *qq. reform.*, n. 66, says that more probably a distinction must be made between natural and violent sickness, because in the latter case "one has not received viaticum while constituted in the article of death; but otherwise if someone already placed in sickness communicated in the morning from devotion."

563. **Can the eucharist be given to a sick person who suffers from a cough?** Response: affirmatively, because the danger that the sacred species will be vomited together with phlegm

is generally absent. And the reason is that the way through which spittle is expelled by coughing is not the esophagus, that is, the way through which food and drink are carried into the stomach, but is the trachea, through which respiration extends as far as the lungs. Yet if the cough is so constant that it prevents the sacred host from being sent into the stomach, then communion must be abstained from. Roman Ritual. But when the sick person suffers from continual vomiting, he cannot communicate unless perhaps he has been free from vomiting for at least six hours. But in doubt whether the sick person is going to vomit the sacred particle, it ought not be given to him. L. 291, 292.

564. **In danger of death is communion to be given to children who have not yet been admitted to sacred synaxis?** Response: negatively, if they have not yet attained the use of reason. The reason is that this is contrary to the present discipline of the Church.

Affirmatively as to children who are possessed of reason. Indeed not only can communion be given to them, but it also must be given. The reason is that, on the one hand, children placed in such danger are held by divine precept to communicate; and on the other, the usefulness of the eucharist then does not demand a greater disposition. Benedict XIV, *de Syn.*, l. 7, c. 12; L. 301; St. Thomas, III, q. 80, a. 9.

565. **In danger of death is communion to be given to the insane, the semi-fatuous, the delirious, and those deprived of the senses?** As to the insane, if they have been perpetually insane, or phrensied, communion is never to be given to them. Roman Ritual, on the sacrament of the Most Holy Eucharist. If they often have lucid intervals and have manifested a desire of communicating, communion can be given to them, indeed must be given, excluding danger of irreverence. Roman Ritual, ibid.; St. Thomas, III, q. 80, a. 9; Roman Catechism; L. 302.

As to the semi-fatuous, communion is to be given to them when they have sufficient discretion to distinguish this heavenly food from others; but rarely, namely only in the article of death, and where the strict precept of communicating urges. L. 303. Yet if the semi-fatuous person shows desire for communion and approaches it with due exterior devotion, so that there is no irreverence, communion can be permitted to him more frequently. Cf. Joannes Sanchez, *Disp. Select.*, 26, n. 5; St. Thomas, loc. cit.

As to the delirious, communion can be given to them if they are able to communicate, excluding danger of irreverence toward the eucharist. L. 292.

As to those deprived of the senses, they are certainly dispensed from the precept, since they are capable of observing no law. But the pastor is not therefore dispensed from the obligation of ministering the eucharist to them, if before loss of reason they were prepared. For the sacraments operate *ex opere operato* in those who desired to receive them before they lost the use of reason. Yet except if danger of irreverence is present, or if it is feared that they are unable to swallow the host. Gousset, n. 232.

566. **Is communion to be given to deaf-mutes, those possessed, and epileptics?** Response: as to deaf-mutes, affirmatively if from signs it is established that they have discretion and are

sufficiently instructed. If they enjoy not just any sort, but some sufficient discretion, they can communicate more often. L. 303; St. Thomas, III, q. 80, a. 9.

As to those possessed, one must distinguish: communion is to be denied them when they are not in possession of themselves; otherwise it is to be granted. Indeed it is expedient that such persons communicate more often according to the prudence of the confessor, since the eucharist is a special remedy for driving away demons.

As to epileptics: communion cannot be given to them when they are in an actual paroxysm because of proximate danger of irreverence; but at other times it is not to be denied. L. 303.

567. **Can communion be given to those condemned to death?** Response: affirmatively. Benedict XIV indeed teaches that "that custom is to be followed which is known respectively to exist in each place," *de Syn.*, l. 7, c. 11; but he calls the use of ministering the eucharist to them more conformable to Christian piety, and says it is to be introduced where it does not exist, and he brings forward the testimony of St. Pius V about this matter. Gousset, n. 230. Communion is then ministered after the manner of viaticum. Sacred Congregation for the Propagation of the Faith, July 21, 1841. E. M.

568. **What dispositions of the soul are required?** For receiving the eucharist there is required the state of grace, at least prudently judged. Otherwise a most grave sacrilege is committed. The reason is clear from the nature of the matter, and also from the words of the Apostle, 1 Corinthians 11:28: But let a man prove himself, and so let him eat of that Bread and drink of the Chalice. For he who eats and drinks unworthily eats and drinks judgment to himself, not discerning the Body of the Lord.

It is not enough that the state of grace be acquired through perfect contrition, but it is required that confession of mortal sins be premised and sacramental absolution be received, except in a case of necessity of celebrating or communicating, and the supply of a confessor is lacking. Trent, sess. 13, c. 7, can. 11.

But in a celebrating priest the state of grace is required both insofar as he is subject, consuming the eucharist, and insofar as he is minister, confecting it. St. Thomas, III, q. 80, aa. 4, 5; q. 82, aa. 5, 7.

Besides the state of grace, it is required that someone at least discern spiritual food from bodily food. L. 256, 257; E. M.

569. **When is the aforesaid necessity had as to making confession?** Necessity from which, if a confessor is lacking, someone could celebrate and receive the eucharist with only contrition premised, is judged to exist in the following cases:

570. Danger of death, that is, so that a host may be consecrated for one dying.

571. If the sacrifice or communion cannot be omitted without grave infamy or scandal.

572. If the pastor must celebrate from office, and cannot through another, so that the people may hear Mass; nor can he omit celebration without infamy or scandal, L. 261, and from Suarez and others even if he can abstain without infamy. Cf. Lugo, d. 14, n. 114; Suarez, d. 66, s. 4.

573. If the precept of annual communion urges, or if the priest cannot hear a commanded Mass unless he celebrates. Thus several; but far more commonly and more truly others deny. As to hearing Mass, St. Alphonsus, n. 261, says that others better contradict this; but as to communion he says that each opinion is probable.

574. If the priest after consecration commits a mortal sin, or remembers one committed before. St. Thomas, III, q. 83, a. 6, ad 2. But if this happens before consecration, and especially before the Canon, he must confess, if he can without mark of infamy, and therefore he can also interrupt the Mass. Indeed several more probably add that he is bound even to desert the Mass if he cannot confess; and this is prescribed in the Rubrics *de Defect.*, tit. 8, n. 5, if scandal is not feared. St. Thomas, loc. cit. But, ordinarily speaking, danger of scandal is present, and in that case a mark of infamy will scarcely be able to be avoided.

575. If on the communion bench you remember that you forgot to confess, and cannot withdraw without a mark or grave scandal. L. 260, 263.

576. **When is the supply of a confessor judged to be lacking?** It is judged to be lacking: 1. If no confessor is present, and, considering the circumstances of debility, age, business, distance, weather, shortness of time, etc., one absent cannot be approached without grave difficulty. 2. If no other confessor is present except one ignorant of the language, or lacking jurisdiction, or one who does not wish or is not able to hear confessions, or to whom you cannot confess without grave harm to yourself or another.

Yet in these cases perfect contrition is required.

But the supply of a confessor is not judged lacking if the one to whom you are accustomed to confess is absent; rather any approved confessor must be lacking. L. 264.

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571. **What distance is required so that a priest is judged to be lacking?** It cannot be determined rigorously, but depends on circumstances. Some require a distance of two leagues; others one league and a half or a quarter; others only one league. But besides the reason of the journey, other reasons often urge, for example infirmity or shortness of time. Thus a priest already about to celebrate can be excused from confession, even if the confessor is fifty paces away. L. 264.

572. **Is one who remembers a mortal sin which from inculpable forgetfulness he did not declare in confession bound to confess it before communion?** Response: certainly negatively if the penitent is already at the sacred table, or a grave cause of communicating is present, and he can confess again only with difficulty. The reason is that even if a precept of confession were present, it would not urge with so much inconvenience.

If the penitent can confess without inconvenience or omit communion, it is controverted. More probably he is neither bound to confess nor to abstain from communion, because the sin involuntarily omitted certainly has been remitted, even if only indirectly; and therefore it in no way stands in the way of receiving communion. Nor say that the precept of Trent of confessing before

communion urges; for since the penitent has already been duly confessed and justified through the sacrament of penance, he is sufficiently proved even according to the mind of Trent. Thus Gousset, n. 249, and others against Lugo and others, who more commonly and not improbably held the opposite. St. Alphonsus approaches more to the former opinion, yet judges that the second is to be advised in practice, provided some cause does not advise otherwise. *Homo Apostolicus*, n. 23; L. 257.

573. **Is a priest who celebrated, or a layperson who communicated conscious of mortal sin, without confession, because of urgent necessity, bound to confess as soon as possible?** Response: as to the priest, affirmatively. For thus expressly Trent, sess. 13, c. 7, and proposition 38 condemned by Alexander VII.

As to the layperson, negatively, more probably. The reason is that Trent speaks only about priests celebrating when necessity urges. Therefore neither does it touch priests merely communicating.

But it is doubtful whether it touches one who celebrates on Friday of the greater week, or one who completes the Mass of another who failed after consecration; because the case is extraordinary, and Trent must be understood strictly about him who truly himself celebrates, that is, consecrates and communicates. La-Croix, n. 539.

But it is very commonly asserted that it does not touch a priest celebrating sacrilegiously when necessity is not urging and the supply of a confessor is not lacking, for whom the law would rather be harmful and a certain occasion of new sin, without hope of fruit.

"But Lugo rightly notes that if a priest from necessity, contrition being omitted, were to celebrate, he certainly would be bound to confess as soon as possible, because the precept of Trent by no means distinguishes between a priest having contrition and not having contrition, but speaks of any priest celebrating from necessity." L. 266, 268. Lugo, d. 14, nn. 138, 139, 150; Suarez, d. 66, s. 7; E. M.

574. **How is that precept imposed on priests of confessing as soon as possible to be understood?** More probably it suffices that the priest confess within three days; because since this precept is only ecclesiastical, the phrase as soon as possible can be understood morally, as it is understood in other human laws, where that word, or another similar one, from common interpretation is extended to the space of three days. Yet such a priest cannot celebrate again before he has confessed, because he was not excused from confession except because of the instant necessity. Hence, if the same necessity of celebrating urges on the following day, and he can confess, he cannot put off confession to another day. L. 266.

575. **Note:** Some said that the particle as soon as possible was to be understood as soon as such a priest had celebrated: "But this opinion is altogether improbable, because then he himself would be bound to confession by reason of the celebration itself; but Trent, apart from celebration, imposes the precept of confessing as soon as possible." L. 266; E. M.

576. **Is a priest celebrating after confession, in which he inculpably forgot some mortal sin, bound to confess as soon as possible?** Response: negatively, if he remembers the sin after celebration, because he did not celebrate conscious of that sin, as Trent says.

Negatively also, more probably, if he remembers the sin before celebration; because since he premised confession, although he forgot some grave sin, he cannot truly be said to have celebrated

conscious of mortal sin without previous confession. St. Alphonsus, n. 266, calls this opinion probable.

Negatively likewise if he remembers the sin, or commits the sin, after Mass has begun. For the Council speaks of a priest celebrating, with necessity urging, without previous confession. Rubrics of the Missal, *de Defect.*, tit. 8, n. 4; Lugo, d. 14, nn. 145, 146; L. 267.

577. **Is one who because of shortness of time cannot confess all things, or who has also reserved sins for all of which the confessor does not have faculty to absolve, bound to confess?** Response: affirmatively, since when confession cannot be materially integral, formal integrity suffices, and therefore when confession is still possible, one is bound to it. Yet many and grave doctors deny that there is an obligation of confession if someone has reserved and non-reserved sins, and St. Alphonsus, n. 265, judges their opinion probable. But all agree that such an obligation of confession is not present if someone has only reserved sins for which the confessor does not have faculty to absolve. Cf. n. 802.

578. **What if the penitent has a reserved excommunication?** "Suarez, Lugo, Coninck rightly judge that he can well receive the eucharist when scandal or a mark of infamy urges. The reason is that the precept of the Church prohibiting the excommunicated from receiving the sacraments does not obligate when the natural precept of avoiding scandal concurs, or does not obligate with so great an inconvenience of bearing infamy." L. 265.

But can he confess to one not having faculty over the excommunication? From St. Alphonsus, the first probable opinion denies; therefore he can communicate, contrition having been premised, although he has other non-reserved sins. For he cannot confess, "since he is bound by excommunication, which forbids him from the reception of the sacrament of penance." L., ibid.

But the second and more probable opinion affirms. The reason is that in that case of necessity "excommunication, just as it does not deprive him of the reception of the eucharist, so neither of penance, which must be received when it can, so that the divine precept of premising confession before communion may be observed." L., ibid.; Ithurriaga, case 52, nn. 24, 25. Cf. n. 802.

579. **Does actual or virtual affection for venial sins, or concomitant actual venial sins, for example voluntary distractions, impede the whole fruit of communion? And what about frequency of communion?** Response to the first: negatively. Thus more commonly. The reason is that all sacraments confer grace *ex opere operato* on those not placing an obstacle. But the obstacle of the sacrament of the eucharist is nothing except consciousness of grave sin.

But although actual venial sins, or actual affection for them, do not remove the whole fruit of communion, nevertheless they impede it in part. For "the effect of this sacrament is not only the attainment of habitual grace or charity, but also a certain actual refreshment of spiritual sweetness, which is indeed impeded if someone approaches this sacrament with a mind distracted by venial sins; but the increase of habitual grace or charity is not removed." St. Thomas, III, q. 79, a. 8. Actual venial sins, or actual affection for them; "for it can happen that someone after many venial sins committed approaches this sacrament devoutly, and fully obtains the effect of this sacrament." St. Thomas, ibid.

Decree of Innocent XI, 1679; L., *Prax.*, n. 148ff.; Trent, sess. 7, can. 6; sess. 13, can. 7; Suarez, d. 63, s. 3; Lugo, d. 14, s. 3; L. 270.

To the second: by frequent communion can be understood communion several times in the year, monthly, weekly, several times in the week, daily. Moreover no determinate rule can be established in this matter, but "it can be taken solely from the peculiar state, devotion, and charity of each one." Benedict XIV, *de Syn.*, l. 7, c. 12, n. 7.

For "about the use of this sacrament two things can be considered: one indeed on the part of the sacrament itself, whose power is salutary to human beings, and therefore it is useful to consume it daily, so that a person may daily perceive its fruit ... In another way it can be considered on the part of the one consuming it, in whom it is required that he approach this sacrament with great devotion and reverence. And therefore, if someone finds himself prepared for this daily, it is praiseworthy that he consume it daily ... But because many times in many human beings many impediments of this devotion occur, because of indisposition of body or of soul, it is not useful for all human beings to approach this sacrament daily; but as often as a person has found himself prepared for it ... This sacrament is spiritual food; hence just as bodily food is consumed daily, so also to consume this sacrament daily is praiseworthy ... And therefore each thing pertains to reverence for this sacrament, both that it be consumed daily and that sometimes it be abstained from ... Yet love and hope, to which Scripture always urges us, are preferred to fear." St. Thomas, III, q. 80, a. 10. And IV Sent., dist. 12, q. 3, a. 1, q. 2: "If someone experimentally knew from daily reception that the fervor of love is increased and reverence not diminished, such a person ought to communicate daily; but if he felt that through daily frequency reverence is diminished, and fervor not much increased, such a person ought sometimes to abstain, so that afterward he might approach with greater reverence and devotion." Trent, sess. 13, c. 8; Lugo, d. 17; La-Croix, n. 655ff.; L., *Prax.*, n. 148ff.; E. M.

580. **What disposition of the body is required for receiving the eucharist?** From the precept of the Church, for communion there is required the natural fast, or total abstinence after midnight from any thing whatever, however small, which is consumed after the manner of food and drink, certain cases nevertheless being excepted. This is established: first, from the universal custom of the Church and unanimous tradition; second, from all Catechisms and Rituals approved by the Church; third, from various Councils, and especially from the Council of Constance, sess. 13.

According to the common opinion, three conditions are required for breaking that fast:

1. That what is consumed be taken from outside and carried into the stomach, because what does not come from outside, even if it is swallowed voluntarily, is not called eating. For things which are eaten come from outside. Hence blood flowing from the mouth, tongue, gums, etc., does not break the fast.
2. That something be consumed after the manner of eating or drinking. The reason is that according to the common sense of human beings the natural fast is broken only in that way. Hence whatever is drawn in after the manner of breathing or saliva in no way breaks the fast. Thus you remain fasting although through breathing you have swallowed dust or a fly.

3. That the thing consumed have the nature of food or drink, that is, that it be something alterable in the stomach. The reason is that otherwise according to the common manner of conceiving, it is neither eating nor drinking. For no one is said to eat iron, glass, wood, etc. L. 279-281; St. Thomas, III, q. 80, a. 8; IV, dist. 8, q. 1, a. 4, q. 2, ad 3; E. M.

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581. **Does the swallowing of remnants of food which cling between the teeth break the fast?** Response: negatively, if it is involuntary, because it does not have the nature of food. This is also established from the Rubrics of the Missal *de Defect.*, tit. 9, n. 3.

If it is voluntary, it is controverted. The first probable opinion denies, because such remnants are not consumed after the manner of food, although intentionally, but after the manner of saliva. St. Thomas, IV, dist. 8, q. 1, a. 4, q. 2, ad 3, says: "Eating is said principally from the taking of exterior food, although it is terminated in the passage of food into the belly, and further in nutrition; and therefore things which are done inwardly without the taking of exterior food do not seem to break the fast of nature, nor impede reception of the eucharist, as the swallowing of saliva; and similarly it seems concerning those things which remain within the teeth, and also concerning belchings." Cf. also Rubrics, tit. 9, n. 3.

The second opinion affirms, because such swallowing, since it is done deliberately, seems to be a new eating. St. Alphonsus, n. 279, says that this opinion is more probable. Lugo, d. 15, n. 36.

582. **Do little drops of water or broth tasted, mixed with saliva, break the fast if they are swallowed?** Response: negatively, if by chance they are passed down contrary to intention, provided they are not in great quantity. The same must be said of little drops which are involuntarily passed down while washing the mouth. The reason is that they are not consumed after the manner of nutrition. This is also established from the Rubrics of the Missal *de Defect.*, tit. 9, n. 3; St. Thomas, III, q. 80, a. 8, ad 4.

St. Alphonsus, n. 279, says: "It is doubtful if they are swallowed intentionally. Coninck and Henriquez apud Croix, n. 566, think that they do not break the fast, provided they are mixed with saliva; and Lugo and Tamburini seem to think the same when they say that since to swallow saliva is not drinking, therefore neither does one violate the fast by passing down these little drops after the manner of saliva. But it must altogether be affirmed with the common opinion ... And the same Doctor Thomas teaches this, loc. cit., where after he said that remnants of food do not break the fast if they are accidentally swallowed, he said that the same reason holds concerning remnants of water or wine with which the mouth is washed ... It is confirmed from the Rubric, loc. cit., where it is had thus: the same must be said, namely that the fast is not broken, if in washing the mouth drops of water are swallowed contrary to intention. Therefore, if intentionally, it is broken. The same must be said if someone before midnight has put sugar in his mouth and after midnight passes some of it down. The reason is that it is not a remnant of eating of the preceding day, but a continued eating ... Thus also one would break the fast if he sucked blood from a finger, or tears flowing from the eyes. But otherwise it must be said if someone swallows blood flowing from the head or gums, or pus

coming from a pustule of the mouth, even deliberately. The reason is that whatever comes from within is not truly eaten and does not break the fast."

583. **Does snuff taken through the nostrils break the fast?** Response: negatively, even if something is transmitted into the stomach. The reason is that although such matter is nutritive, nevertheless it is not consumed after the manner of eating. L. 280; St. Thomas, loc. cit.

584. **Does tobacco smoke or similar smoke break the fast?** Response: negatively, because tobacco smoke is neither food nor drink, nor is it taken by eating or drinking; otherwise we would have to say that those also break the fast who draw in the smoke of foods in a kitchen, both by mouth and by nostrils. And this holds even if the smoke is voluntarily sent into the stomach. The same seems to be said of the juice or odor of camphor, which is drawn in after the manner of tobacco smoke. L., loc. cit.; St. Thomas, loc. cit.

585. **Does one break the fast who takes a tobacco leaf or spice in order to crush it with the teeth and spit out the phlegm?** Response: negatively, probably, even if some small amount of juice inseparably mixed with saliva is swallowed contrary to intention; because if by chance it is swallowed, it is passed down not after the manner of food, but after the manner of saliva. But all agree that chewing of this kind before communion is indecent; hence it does not seem excused from venial fault unless some reasonable cause intervenes.

"The same must be said of one who would swallow dust, rain, a flake of snow, a gnat, or a fly; for if this happened by chance through breathing, it would certainly not break the fast, because such an action is not eating, but breathing." L. 280; St. Thomas, loc. cit.

586. **Does eating hair, nails, wood, paper, little stones, and similar things impede communion?** The first opinion denies universally, because all these do not have the nature of food, or at least in use are not held as edible; and Busembaum thinks this probable.

The second opinion affirms universally, because it does not matter whether something nourishes or does not nourish, provided it is consumed after the manner of food.

The third opinion, common, affirms if digestible things are eaten; but denies if the things are altogether indigestible. For indigestible things do not have the nature of food, and the Church forbids that the eucharist be consumed after food or drink. Council of Toledo VII, can. 2; St. Thomas, III, q. 80, a. 8, ad 4; L. 281.

587. **Can one communicate who doubts whether after midnight he consumed food or drink, or swallowed something on the same day?** Response: affirmatively, more probably. The reason is that in the case it is not established that the fast was violated, and therefore it is not established that communion is forbidden; for the fact of the violated fast would have to be proved before the law prohibiting the eucharist to one not fasting is invoked. L. 282; l. 1, nn. 38, 39.

588. **Among several disagreeing clocks, is it lawful for someone to follow the last one for receiving communion?** Very commonly they affirm, provided that its error is not established

and that it is not one of those which for the most part err, because these are presumed always to err. L. 282.

589. **Can one communicate who swallows food after the first stroke of the clock but before the last?** The Salmanticenses, etc., affirm, because, as they say, the last stroke morally completes the same hour, so that all the strokes are computed as one. But Lugo, etc., better and more commonly deny this. The reason is that at the first stroke of the hour midnight has already been completed. L. 282.

590. **Is it lawful to eat and drink immediately after communion?** Formerly indeed after communion fasting was prescribed until Sext. *De Consecrat.*, dist. 2, cap. 23. But this precept has long since been abrogated. Yet from decency some delay must be observed between reception of this sacrament and other foods, at least as long as the consecrated species not yet plainly corrupted persevere in the stomach, unless nevertheless some reasonable cause is present for consuming something immediately. Otherwise such eating because of irreverence is not excused from venial fault. L. 283, 289; St. Thomas, III, q. 80, a. 8, ad 5, 6.

591. **Is it unlawful to spit after communion?** Response: negatively of itself, provided no fragment of the host has remained in the mouth. For there is no danger of irreverence toward the sacred species, since the way through which spittle flows together into the mouth is not the esophagus, or the way of food and drink, but the way of respiration. Yet all agree that it is fitting that communicants abstain from spitting for some interval of time. L. 283.

592. **When is it lawful for someone not fasting to communicate?** One not fasting lawfully communicates: 1. In danger of death, from whatever cause it proceeds; 2. In danger lest the eucharist perish or be badly treated, for example by heretics or impious persons; 3. In proximate danger of grave scandal from omission of the sacrifice or communion; 4. In necessity of completing the sacrifice or communion, for example if for the species of wine the priest had taken water, etc.; "because necessity has no law." St. Thomas, III, q. 80, a. 8; L. 284, 285; Roman Ritual, on Communion of the sick.

593. **Note:** 1. "If the priest remembers after consecration that he is not fasting, it is certain that he is not bound, nor able, to abandon the Mass, since the divine precept of completing the sacrifice outweighs the ecclesiastical precept of communicating fasting ... But if he remembers the broken fast before consecration, and especially before the Canon, he certainly ought to desist from the Mass, if he can without mark of infamy or scandal, as they also commonly say ... from St. Thomas, III, q. 83, a. 6, ad 2 ... St. Bonaventure judges, and Soto, etc., think it probable, that because of this reason of scandal one must never desist from a Mass begun, because it could almost never be omitted without scandal. Conversely, Concina says that scandal can rarely occur in this. I judge it better to say that scandal can always be feared, unless the celebrant is of known, or at least presumed, probity." L. 287.

594. "If for the species of wine the priest has taken water, if he notices while he has it in his mouth, it is not to be spit out because of the danger of ejecting a fragment of the host and irreverence, but is to be swallowed ... If a part of the host after the ablution has been consumed adheres to the chalice or palate, more decently it is pushed along by a new ablution, that is, purification, than by the finger, although the Missal also permits that it be drawn by the finger to the lip of

the chalice and consumed before the ablution. In this way also those are excused who from devotion retain the host in the mouth for a long time and by chance first take some of the ablution; yet voluntarily this is not lawful, unless good faith and holy simplicity excuse." L. 288.

595. "It is lawful to give to a sick person a very small particle together with the ablution, if because of dryness he cannot swallow it ... The ablution of water or wine is also lawfully given to a healthy person so that he can swallow fragments of the particle which have adhered to the mouth ... because it is not morally judged to have preceded communion ... then that whole thing from the ablution and particles is consumed in one single reception ... And therefore on the day of Parasceve the Church instituted that the particle consecrated on the preceding day be consumed together with wine; and in the Rubrics of the Missal, l. 10, n. 8, it is said: if the particle adheres to the chalice, wine can be poured in and it consumed; and Lugo and the Salmanticenses add that wine can be poured in again until the particle is consumed." L., ibid.

596. "That because of fear of death it is lawful to celebrate after food, contempt being excluded, several doctors admit." L. 289.

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594. **Can a priest celebrate not fasting in order to minister viaticum?** Response: the first opinion affirms. The reason is that the divine precept of viaticum is to be preferred to the ecclesiastical precept of fasting.

The second opinion denies. The reason is that since this sacrament is not of such necessity, the reverence due to the sacrament, because of which fasting is prescribed, is to be preferred. "I think the first opinion probable," says St. Alphonsus, n. 286, "but this second seems to me more probable, unless the dying person could not be fortified by the sacrament of penance or extreme unction; for in that case the eucharist will be able to be a sacrament of necessity, so that he who is attrite may become contrite. But otherwise it must be said if a priest, when he was near death, had to celebrate in order to give viaticum to himself; because then he will well be able to celebrate not fasting, so that he may satisfy the precept of viaticum. For then in the same person the ecclesiastical and divine precept concur, and the divine is to be preferred: thus commonly."

If it is known that the priest is not fasting, it will certainly be difficult in practice, because of scandal, to follow the first opinion.

595. **Can a priest not fasting celebrate so that the people may hear Mass and satisfy the precept?** The sole reason of seeing to it that the people hear Mass does not suffice, according to the common opinion, for celebrating after the fast has been violated, because it is better that the people be deprived of Mass than that the priest celebrate not fasting. If another grave reason is added, namely of public scandal which could not easily be impeded, for example by warning the people that because of some case the priest is no longer fasting, the celebration of Mass would be lawful. Yet one must attend in practice lest perhaps greater scandal be had from this, for example if it is not hidden that the priest is not fasting, or if this is later learned. La-Croix, n. 582ff.; D'Annibale, 3rd ed., part 3, n. 411; E. M.

596. **Is moral certainty of danger of death required so that viaticum can be ministered to one not fasting?** Response: negatively, but a founded doubt, or probability of danger, suffices, especially when it is to be feared that the sick person may be seized by sudden death. Indeed pastors and parents or relatives of the sick who through carelessness or vain fear delay the administration of sacred viaticum with danger that they may depart without the eucharist are to be gravely reproved. L., *Homo Apostolicus*, n. 46. And St. Alphonsus, n. 285, skillfully warns that in this one must not proceed scrupulously, since in the Council of Constance, sess. 13, the sick are simply excepted from the law of fasting. "The sick," says St. Thomas, III, q. 80, a. 8, "are to be communicated immediately, even after food, if there is doubt about their danger, lest they depart without communion." Roman Ritual, on Communion of the sick.

597. **Is it ever lawful to give communion to a sick person not fasting and not dangerously bedridden, if the sickness is long-lasting?** It must be denied, with attention to the actual practice of the Church, unless the sickness is such that of itself it can induce danger of death. Yet several and grave theologians are not lacking who sometimes permit this if the sickness is long-lasting and the sick person can never communicate altogether fasting, provided it is done rarely, for example several times in the year. But the more common opinion of the doctors contradicts this, who assert that only the Pope can dispense in this law. In fact the Supreme Pontiff sometimes dispenses. This dispensation is customarily sought from the Holy Office. Yet then there seems to be a sufficient reason that the eucharist can sometimes be administered to the sick person after midnight. There is no doubt as to the case of annual or paschal communion, which is prescribed not by merely ecclesiastical law but also by divine law, because the divine command is more excellent than the human. And the Roman Ritual, on Communion of the sick, seems tacitly to concede this, since it forbids it to be given only to sick persons not fasting who communicate because of devotion. Gury-Ballerini, n. 334.

598. **Is it lawful to minister communion again to a sick person not fasting who has already been fortified with viaticum?** Response: affirmatively. The reason is that this sacrament is not given to the sick precisely for satisfying the precept, but as a protection against temptations which press more at the time of death. Therefore this is lawful not only if a new danger recurs, but also if the same danger endures. Roman Ritual, on Communion of the sick; L. 285; Benedict XIV, *de Syn.*, l. 7, c. 12.

599. **How much time must one communion be distant from another if the sick person communicates not fasting?** From the general rule about eight days, and even less if the sick person desires it, and even daily if the sick person was accustomed to communicate often and there is no inconvenience from the exterior apparatus, as for sick religious or other pious persons living in a monastery, since the sacred eucharist does not have to be carried publicly through the streets. Benedict XIV, *de Syn.*, l. 7, c. 12, warns bishops that, abstracting from various opinions in this matter, they should insinuate to pastors that "Most Holy Viaticum can and ought to be administered again and a third time in the same sickness, especially if the sick person asks and if he wishes." Therefore particular statutes of places are to be attended to. L. 285; *Homo Apostolicus*, tr. 5, n. 47.

600. **What about exterior decency of the body?** By natural law there is required that exterior habit and that composition of body which exhibits internal reverence and devotion of soul. The

reason is clear: for not only internal but also external veneration is owed to this most august sacrament, since Christ himself, by means of the species, exists and is handled in it in a certain sensible way.

No stain of the body at all of itself impedes communion, since the eucharist is only food of the soul, nor is purity lessened by stains of the body, which contribute nothing to moral goodness or malice. Yet decency and reverence due to so great a sacrament require that if filth appearing outwardly can be removed, it be diligently removed.

There is no obligation of abstaining from communion because of hidden stains of the body, or even those appearing outwardly but indelible. Yet if external stains, here and now indelible, are very notable and ought to cease shortly, it will be fitting, where it can be done conveniently, to defer communion. But when they last longer, there is no reason why someone should be deprived of heavenly nourishment. L. 271, 275; St. Thomas, IV, dist. 9, q. 1, a. 4, q. 2.

601. **Resolves:** 1. Women ought to approach sacred communion in holy adornment, redolent of modesty; if any present themselves to the sacred table very indecently, communion would have to be denied to them, with due cautions nevertheless for preventing scandals as far as can be done.

602. Leprosy, flux of blood, and similar things which occur without the fault of the patient, of themselves do not prohibit from communion, because those stains do not obstruct devotion, which is the disposition required for communion.

603. A priest infected with leprosy or another infirmity exciting horror can celebrate, but not in public. C. *Tua nos* 4 *de Cler. aegrot*.

604. It is fitting from decency and Christian humility that soldiers about to communicate approach the sacred table after laying aside weapons. Yet they are bound to this by no law. Let the same be said of laypeople wearing gloves.

605. When a priest receives the eucharist in the manner of laypeople, he ought to be vested with a stole. Some excuse this from mortal sin, but not from venial; others even from venial. L. 275, 276; St. Thomas, III, q. 80, a. 7.

606. **Because of pollution is one bound to omit communion?** Response: negatively, if it was involuntary; and this even if it arose from a venially culpable cause, provided that a notable disturbance of mind arising from that bodily commotion does not endure, or that some just cause of necessity or devotion is present. Otherwise, speaking per se, it will be venial. The reason is that an external stain, since it is already past, does not impede the present decency of the body.

Negatively, if it was culpable and already retracted by due penance, provided a just cause of necessity or even utility of approaching communion is present. Otherwise it will be venial because of the reverence due to so great a sacrament; yet this is sufficiently provided for by that proportionate reason which is present for receiving communion. Rubrics of the Missal *de Defect.*, tit. 9, n. 5; L. 272; St. Thomas, III, q. 80, a. 7; IV, dist. 9, q. 1, a. 4, q. 2; Suarez, d. 68, s. 2; Lugo, d. 15, n. 4ff.

603. **Does marital intercourse impede from the eucharist?** "It is venial to approach the eucharist on the day intercourse was had because of pleasure, unless some reasonable cause excuses. But if intercourse was had for the sake of procreating offspring, or even avoiding incontinence, then it is only of counsel to abstain from holy Communion. C. *Si vir* 7, caus. 33, q. 7. And so likewise it is of counsel to abstain on the day on which a spouse rendered the debt ... But after Communion has been received, it is no sin to render. But to ask? Some say it is venial; others none." L. 922, 273, 274; Sporer, *de Matr.*, n. 494; St. Thomas, III, q. 80, a. 7, ad 2; IV, dist. 32, q. 1, a. 1, ad 1.

604. **What is spiritual Communion, and how far is it to be commended?** Spiritual Communion is called a pious desire of receiving the sacrament of the eucharist when it cannot be received really. Hence for it there is required:

605. An act of faith by which the one about to communicate spiritually presents to himself Christ truly present in the eucharist.

606. An act of desire by which he longs to receive Christ in the sacrament and to be united with him with his whole heart.

607. Humble and fervent prayer by which he asks Our Lord Jesus Christ kindly to bestow on him those graces which by his sacramental presence he is accustomed mercifully to impart to us.

This Communion was very much in delight among the Saints and is commended by Trent, sess. 13, c. 8; sess. 22, c. 6. It is very useful to pious faithful. For if God rewards the pious desire of any virtue whatever, how much more the desire of possessing him himself! Therefore it is to be diligently insinuated and most vehemently commended by confessors to the faithful, their penitents.

Spiritual Communion can be made at every time and in every place, both morning and evening. Yet the more opportune time is the time of Mass itself, namely when the priest communicates; for then, since the most august sacrament is presented to the eyes and more vividly represented to the mind, it will inflame the heart more ardently with divine love. St. Thomas, III, q. 80, a. 11.

V. On the Nature and Power of the Sacrifice of the Mass

605. **What is sacrifice?** Sacrifice is: An offering of a sensible thing made to God, by the ministry of a priest, by which, by destroying or changing that thing, we profess that God is Lord of life and death. Trent, sess. 22, c. 3; St. Thomas, II-II, q. 86, a. 1.

606. **Is the eucharist a sacrifice, and what kind?** Response: it is established from Trent, sess. 22, c. 1, can. 1, that the eucharist is a true sacrifice.

And from the same Trent, ibid., c. 2, it is established that this sacrifice is essentially the same as the sacrifice of the Cross, and differs from it only accidentally. For the Host of each is the same; the same Priest, Christ, offers in the eucharist by the ministry of priests; each is confected by the pouring out of blood; only the manner of offering is different. For in that sacrifice the pouring out of blood was real, and Christ was immolated bloodily; in this sacrifice the pouring out of blood is mystical, and Christ is immolated bloodlessly. Suarez, d. 75, s. 5.

But it is a latreutic sacrifice, because it is the most absolute act of latria. For it is offered to God in acknowledgment of his supreme dominion. It is eucharistic, because it chiefly pertains to giving thanks to God for benefits conferred. It is propitiatory, because it is offered to God for obtaining pardon of sins. It is expiatory or satisfactory, since it is offered to God for obtaining also remission of punishment due to sins, namely temporal punishment; for remission of eternal punishment is not the effect of this sacrifice, since it is not remitted except when mortal sin has been destroyed. It is impetratory, for it is offered to God also for obtaining other necessities and benefits. Trent, ibid., cc. 2, 3, canons 3, 5; St. Thomas, III, q. 83, a. 1.

The eucharist, as sacrifice, is customarily called Mass from the word to send, either because at the end of the celebration of this sacrifice the people are dismissed with those words, Go, the Mass is ended; or because Christ in it is the Host sent by God. E. M.

607. **Note:** The Mass does not have the power of remitting sins per se and immediately, but only of obtaining helps for repentance, by which they are remitted, and also of obtaining helps for perfecting acts by which grace already acquired is increased, and of obtaining other goods both spiritual and temporal. But it has power per se and immediately of remitting punishments of sins for just persons for whom it is offered. L. 311.

608. **What are the principal parts of the Mass?** They are three: the Oblation, by which the sacrifice is, as it were, prepared; the Consecration, in which the essence of the sacrifice is had, for in it there is had the mystical slaughter of the victim, Suarez, d. 75, s. 5; the Consummation, by which the sacrifice is completed and perfected. St. Thomas, III, q. 82, a. 4. Hence none of these can be omitted without immense sacrilege. St. Thomas, III, q. 83, a. 6, ad 1, 2.

Therefore if the priest has omitted the oblation, he must supply it mentally before consecration. Benedict XIV, *de Sacr. Miss.*, l. 3, c. 18, n. 5. If either species has not been consecrated, before the consumption of the other it must altogether be consecrated; after the consumption of the other, each must be consecrated, if this can be done without any scandal and within a brief time, that is, within about an hour; for otherwise it would not seem to be the same sacrifice. Rubrics of the Missal *de Defect.*; St. Thomas, III, q. 83, a. 6, ad 4; L. 355. Cf. nn. 323, 329ff.

Finally, if the celebrant dies or is affected by some infirmity before the consumption of the wine, or after the consecration of the bread, and cannot continue the sacrifice within a brief time, the Mass must be completed by another priest, even not fasting if necessary to avoid scandal, from the place where the other ceased, if this can be done within a brief time and without very grave inconvenience. But if he himself who consecrated recovers, even after several hours he can continue and complete the sacrifice. St. Thomas, Supplement, q. 29, a. 2, ad 3, says: "If after the consecration of the bread the priest dies, another priest can proceed to the consecration of the wine, beginning where he left off, or even begin from the start over other matter."

But if the priest has failed before consecration, or after consummation, nothing needs to be supplied or continued, because in the first case the sacrifice has not yet been begun, and in the other it has already been completed. Rubrics of the Missal, ibid., tit. 10, n. 3; La-Croix, n. 548; L. 305, 354, 355; St. Thomas, III, q. 82, a. 4; q. 83, aa. 4, 6, ad 1, ad 3; Suarez, d. 71, s. 3; Lugo, *Resp. Mor.*, l. 1, d. 10.

609. **Note:** These things are in the Rubrics of the Missal, tit. 4, n. 8: "If the matter which would have to be set out, because of defect either of bread or wine, cannot be had in any way, if this is before the consecration of the body, one must not proceed further; if after the consecration of the body, or even of the wine, the defect of the other species is discovered, one species already consecrated, then if it cannot in any way be had, one will have to proceed and complete the Mass, yet so that the words and signs which pertain to the lacking species are omitted. But if by waiting a while it can be had, one must wait, lest the sacrifice remain imperfect."

Hence Gavantus here, and Azor, note that if the lacking species can be had only with the greatest difficulty, and notable offense of the people would arise from this, the Mass must be completed, because the natural right of avoiding scandal prevails over the positive divine right of integrating the sacrifice. L. 306. But what is to be done if a fly or spider, or something else poisonous or something which provokes vomiting, falls into the chalice, you have in the Rubrics *de Defect.*, tit. 10, nn. 5-7.

610. **For whom can the sacrifice of the Mass be offered?** It can be offered for all those for whom the sacrifice of the Cross was offered, unless the Church forbids it for someone. For "the fruits of the bloody oblation are received most abundantly through this unbloody one." Trent, sess. 22, c. 2. Therefore it can be offered:

611. For baptized wayfarers, even infants, or energumens, or sinners not excommunicated, even for unbelievers, not only generally for all, but also for individual unbelievers, even for kings, insofar as it is propitiatory, expiatory, and impetratory. Trent, ibid.

612. For the souls of Purgatory, to whom it profits from the infallible promise of Christ, insofar as it is expiatory. Trent, ibid., and sess. 25, decree on Purgatory.

613. For the Blessed, insofar as it is eucharistic. Trent, sess. 22, c. 3.

But it is forbidden to offer it for the excommunicated. Benedict XIV, C. *Ex quo*, March 1, 1756, section 27. For a tolerated excommunicate a priest can lawfully offer Mass both in his own name, as a private person, and more probably in the name of the Church, as minister of the Church. The reason is that the faithful are permitted to communicate with them, even in divine things. But for an excommunicate to be avoided, a priest can still lawfully offer Mass in his own name, but by no means in the name of the Church. La-Croix, n. 33; L. 308, 309; St. Thomas, IV, dist. 12, q. 2, a. 2, q. 2, ad 4; E. M.

611. **Of how many kinds is the fruit of the sacrifice of the Mass?** The fruit of the sacrifice of the Mass can be considered in three ways: first, on the part of the cause; second, on the part of the good itself which is to be obtained through the Mass; third, on the part of the person for whom such a good is obtained, or to whom the Mass is applied.

On the part of the cause, one fruit is *ex opere operantis*, namely that which is conferred in view of the prayer, devotion, and merit of the celebrant; another is *ex opere operato*, which is conferred in view of the merits of Christ and by force of his promise. From this it happens that a sacrifice offered by a holy priest, insofar as it is considered *ex opere operato*, does not profit more than if it were offered by an unworthy minister; because the sacrifice, thus considered, is the work of Christ, and the fruit flows only from the merits of Christ. Therefore in this sense it can rightly be said that the Mass of a bad

priest is worth as much as the Mass of a good priest. But otherwise it must be said if the merit *ex opere operantis* is attended to; for the worthier the priest is and the greater the devotion with which he is endowed while he performs the rites and prayers of the Church, so much greater does the fruit of the Mass become.

But the priest offers the sacrifice bearing the person of the whole Church, since he "consecrates the eucharist, which is the sacrament of the whole Church." St. Thomas, Supplement, q. 37, a. 4, ad 2. And thus under the name of the celebrating minister also comes the Church, insofar as through the minister she herself offers. "Whence I infer," says Suarez, d. 79, s. 2, assertion III, "that this value proceeding from the Church is better called *ex opere operantis*, as Cordoba, etc., speak, than *ex opere operato*, as Scotus, etc., speak ... And hence it is inferred that this value can grow and diminish according as there are holier persons in the Church."

On the part of the thing, one fruit is meritorious, namely the merit which is had from it; another is propitiatory, and is remission of sins, not indeed per se and immediately, but through obtaining help for repentance, by which sins are remitted. Trent, sess. 22, c. 2. Another is satisfactory or expiatory, insofar as per se and immediately it remits punishments of sins for just persons for whom it is offered, both in this life and in Purgatory. Trent, sess. 25, c. 1. Finally another is impetratory, and is first the obtaining of helps for perfecting acts by which sanctifying grace is increased in us; moreover, it is the obtaining of other spiritual goods, and also temporal goods. Trent, sess. 22, c. 2.

On the part of the subject, or of those to whom it is applied, one fruit is general, another special, another most special.

The general fruit is that which corresponds to the sacrifice insofar as it is a work placed by the priest as he operates in the name of the whole Church. Trent, sess. 22, c. 6. And indeed all the faithful, although the priest does not think of them, perceive this fruit; but it is attributed to them by way of impetration only, insofar as impetration also includes propitiation, but not, as it seems, by way of satisfaction, because from the thousands of sacrifices which are offered daily, any just person, even unaware, would obtain remission of immense punishment, which appears incredible.

Those assisting at the sacrifice, and a fortiori those cooperating with it, for example those serving the priest, etc., participate in this general fruit in a more abundant or more special way. But this fruit, as being *ex opere operantis*, is more abundant according as the devotion and holiness of those assisting and cooperating is greater. Trent, sess. 22, c. 6. Hence although several hear Mass or serve it, each will perceive the whole fruit proportioned to his devotion, not otherwise than if he alone were hearing or serving. But since, as is established from the Offertory, it is also offered for souls existing in Purgatory, satisfactory fruit is applied to these from the oblation of the Church of the sacrifice of the Mass also for them.

The special fruit is that which comes to him or those to whom the priest specially applies the sacrifice. These participate *ex opere operato* in the sacrifice as it is impetratory and propitiatory; indeed also, provided nothing stands in the way, as it is satisfactory.

The most special fruit is that which comes to the offering priest insofar as he is a private person offering. For if any cooperators perceive from the sacrifice their own altogether special fruit, much more must the priest who sacrifices perceive this. But whether the priest can apply this fruit to others is uncertain. Yet this is certain: that the priest cannot apply this most special fruit to another

in such a way that he receives another stipend from this; understand this, however, unless this very thing is done with the consent of the one giving the other stipend. Lugo, d. 19; Suarez, d. 79; L. 311, 312; St. Thomas, III, q. 82, a. 6; E. M.

V. On the Nature and Power of the Sacrifice of the Mass

612. **Does a Requiem Mass profit the dead more than a Mass of the Saints?** Response: negatively as to substance, or on the part of the sacrifice; but certainly as to accidentals, or on the part of the prayers, whose defect devotion can supply. L. 309; St. Thomas, Supplement, q. 71, a. 9; E. M.

613. **Is the value and fruit of the sacrifice of the Mass infinite?** "It must be noted that the value is one thing, the fruit of the Mass another. Value is that efficacy which the Mass has from the dignity of the one offering and of the thing offered, for conferring goods on the one offering and on those for whom it is offered. But the fruits are the goods themselves which God confers in view of the sacrifice. Hence value differs from fruit as cause from effect." L. 312. Therefore here fruit is taken for the fruit which is actually perceived.

Moreover, there is no doubt that the value of the Mass, like the value of the sacrifice of the Cross, is truly infinite, since Christ himself is the host and the one offering now by the ministry of priests. Trent, sess. 22, c. 2. Hence the Mass can cause fruit always greater intensively, according as someone needs more and is better disposed, and extensively insofar as it can profit infinite human beings without anything being taken away from individuals, whether it is applied only for one, or for several and all.

It is disputed about the fruit actually perceived, how much someone really receives.

The first opinion, more probable to St. Alphonsus, holds that this fruit is infinite, or rather indefinite, or to be perceived indefinitely, both intensively insofar as less or greater is really perceived according to the measure of the disposition of the human being, and extensively insofar as it really profits one as much as several. Therefore, if this fruit afterward actually perceived is always finite, this is certainly not because from divine institution only so much fruit and not more is to be perceived, but it is only from the finite capacity of the human beings for whom it is offered, each of whom perceives a more abundant fruit according to his own disposition and that of the one offering; but the Mass always profits individuals equally, when applied for several, as if it is applied for one.

The reason for this opinion is that the eucharistic sacrifice does not differ from the sacrifice of the Cross except only by the different manner of offering. Therefore, as the sacrifice of the Cross operates after the manner of a universal supernatural cause according to the capacity of the subjects, so also the eucharistic sacrifice. And for this opinion St. Alphonsus affirms that St. Thomas, III, q. 79, a. 5, is clearly in favor.

The other opinion, which the same St. Alphonsus calls probable, holds that the fruit actually to be perceived is finite from the institution itself of this sacrifice, because namely a certain degree was determined by Christ, and therefore the more widely among several it is distributed, the less comes to each. The reason for this opinion is taken from the usage and sense of the Church, while Masses are repeated and multiplied for one and the same thing, which is a sign that it does not have an

indefinite effect, but one certain and limited from the will of Christ. And St. Thomas, IV, dist. 45, q. 2, a. 4, q. 2, ad 2, seems to favor this opinion. Suarez, d. 79, ss. 11, 12.

614. **Is application of the Mass necessary for perceiving the fruit of the sacrifice?** Application of the Mass is the intention by which the priest wills that the fruit of the sacrifice fall to the benefit of a certain person.

Moreover, the application of the priest is not required for part of the general fruit to be perceived; but it suffices that he wishes to celebrate according to the mind of the Church, for such application is always implicitly included in the general intention of the celebrant. Likewise, for the most special fruit to come to the priest himself, it is not necessary that he wish to apply it specially to himself; for this is always applied to him per se. Indeed there are those who think this fruit is so proper to him that it cannot be applied to another. L. 318.

But application of the priest is required so that the special or ministerial fruit may come to someone. For the priest, and indeed he alone, bears the person of Christ; therefore just as he alone in the person of Christ offers the sacrifice for others, so also he alone applies its fruit.

A priest, although he has promised to celebrate Mass for no one, must make some application of the special fruit of the sacrifice. The reason is, first, because in his ordination he received from Christ's institution the power of confecting the sacrifice and consequently of applying its fruit; but that power would remain useless if the priest did not use it. Second, if no application is made, there is no reason why it should profit one more than another. Therefore the unapplied fruit remains in the general treasury of the Church, and consequently becomes less useful. "If it is applied to no one, or to one incapable, the fruit remains in the treasury of the Church, as Suarez teaches, or falls to the priest himself, or to those for whom he is bound specially to offer, because he is judged to have intended this implicitly." Busembaum apud St. Alphonsus, n. 336; Suarez, d. 78, s. 5; Lugo, d. 9, s. 10; E. M.

615. **When must the application of the fruit of the Mass be made?** It must be made at least before consecration. For the application of the Mass made after each consecration does not avail. The reason is that the sacrifice has already been perfected; and it can no longer be offered to some determinate end, since the past action has already been done to one end, or to no end. For a past action done to some end in general, or to an end afterward determined, cannot be understood.

But the application made before consecration avails, although it is better to make it before Mass or at the beginning of Mass. The reason is that since the sacrifice is situated in the consecration, and in it alone, it can well be offered before consecration. Indeed according to several, the application probably avails even between the two consecrations. The reason is that the sacrifice is perfected by the consecration of the chalice, and consequently the priest is then said to sacrifice, and therefore before the consecration of the chalice he can still apply the sacrifice. Tamburini, *Meth. celebr. Miss.*, c. 2, section 10; L. 336.

616. **Must the application of the fruit of the Mass be actual?** Response: negatively; but it suffices that it be habitual, namely that once made it is not retracted. The reason is that this application is made after the manner of a donation, and therefore through an intention once

had, the priest has already donated the fruit of his sacrifice; and consequently it is owed to him to whom he donated it, and when the Mass is celebrated, it comes to the same unless the donation is revoked. L. 335.

617. **If a priest has received stipends from ten persons, does he satisfy by celebrating with a confused and indeterminate intention?** Response: entirely negatively, because a determinate intention is required at least to a certain person; otherwise there is no reason why the Mass should be applied to one rather than another, and so it would be applied to no one.

Yet if he intended to apply any Mass to those ten persons, by applying to each one a tenth part of each Mass, he would satisfy the obligation; because the fruit of the sacrifice is divisible, and to each one is attributed what is owed to him. For each one, by receiving in each of the ten Masses a tenth part of the fruit, when the tenth sacred rite has been done, has already attained the whole fruit owed to him, or even will receive an entire fruit from each of the ten Masses. L. 335.

618. **How is the application to be determined when stipends are given by many unknown persons, as usually happens in pious pilgrimages?** The intention is to be made for those who gave the earlier stipends. This easily succeeds when the same priest is going to satisfy all obligations; nor does it stand in the way that he perhaps distributes part of the Masses to be celebrated to other priests, because he can distribute them in the same order in which he received them, and thus the application seems sufficiently determined. So also the sacristan or another who has collected many stipends from diverse persons and distributed the confused money to several priests can distribute successively in the same order. Often nothing else can morally be done except that the distribution and application be made according to the order of time, according to the intention of the giver, according to the axiom: He who is prior in time is stronger in right; unless namely a graver cause is present for interrupting this order, for example if a greater stipend is given for this reason, that the sacred rite not be delayed, etc. Indeed it is not necessary that the priest explicitly attend to this; since he is judged to wish to act thus, since natural equity demands it.

619. **Does an application made for a living person whom you believe dead avail, if you ought to have celebrated only for him already dead?** Response: negatively. The reason is that the obligation falls on the application to be made for the dead person, for relieving his soul from the punishments of Purgatory. But that end is not obtained while the sacrifice is offered for a living person. Nor does it avail that the satisfactory fruit of the sacrifice can also profit a living person and exempt him from the punishments of Purgatory; nor that a living person is capable of and becomes a participant also of those fruits of which the dead are not capable. For the will of the one giving the alms stands in the way, who wishes the Mass to be applied not to himself living, but to himself dead.

620. **Is the application of Mass valid for the first person who will give a stipend?** An offering made for the first person who will give a stipend is of itself valid, but unlawful, as prohibited by Clement VIII, Nov. 15, 1605. But often such an application of Mass is also invalid, because it often happens that the Mass is said for a cause not yet existing, for example if the one about to offer the stipend is going to request Mass for liberation from an infirmity which has not yet been contracted; for the effect of the Mass would have to remain suspended, which cannot be

admitted. Yet "if the priest foresees that Masses will be requested for some deceased person, he can well offer them now and afterward receive the stipend, because in this case they would already be offered for a determined person." L. 337.

621. **In the application of Masses, is it lawful to divide the fruits of the sacrifice and apply them for various ends and persons?** Response: negatively, if someone from an obligation of justice ought to apply the Mass for another. For that person is always judged to ask the whole fruit of the sacrifice for himself. Nor is it certainly established that the sacred rite, offered for several, profits each as much as when applied for one alone. Therefore one cannot receive a doubled or tripled stipend for one and the same Mass. And this is also established from propositions 8 and 10 condemned by Alexander VII.

But as to Masses altogether free, which namely the celebrant is bound to apply for no one, or which he is bound to apply from fidelity alone and a liberal promise, or from obedience alone, or mandate of a superior, or statute of an order, it is lawful to divide the fruits: namely latreutic, eucharistic, propitiatory, impetratory, satisfactory. The reason in the first case is that the Mass has all these fruits, and the celebrant has the power of applying the fruits of the sacrifice, which, since they tend to diverse ends, can be applied for those various ends. The reason in the second case is that every liberal promise is always understood as least burdensome to the one promising. Hence someone can also apply one and the same sacrifice for several, according to the opinion about indefinite application of the fruit of the sacrifice of the Mass, if he is bound only by a gratuitous promise and by no title of justice. The reason in the third case is that every obligation of law or precept is not to be extended beyond the end of the law. Hence, if, for example, a superior commands Mass for others than the dead, application for liberating a soul remains free to the priest, as St. Francis Borgia, Superior General of the Society of Jesus, declared for his subjects in 1654. E. M.

VI. On the Obligation of Applying Mass

622. **Is there an obligation of applying Mass for another?** Response: affirmatively. For it is had: 1. From the law itself, for Bishops, Pastors, Chapters of Cathedral or Collegiate Churches; 2. From the will of testators, for beneficed persons, chaplains, heirs, legatees, etc.; 3. From pact, a stipend having been accepted, or from gratuitous promise. And these Masses are customarily called manual, so that they may be distinguished from other founded Masses, owed from foundation. L. 314-317.

But it is not simoniacal to accept a stipend for Mass; for "the priest does not receive money as though the price of the consecration of the eucharist ... for this would be simoniacal, but as a stipend for his sustenance." St. Thomas, II-II, q. 100, a. 2, ad 2. Nevertheless even wealthy priests can accept a stipend, "both because today it is permitted by the custom of the universal Church, and because every worker, whether rich or poor, is worthy of his wage." L. 317. And St. Thomas favors this, *Quodlibet* 6, a. 10. E. M.

623. **Is a priest guilty of simony who celebrates chiefly in view of the stipend?** Response: negatively of itself, namely unless he holds the stipend as the true price of the sacrifice of the Mass. But he cannot be excused from sin, since it is especially hateful and disgraceful that

someone abuse the sacred ministry for the sake of earning money. Yet a priest does not sin who celebrates accessorily in view of the recompense to be received, especially if it is necessary to him. Nor of itself is one marked by any stain who, a stipend having been accepted, is determined to celebrate, although otherwise he would have omitted the sacred rite; for then he is moved not by reason of the stipend, but by the obligation to be fulfilled. E. M.

624. **Is the obligation of applying Mass grave?** Response: affirmatively, if it proceeds from law, or from the will of the deceased, or from pact, a stipend having been accepted. For the matter is grave, since another is deprived of great fruit. Hence one is bound to restitution. L. 315.

If the accepted stipend is not grave matter, some deny that it is grave, while others more probably affirm, because, with a pact from justice standing, grave harm is always unjustly inflicted on another. There is added the grave precept of the Church in this matter, as is more than sufficiently established from so many Constitutions and Decrees issued. And this is confirmed from the common estimation in this matter; for the stipend taxed for Masses of one or two lire is not matter grave in itself, and yet all who do not celebrate the Masses owed from the ordinary stipend believe that they sin gravely and are bound to restitution. L. 317. And this holds, although someone has knowingly and willingly accepted small stipends, unless they are so small that he seems to have promised gratis. Innocent XII, C. *Nuper*; L. 320.

If Mass is owed from a simple promise, it is not grave to omit it, because a simple promise does not obligate under grave matter. L. 317.

"But all agree that one sins gravely who omits a Mass owed from vow or precept of a prelate, because no one can doubt that this is grave matter in vow or precept." L. 317. Yet if a religious knowingly applies the sacred rite against the will of the superior, the application will be valid. The reason is that application of Mass is an act of the power of order. But acts of the power of order in no way depend on the faculty of the superior. Therefore, as the intention of confecting sacraments, so the application of the sacred rite cannot be made invalid by the will of the superior. L. 334.

Otherwise excluding a personal obligation of celebrating and applying Mass, commonly speaking it does not matter whether one celebrates by himself or through another, provided that the Mass is celebrated in the due place and time, and that the whole and not smaller stipend, accepted from the title of celebration alone, is handed over to the other. Proposition 9 condemned by Alexander VII. This has place only in manual Masses, which are not given in view of the person, but in view of the Mass to be celebrated. And this so that every base profit may be removed. Innocent XII, C. *Nuper*; Benedict XIV, encyclical *Quanta cura*; L. 321. Therefore whoever subtracts a part of the stipend is guilty of sacrilege and injustice, and is bound to restitution toward the celebrant, although that part is small and is spent for a pious use, unless the other altogether spontaneously, and therefore not having been asked, remits the excess. Benedict XIV, encyclical *Quanta cura*; proposition 9 condemned by Alexander VII; L. 321, 322.

Indeed, regularly speaking, one sins gravely not only if he omits the Mass, but also if he does not celebrate it within the defined time; or, if none has been determined, within a moderate time, that is, for the dead within one month, for the living within two months, unless the one giving the alms consents to the delay. Innocent XII, C. *Nuper*, to 11; L. 317. The designated time having elapsed, he

will still then be able to celebrate, although he has already sinned, unless the cause of celebration has ceased; for then he is bound to restitution, even if afterward he celebrates. L. 317.

It is likewise grave if someone does not celebrate in the prescribed place, and the place from a grave cause is intended of itself. Yet one who, having accepted a stipend for Mass to be celebrated on a privileged altar, celebrated it on another altar, does not have to restore the stipend, a proportionate compensation having been made, by afterward gaining a plenary indulgence applicable to the dead. L. 328, 329; E. M.

VI. On the Obligation of Applying Mass

625. **Resolves:** The whole stipend does not have to be handed over to another celebrant if someone has received a richer stipend by another title and in view of the person, for example: 1. If the Mass is to be celebrated by reason of a benefice. Innocent XII, loc. cit. 2. By reason of a chaplaincy. Sacred Congregation of the Council, March 15, 1745; A. S. S., vol. 8, p. 79. 3. By reason of a legacy left to someone for life. L. 321. 4. By reason of a parochial office. Sacred Congregation of the Council, July 25, 1874; A. S. S., vol. 8, p. 84. 5. By reason of a special obligation and burden undertaken. A. S. S., vol. 4, p. 40. 6. By reason of the poverty of the priest, friendship, consanguinity, etc. L. 321; provided that this intention of the giver is morally certain. Sacred Congregation of the Council, July 25, 1874; A. S. S., vol. 8, p. 94; E. M.

626. **How much is it lawful to accept as a stipend for Masses?** It is lawful to accept the stipend determined by diocesan law or custom. Trent, sess. 22, decree on observance, etc.

It is not lawful to demand a greater stipend except from a just cause, for example some extraordinary labor; nor is it lawful to accept less if this has been prohibited by the Ordinary. Sacred Congregation of the Council, July 16, 1689; A. S. S., vol. 3, p. 558. Yet this does not prevent someone from being able to admit a smaller stipend from another title, from charity or friendship, as also a greater stipend from the mere liberality of the giver.

Regulars also are held to the diocesan tax, Sacred Congregation of the Council, Jan. 16, 1639, and the heirs of those who have left Masses with no determinate alms must observe it. Innocent XII, C. *Nuper*, paragraph 5, *Posito*. "If beyond the alms taxed by the bishop the priest about to celebrate demands more, he not only offends against the law of the Church, but also injures commutative justice." Benedict XIV, *de Sacrif. Miss.*, l. 3, c. 21, n. 13. Trent, sess. 25, cc. 4, 5 *de Ref.*; L. 319, 320; E. M.

627. **Is it lawful to collect stipends for Masses, so that the Masses to be celebrated may afterward be handed over to others?** Response: if this is done for the sake of profit, it is forbidden, especially to merchants and booksellers, so that every occasion, appearance, and suspicion of base profit may be removed from the holiness of so great a sacrifice, although the collectors afterward see that they are celebrated by poor priests, giving in place of the stipend books, religious and pious periodicals, etc., or spend on pious uses the profit which is taken from the exchange of books or goods with alms.

If this is not done for the sake of profit, the matter is often dangerous, because Masses of this kind often must be celebrated at the appointed time, place, etc. Hence collectors sin gravely, and also those who give stipends to them, or receive them from them, as accomplices. Moreover collectors are guilty of theft if they subtract anything for themselves beyond the just price of the office and labor. Benedict XIV, C. *Quanta cura*; Sacred Congregation of the Council, Sept. 9, 1874; Apr. 24, 1875; L. 332.

It is not unlawful to grant goods, periodicals, or books for the application of Masses, and therefore neither is it unlawful for clerics to purchase them; and all the more is it lawful for writers of books, or directors of journals, to whom Masses are voluntarily handed over for this reason, to distribute their journals or books in this way, and for priests to purchase them. Nor is it lawful for bishops to forbid this, provided that: 1. The Masses are celebrated; 2. Every kind of negotiation or commerce relative to Masses to be celebrated is absent; 3. Nothing is subtracted from the will of founders or offerers concerning the quantity of the stipend, the place and time of celebration of Masses; 4. Testimony about the subsequent celebration of the Masses is given to the one to whom it is due by law; 5. Finally, any studied collection of Masses is excluded.

Therefore one sins who buys books, even religious and pious ones, at a lower price by the application of Masses, intending afterward to sell them for a just but greater stipend in money; or who buys them at a lower price in money, intending afterward to sell them for a just but greater stipend by application of Masses. Sacred Penitentiary, Oct. 6, 1862; Nov. 19, 1863; Sacred Congregation of the Council, Apr. 24, 1857; Aug. 31, 1874; Apr. 24 and Aug. 31, 1875; L. 322; E. M.

628. **Can a priest to whom a rich stipend is offered for today's Mass, retaining this, ask another priest to celebrate for him, promising to celebrate on the following day for the same person for whom he was going to celebrate for the ordinary alms?** Response: negatively, if this is done often or deliberately, namely by studied capture of a richer stipend. For this bears before itself a certain appearance of negotiation and base profit on the occasion of Masses. This is confirmed from the Sacred Congregation of the Council, May 6, 1865; A. S. S., vol. 2, p. 203; vol. 3, p. 98.

If it concerns some occurring case, it is controverted. "Concina rightly denies," says St. Alphonsus, n. 322, "because this could not be excused from the appearance of base merchandise; yet deservedly he does not dare condemn it of grave sin ... La-Croix and Mazzotta affirm, because this would not be retaining part of the price, which the Pontiff condemned, but only exchanging Masses and days." This latter opinion is altogether probable by solidity of reason and weight of authority, and is approved by the very common practice of pious priests. Except, however, if the one giving the alms is reasonably and gravely unwilling that the Mass be celebrated by another. L. 321.

629. **Is one obligated from stipend to celebrate on a privileged altar for a deceased person bound to read a Requiem Mass when the rite permits this?** Response: affirmatively. The reason is that this is required for gaining the indulgences. But on days on which Requiem Masses are prohibited, the priest gains the indulgences by reading the Mass of the day, as has several times been declared by the Sacred Congregation. L. 339; E. M.

630. **Does one obligated from stipend to read a Requiem or votive Mass satisfy if he says another Mass?** Response: affirmatively. The reason is that the Mass is the same as to substance; and if a just reason is present, there will be no sin. Except unless the quality of the Mass has been strictly prescribed because of some peculiar reason. Hence if the rubrics do not permit that on that day a Requiem or votive Mass be read, the Mass of the day must be read, and thus the obligation is truly satisfied. But one who does this without a legitimate reason cannot be excused from venial sin; nor is one's own devotion held as a sufficient reason. L. 328, 422; St. Thomas, IV, dist. 45, q. 2, a. 3, q. 1, ad 5; E. M.

631. **Can a stipend be received for a Mass to be celebrated on the day of the Commemoration of all the faithful departed?** Response: affirmatively. The reason is that not all priests are held on this day to apply Mass for all the dead; indeed neither are they obligated to celebrate. Therefore they can apply Mass at will either for all the dead dwelling in Purgatory, or only for some. Sacred Congregation of Rites, Aug. 4, 1663. But this being supposed, nothing at all stands in the way of a stipend being accepted for Mass. L. 338.

632. **Can priests of the Society of Jesus accept stipends for Masses?** A priest of the Society can accept a stipend neither for himself nor for another for the Masses which he reads. The same also must be asserted if it concerns any other sacred ministries. This is established from the Institute of the Society, *Epitome Inst. Soc. Iesu*, part 2, c. 1, s. 6, n. 27; part 4, c. 2, s. 1, n. 30.

If money is offered for Masses to a priest of the Society or to the Community, it can be admitted through the superior, not indeed with a rigorous obligation, but with a broad promise of saying some Masses, or even one or another in individual years from gratitude.

Likewise money can be accepted liberally, and in turn Masses can be liberally promised, yet so that the later promise is not as compensation, or a reciprocal payment as it were for stipends, but that the money be admitted under the mere title of alms; so that the offerer plainly understands that it cannot be accepted under another name, and he himself gives it under this same name. La-Croix, l. 4, n. 136ff.; l. 6, part 2, n. 146.

633. **Resolves:** 1. A priest of the Society of Jesus, to whom money is offered for Masses to be read, can say to the one offering that he will read the Masses gratis according to his intention, and in turn ask him that he may wish liberally to apply the offered money to this or that pious cause; thus the offerer will have a doubled fruit: namely the ordinary fruit of the Mass, and then of cooperation toward that pious cause.

634. Titius, a priest of the Society, can read Masses according to the intention of Sempronius, a secular priest, who has accepted stipends for Masses to be read, when this latter can neither restore them nor satisfy for all the Masses; because in those circumstances Titius is judged to read gratis and from pure charity.

635. If Titius, a priest of the Society, does not indeed receive the stipend, yet disposes about it, for example says to Caius: give the stipend to this poor person, and I will read the sacred rite according to your intention; or if he says to Sempronius: you accept the stipend, I will read the sacred rite in your place; he acts unlawfully, because thus by disposing of the stipend through a

certain tacit quasi-contract, I do that you may give, he virtually accepts the stipend and gives it back to another; each of which is against the vow of poverty.

636. If Paul, a man of the Society, supplies for a chaplain obligated from foundation in singing Mass, he by no means sins, although the chaplain receives his revenue, because the former disposes of nothing. The same must be said if he preaches or exercises another office for someone who receives customary rights from this.

637. If Sempronius, a pastor, having already accepted a stipend, asks Titius, a priest of the Society, to supply for him in reading Mass, Titius will lawfully supply, provided he disposes of nothing about the stipend. The reason is that the stipend is not received by Titius, not even virtually, since he disposes of nothing about it, and it is altogether indifferent to him who gave the stipend by whom the Mass is read. This is confirmed: If Titius, going to Paris, were gratis to carry letters in favor of Sempronius, for carrying which Sempronius was hired for pay, certainly Titius would not act against poverty, nor would he be judged to acquire that payment for himself and give it to Sempronius. Therefore similarly in our case. La-Croix, l. 4, nn. 138, 139; l. 6, part 2, n. 146.

VI. On the Obligation of Applying Mass

634. **What is the obligation in the Society of Jesus as to Masses and prayers customarily enjoined?** Religious members of the Society who do not discharge prescribed prayers and Masses, speaking per se, do not sin, because no rigorous precept is given; for there is no other obligation except from rule, which of itself does not obligate under sin. Yet superiors will sin if from negligence they do not see to it that those are designated who celebrate Masses or pray, especially for benefactors and founders.

But those who read the Masses to be read through others do not satisfy the rule, because it is a personal burden. Yet one satisfies who asks another to celebrate today or this week in his place, with himself compensating on another day or another week. Likewise those satisfy who, foreseeing difficulty for the following week, anticipate sacred rites in the week which precedes.

Masses for the deceased of the Society enjoined, whether they are determined by the general Constitutions of the Order, or from particular rules, or from the prescription of superiors, induce no other obligation than that of a simple rule or simple ordinance, and therefore they obligate neither under grave nor under light matter of themselves, special precept always being excluded.

Masses affixed to a time, for example which must be read every week or every month, if at this time because of impediment or sickness they could not be celebrated, do not necessarily have to be supplied afterward, but can be omitted. On the contrary, if they have been omitted from negligence, they must afterward be supplied. La-Croix, ibid., n. 171.

If Masses or prayers are indicated for an indefinite time, it is enough to say them for two or three months. La-Croix, l. 6, part 2, n. 168ff.; Pellizzari, tom. 1, tract. 5, c. 9, n. 12; Suarez, *De Relig.*, tr. 10, l. 8, c. 2, n. 5.

VII. Various Adjuncts of Mass

635. **On which days and at what hour is it lawful to celebrate?** On Thursday of greater week and Holy Saturday only Conventual Mass is permitted to be celebrated. On Holy Saturday it is celebrated in parochial churches because of the blessing of the font, where it exists. Declaration of Clement XI, March 15, 1712; Benedict XIV, notification 38; L. 350. Nevertheless where a custom prevails that the pastor celebrate on these days, it is to be tolerated.

Moreover, in rural parishes in which three or four clerics at least cannot be had for carrying out the sacred functions on Friday and Holy Saturday, pastors, with permission of the bishop, which in several places is not sought, to be obtained yearly, can celebrate a low Mass on Thursday in the Lord's Supper before the conventual Mass begins in the Cathedral or Mother Church. Sacred Congregation of Rites, July 28, 1821; A. S. S., vol. 1, p. 495. And if on that day there falls a feast of precept of St. Joseph, or of the Virgin greeted by the Angel, or of the principal Patron, it is lawful to celebrate as many Masses as will be necessary by command and judgment of the bishop. Sacred Congregation of Rites, Sept. 27, 1716; Sept. 27, 1868.

But on Friday of greater week it is altogether prohibited under grave obligation to celebrate. These days excepted, it is permitted to celebrate daily. Decree of Clement XI, March 15, 1712; Sacred Congregation of Rites, Sept. 13, 1692; Jan. 10, 1693; L. 349, 350.

A private Mass can be said at any hour from dawn until noon. Rubrics of the Missal. Dawn is to be computed from the variety of times. "But all agree that there is no fault in finishing Masses at dawn and beginning them a little before noon; the reason is that the time both of dawn and of noon is to be taken not mathematically, but morally." L. 341. In like manner the privilege of celebrating one hour before dawn or after noon must be understood of one hour before or after the time assigned for others not privileged; otherwise the privilege would profit little. L. 346. St. Thomas, III, q. 83, a. 2; E. M.

636. **Does one sin gravely who celebrates before dawn or after noon?** Response: affirmatively, if he anticipates by much or extends the time established by the Church; but otherwise if the change is light. Indeed if a just cause is present, it will be free from all fault. But what change is judged notable? It is controverted. According to the more common and more probable opinion, it is not held grave unless the celebration is begun a whole hour before or after the established time. L. 343, 346.

637. **When is it lawful to anticipate or extend the time of celebration?** It is lawful to anticipate: 1. In necessity, for example so that viaticum may be ministered to one dying, in which case it would be lawful to celebrate even at midnight. 2. Where there is a reasonable custom, for example so that craftsmen and servants can hear Mass very early in the morning. 3. By force of privilege of the Pope or permission of the bishop. L. 343.

It is lawful to extend: "1. After solemn Mass on a feast, if the solemn Mass is extended to an hour or more after noon, indeed probably even after two hours, lest a great part of the people lack Mass. 2. From cause of journey for an hour after noon or before dawn. 3. So also by reason of the funeral of some magnate, or a sermon, or public supplication. 4. If the bishop dispenses in some particular case

from a reasonable cause. And La-Croix rightly says that all superiors have the same faculty, privilege being excluded, toward their religious, since they are their Ordinaries." L. 344.

638. **Whether and under what conditions is it lawful to celebrate Mass more than once in a day?** Outside a case of true necessity, it is not lawful to repeat Mass. Except the day of the Nativity of the Lord and, where the privilege has been granted, the day of the Commemoration of all the departed. C. *Consuluisti* 3 *de Celebrat. missar.* But no one, not even a pastor, is bound to celebrate three Masses on the night of the Nativity, but can omit one at his judgment. L. 351.

There is necessity if a pastor before the ablution is warned about communicating a sick person, and has already consumed his own host, and no other fasting priest is found; nevertheless this is scarcely practical. L. 352. More practically, necessity is present lest several lose the sacred rite on a feast day, for example if one pastor rules two distant parishes, if part of the people because of distance of places cannot come to the same church, or because of narrowness of the church cannot come to the same Mass.

This necessity of celebrating two Masses is to be recognized by the bishop, according to those things which Benedict XIV has, C. *Declarasti*, March 16, 1746, *de Sacrif. miss.*, l. 3, cc. 5, 6, and permission is to be given by the bishop. But what distance is needed, or what number of faithful, so that Mass can be repeated, is left to the judgment of the Ordinary. And if they are distant by one stone, or there are twenty who otherwise would not satisfy the precept of the Church, he will be able, indeed ought, to permit it. Sacred Congregation of the Council, July 31, 1851; Jan. 12, 1847.

The pastor is bound to apply the second Mass for the people, just as the first, no stipend having been accepted, on feast days in united parishes, except in the case in which the union of parishes is such that one parish altogether arises from it. Therefore a pastor ruling two parishes, and therefore celebrating twice, is bound to apply his Mass to each parish. On the contrary, a pastor celebrating twice in one and the same parish is bound to apply only one Mass for the people.

The celebrant, when he celebrates again, must be fasting. Alms can never be received for the second Mass to be celebrated, even for pious causes, and whoever he is who celebrates it, nor can the title of poverty or defect of revenues be alleged for receiving this alms. But if he feels some inconvenience, he is not prohibited from demanding recompense because of this. Sacred Congregation of the Council, March 23, 1861; Feb. 22, 1862. St. Thomas, III, q. 83, a. 2, ad 5; Suarez, d. 83, s. 3; Lugo, *Resp. Mor.*, l. 1, d. 14; E. M.

639. **In what place is it lawful to celebrate?** Commonly it is not lawful to celebrate except in a Church, and one consecrated or at least blessed, which is not polluted, execrated, or interdicted; and on an altar, not execrated. Under grave sacrilege a consecrated altar, fixed or portable, is required. Trent, sess. 22, decree on observance; L. 373.

"In a Church violated internally, unless it is first reconciled, it will not be lawful under grave sin, except in necessity, with permission of the bishop if he can be approached, otherwise without it, to celebrate or to bury the dead. But necessity is judged sufficient if the people have no other Church where they may hear Mass. But if the Church is polluted after the Canon has begun, the priest certainly must continue the Mass." L. 361.

To celebrate Mass under the open sky is grave, unless from a graver necessity and with permission of the Ordinary, if it can be sought, for example if the Church has collapsed, or if on a solemn feast it does not hold those who have gathered. C. 11 *de Consecr.*; Rubrics of the Missal; Lugo, d. 20, n. 48; L. 356.

The bishop can no longer, as formerly, grant the faculty of celebrating in private houses, nor in a private oratory. Trent, sess. 22, decree on observance. This is also established from the Sacred Congregation of the Council, May 27, 1617; Jan. 23, 1847, in which it is said that it is not lawful for any bishop to grant licenses of this kind, not even for a passing act; this faculty is reserved to the Roman Pontiff alone. Yet exception is made if grave and urgent causes are present, and only by way of a passing act. Sacred Congregation of the Council, May 27, 1617; July 7, 1855; Dec. 20, 1856; L. 359.

The bishop can indeed grant the faculty of performing the sacred rite in public oratories, and of carrying out there the other sacred functions which are not strictly parochial. St. Thomas, III, q. 83, a. 3; E. M.

640. **In what oratories can bishops give permission of celebrating?** They can permit that it be done in every religious and pious place. That place is called religious in which works of religion, piety, and mercy are exercised, and which has been erected by authority of the bishop or of another ecclesiastical prelate. Such are monasteries, any religious communities, seminaries, etc. But that place is called pious which is constituted and deputed for works of piety and mercy, even without the authority of the bishop or ecclesiastical prelate. Hence hospitals and any orphanages must be held as pious places, in which therefore the bishop can permit the erection of an oratory, even if places of this kind have been erected and constituted by civil power. Add also oratories to be erected in prisons.

In these oratories it can be celebrated with doors closed; nor is it necessary that the oratory be separated from other places by four walls, but for the fourth wall a cloth can be fitted, which is opened for the convenience of those hearing Mass. Trent, sess. 22, decree on observance, etc.; Sacred Congregation of the Council, March 27, 1847; L. 357.

641. **How is a church polluted, and how must it be reconciled?** Response to the first: a church is polluted or violated when certain foul or indecent actions injurious to a sacred place are exercised in it, because of which it is judged indecent that the Immaculate Host be offered there and divine offices celebrated until it is reconciled. Therefore a Church is polluted:

642. By homicide, voluntary, mortally evil, or at least injurious to ecclesiastical immunity.

643. By the pouring out of human blood from a blow or wound gravely injurious.

644. By illicit voluntary emission of human seed.

645. By the burial of one not baptized, or of an unbeliever. Except, more probably, if he is a catechumen, because he is not judged an unbeliever. Likewise if it is an infant whose parents are Christian, because then the parents desire baptism for him. Thus Pichler, Gousset, n. 310, against others.

646. By the burial of an excommunicate to be avoided.

But for a Church to be judged polluted, these crimes must be notorious, so that they can in no way be hidden. They must also be committed in the church itself, not only in the tower, roof, sacristy, or other places adjoining the Church. C. 19, 20, 27 *de Consecr.*, dist. 1; C. 4, 7, 10 *de Consecr.*, etc.; C. un. h. t. in 6; C. 5 *de Adulter.*; L. 362, 364.

"Note that the pouring out of blood means abundance. Hence it does not violate if from a light blow or wound, for example of the nose in a quarrel of boys, even abundant blood flows, because in this commonly mortal sin is not present." L. 385.

A church is not polluted "by desolation, heretical exercise, filth of human beings or of animals stabled there, etc., although it is fitting and practice has it that it be reconciled and washed by the bishop, or at least by a priest, with some ceremony; understand the same about an altar in a similar case." L. 367.

To the second: 1. If the church was only blessed, it can be reconciled by a priest delegated by the bishop, with the accustomed prayers and with blessed water. "But the water can be blessed by the priest himself." Sacred Congregation of Rites, June 20, 1622. Indeed Benedict XIV, *de Syn.*, l. 13, c. 15, n. 2, says: "If the church was simply blessed, then the same Gregory IX in C. *Si ecclesia de Consecr. eccl.* established that without any delegation previously obtained, by a simple priest, blessed water being used, which they call holy or lustral, the polluted church can be reconciled."

2. But if that church was consecrated, it must be reconciled by the bishop himself, or by a priest delegated by the Pope according to the rite of the Roman Pontifical. Yet if divine offices cannot be omitted without grave inconvenience, the bishop, detained by some impediment, can delegate a priest to bless the Church with a simple blessing until he himself can consecrate it.
3. But private oratories, although blessed and deputed to worship, are not judged polluted; and therefore they do not need reconciliation. Suarez, d. 8, s. 4, n. 6; Lugo, d. 20, nn. 58, 59; Giraldi, part 1, s. 598; L. 362, 363; St. Thomas, III, q. 83, a. 3, ad 3; E. M.

VII. Various Adjuncts of Mass

642. **How are a church, altar, and sacred vessels execrated, and how are they rendered suitable again for worship?** "Execration is said when a sacred thing loses its consecration, so that it must be consecrated anew, which happens when it is so destroyed that it loses its form and use." L. 368.

Now a church is judged to be execrated when it falls or is destroyed totally or for the greatest part, so that it must be built anew, at least for the greater part. "A church is not execrated if one part after another is destroyed. And this even if through intervals of weeks or days the whole church becomes new, because whatever part acceding remains consecrated, since the greater worthy thing draws the less worthy to itself. And this proceeds even if there is an intention of destroying the whole church, because that intention does not prevent the consecration from enduring. Nor if the roof falls, because the consecration is in the walls." L. 368.

Likewise the Church is not execrated if the whole coating of the walls, commonly plaster, is removed, even all at once. For the consecration adheres to the whole church. Sacred Congregation of Rites,

May 5, 1882; June 26, 1894; May 19, 1896. A church execrated is to be blessed or consecrated again according to the rite and form prescribed for blessing or consecrating churches.

A fixed altar loses consecration when the mensa or upper stone is removed from its base. Sacred Congregation of Bishops and Regulars, May 15, 1819. Altars, whether portable or fixed, lose their consecration through an enormous fracture or through violation of the sepulcher in which the sacred Relics are enclosed, or through loss of the same. Sacred Congregation of Rites, Sept. 23, 1848. Nor does it suffice to entomb other authentic Relics in them; rather the altars must be consecrated anew. Sacred Congregation of Rites, Dec. 7, 1844.

Sacred vessels and other consecrated things are execrated when they lose their form and can no longer serve for their use. Moreover "the chalice and paten lose their consecration through new gilding, and thus need a new consecration." Sacred Congregation of Rites, June 14, 1845. A sacred vestment, a notable part of which has been torn so that it cannot serve for due use, remains execrated, although it is immediately mended, because it has already lost its form. "To use sacred vestments, even worn ones, for profane uses is mortal. Yet sacred vestments used for profane uses do not lose their blessing." L. 370, 371, 376.

When part of a church is polluted, the whole church is judged polluted, even with the adjoining cemetery. On the contrary, when a church is execrated, the cemetery is not therefore execrated, nor do fixed and intact altars lose consecration. St. Thomas, III, q. 83, a. 3, ad 2, ad 3, ad 4, ad 5; L. 367ff.; Suarez, d. 81, s. 2; E. M.

643. **What things are required for celebrating Mass?** These are required: 1. A stone altar, fixed or portable, consecrated by a bishop; 2. A triple cloth made from linen or hemp; 3. Sacred vestments, or vestments blessed by the Ordinary; 4. A consecrated chalice and paten; 5. A linen corporal, or one from hemp, blessed by the Ordinary; 6. A pall likewise linen or from hemp; 7. A linen purificator; 8. A missal with cushion; 9. A crucifix, but not a cross alone; 10. Two candles lit from wax; 11. A burse, veil, hand towel, glass cruets; 12. A male server.

As it is grave or light to celebrate without some one of these things, so likewise it is grave or light to celebrate with that thing not blessed, if nevertheless it must necessarily be blessed.

As to candles, which under grave obligation must be of wax, in private Masses it is not lawful to light more than two candles, unless a bishop celebrates, or unless some extraordinary solemnity or exposition of the Most Holy Sacrament requires a greater number. Rubrics, rite to be observed, etc., tit. 1; *de Defect.*, tit. 10, n. 1; St. Thomas, III, q. 83, a. 3; L. 378-389, 394; Benedict XIV, C. *Imposito nobis*, March 29, 1751, section 4; Pius VII, C. *Decet Romanos*, IV Non. July 1823; Sacred Congregation of Rites, Aug. 7, 1627; March 15, 1664; Sept. 7, 1850; March 8, 1879; E. M.

644. **What kind of sin is it to celebrate without chalice, paten, corporal, pall, or purificator?** To celebrate without chalice and paten, unless from a most grave cause, is grave; without a corporal, unless from a grave cause, is grave; without a pall or purificator is light.

If a purificator cannot easily be had, it is probably lawful to celebrate without it, and in its place a clean small towel can be used, which afterward is not to be used for profane uses.

In necessity, when a pall is lacking, another corporal, or a purificator or burse, can be used.

The pall is more probably to be blessed with the same blessing as the corporal, and it can be used for a corporal.

As it is grave to celebrate without a corporal, or without a blessed corporal, since it immediately touches the Body of Christ, unless grave necessity urges, so it is grave to celebrate with a very unclean corporal; but venial if it is not very unclean. Indeed in necessity, if the priest himself or others otherwise would have to omit the sacred rite of precept, there is no sin.

The corporal can be silk or worked in gold at the ends; nor must it be blessed again after washing. Rubrics, rite to be observed, etc., tit. 1, n. 1; *de Defect.*, tit. 10, n. 1; L. 376, 386-389; St. Thomas, III, q. 82, a. 3; q. 83, a. 3, ad 7, ad 8; E. M.

645. **Must the chalice and paten be consecrated under grave obligation or only under light, and from what matter are they to be made?** Response to the first: they must be consecrated under mortal sin; for the precept concerns a grave matter. Gousset, n. 323; L. 379.

To the second: from the Rubrics, rite to be observed, etc., on preparation, n. 1, *de Defect.*, tit. 10, n. 1, at least the cup of the chalice must be gold, or silver, or tin in case of necessity, gilded inside; not bronze or glass. Likewise the paten must be of gold or gilded silver. St. Thomas, III, q. 83, a. 2, ad 6; Supplement, q. 37, a. 5; L. 370; Benedict XIV, C. *Etsi pastoralis*, May 26, 1742; C. *Imposito nobis*, March 29, 1751; E. M. Cf. n. 551.

646. **Is a chalice execrated if the gilding perishes?** "Azor, etc., affirm, because the immediate subject of consecration is removed, since the whole anointing is done on the surface of the chalice. But Lugo, d. 20, n. 94, etc., more probably deny with the common opinion. The reason is that although the anointing is not done except on the surface, nevertheless the whole mass of the chalice, or the whole chalice and not only its surface, is consecrated." L. 370. Cf. n. 642.

647. **Is it lawful to celebrate without veil, hand towel, cushion, or burse, and are these to be blessed? Also without a cross, and is it to be blessed?** Response to the first: "Busembaum rightly says that these are not blessed ... La-Croix says that to celebrate without a veil, when none is had, is not a sin, for he says the veil, hand towel, and cushion are required only for decency, and he judges the same about the burse with Sporer." L. 395. "If something of these is lacking, it can be mutually received from profane things suitably clean, and afterward returned to the former use." L. 395.

To the second: likewise it is light to celebrate without a cross; nor is it of precept that it be blessed. And Pignatelli teaches the same about all images to be placed on the altar. On an altar on which the Most Holy Sacrament is exposed, the cross can be displayed or not displayed according to the custom of each diocese. Benedict XIV, C. *Accepimus*; Sacred Congregation of the Council, Sept. 17, 1822; Sacred Congregation of Rites, Sept. 2, 1741; L. 393; E. M.

648. **Is it ever lawful to celebrate without a missal? What kind of missal is required?** "Under grave sin, a missal is required, at least containing the Canon ... but the very common opinion ... probably says that a priest can sometimes celebrate without a missal, if he could not easily have this, and because of past experience moral danger of erring were absent. Hence Lugo, etc.,

probably infer that a priest who because of weakness of sight recites Mass from memory celebrates lawfully," etc. L. 390.

But one must use his proper missal. Yet if someone celebrates Mass in another church, he can use both the Roman Missal and the Missal of Regulars which the Church uses, excluding nevertheless the proper rites of Orders. Sacred Congregation of Rites, July 9, 1895.

In Churches from which Regulars have been ejected, Mass can no longer be celebrated according to the calendar of the Order, nor by the regulars themselves, if someone has remained in them as a kind of chaplain or custodian, but according to the diocesan calendar. Sacred Congregation of Rites, Dec. 20, 1864.

649. **Do two cloths suffice, or one doubled?** "Suarez, Laymann, Holzmann, Palaus with Sa and Azor affirm; likewise Bonacina, Henriquez, and Gobat apud La-Croix, n. 322. Yet I think one must not depart from the Rubric, which prescribes three cloths ... Yet Escobar and Roncaglia with Pasqualigo probably say that this does not exceed venial fault. But to celebrate without any cloth is not excused from mortal sin ...; on the contrary, no fault is committed if grave necessity is present for celebrating thus." L. 375. That the upper cloth "reach down to the ground" according to the Rubric "is not in use today." L. 375. Rubrics *de Defect.*, tit. 10, n. 1.

650. **Must the cloths necessarily be blessed?** Response: affirmatively from the clear Rubric *de Defect.*, tit. 10, n. 1. Yet Suarez and others deny, saying that blessing is required only from decency. And St. Alphonsus says: "This opinion does not seem improbable because of the authority of these authors, especially Suarez, who testifies that custom is to the contrary." L. 375. Moreover "such a defect, as they probably say, does not exceed venial fault," from which "any reasonable cause" excuses. L. 373.

VII. Various Adjuncts of Mass

651. **What kind of sin is it to celebrate without sacred vestments?** To celebrate without any sacred vestments, that is, blessed ones, namely chasuble, stole, maniple, alb, amice, and cincture, at least regularly speaking, is never lawful, even in necessity of receiving viaticum. For the reverence due to this sacrament and sacrifice is a just cause that the Church not permit this sacrament to be celebrated and ministered without sacred vestments because of the grave inconveniences which can arise from this permission. At least regularly speaking: for if death is threatened unless the priest celebrates without sacred vestments, altar, or chalice, some say it is lawful, others that it is not lawful.

To celebrate without amice or cincture is a light sin, from which a just cause excuses; without stole or maniple, unless in grave necessity, is grave; without alb or chasuble, unless in most grave necessity and with scandal removed, is likewise grave.

But when it is grave not to use some sacred vestment, to use it not blessed is likewise grave, unless grave and proportionate necessity excuses.

To make sacred vestments of this kind from profane things, for example a chasuble from a woman's silk garment, is not prohibited.

In the Roman Ritual there is had a blessing of priestly vestments in general; but in the Pontifical there is had both a blessing in general and a special blessing of each vestment. But when an inferior priest having faculty blesses some priestly vestment, he must use the blessing of the Roman Ritual. Sacred Congregation of Rites, March 16, 1876; A. S. S., vol. 13, p. 33. La-Croix, nn. 327, 328, 339, 392; L. 289, 367, 377; St. Thomas, Supplement, q. 37, a. 5; q. 40, a. 2, ad 2; a. 7; Benedict XIV, notification 21, n. 10; Pius VII, brief *Quo luctu*.

652. **Is the color of vestments of precept?** "Tamburini, Quarti, Diana with Homobonus, likewise Suarez and Aversa apud La-Croix, n. 340, deny ... but Sporer and Quarti contradict. And I think this more probable ... Yet Sporer and Quarti judge well that this Rubric does not obligate under grave matter unless scandal is present, for example if on Easter day, or in any festive Mass, one celebrated in black vestments. Sporer adds that it is better on any day whatever to perform the sacred rite in any color than to omit it. Hence he rightly says a fortiori that any reasonable cause excuses, as if because of a gathering of priests vestments of the due color did not suffice." L. 378. E. M.

653. **What kind of sin is it to celebrate without a server?** It is mortal according to all. Yet the doctors commonly say that it is lawful to celebrate without a server when necessity of ministering viaticum urges. Others concede the same so that the people may hear Mass of precept.

It is lawful for the celebrant to continue a Mass begun without a server if this one perhaps is absent and does not return after a brief time, especially when the offertory has already been made.

If necessity urges, especially among nuns, it is permitted that a woman respond from afar, provided that she does not immediately serve at the altar by handing the cruets. For this is prohibited under grave obligation. C. *Inhibendum* 1 *de Cohabit. cler.* And therefore, when necessity urges, it would be better to celebrate without a server than with a woman serving. L. 391, 392; St. Thomas, III, q. 83, a. 5, ad 12; A. S. S., vol. 26, p. 572ff.; E. M.

654. **What kind of sin is it to celebrate without light?** "It is certain among all that it is mortal to celebrate without any light from C. *Litteras* ult. *de Celebr. miss.* ... And this even if necessity of ministering viaticum urges ... If before consecration the light fails, one must altogether desist from celebrating; otherwise if after consecration ... There is no obligation of lighting a third candle after the Sanctus; for thus common usage has today ... Commonly and probably they say it is lawful to celebrate with oil or tallow in necessity ... But I do not approve what Pasqualigo, Gobat, and others, with whom Suarez agrees, say when speaking of light from oil, namely that it is not unlawful to celebrate with candles from oil or tallow, even from devotion alone, if others cannot be had. For this does not seem a sufficient grave cause for excusing from mortal sin ... To celebrate with one wax light, I think more probably and more commonly, is only venial; and from this, therefore, I think any reasonable cause, even of devotion alone, scandal being excluded, excuses." L. 294. Cf. La-Croix, n. 392.

655. **Is it lawful to celebrate with head covered, without cassock, without shoes? Is it lawful for canons to wear a ring?** Response to the first: it is not lawful to perform the sacred rite with head covered by a skullcap, without permission of the Apostolic See. C. *Nullus de Cons.*,

dist. 1. But whether this is grave or light is controverted. Yet scandal being excluded, it does not obligate with grave inconvenience, and therefore it is lawful for a sick or old man, the Canon excepted. Likewise it is not lawful to celebrate with a wig. But this has already become obsolete in many places. Cf. Ferraris, v. *Coma ascititia*. The Rubrics, rite to be observed, tit. 1, n. 2, prescribe a cassock for the celebrant; nevertheless the obligation does not seem grave, and therefore a reasonable cause can excuse from it. Likewise from the same Rubric it is not lawful to celebrate with bare feet without cause, which would be only light. But it suffices to be shod with sandals. L. 396, 397, 398; E. M.

To the second: negatively. Sacred Congregation of Rites, Feb. 12, 1892; March 9, 1894.

656. **Is it lawful to pronounce everything in a low voice or aloud?** To pronounce all things softly, so that one is heard neither by those standing around nor by himself, contrary to what the Rubric prescribes, probably is not mortal. But this is not excused from venial fault, since in the Rubric it is expressly prescribed that the celebrant pronounce in such a way that he hears himself. But one who would thus utter the words of consecration is not excused from mortal sin.

To recite softly what is prescribed to be recited aloud is not mortal; but it can by no means be excused from venial, since the opposite is expressly prescribed in the Rubric. Yet it is not necessary that all the people hear, but it suffices that attentive bystanders, namely those who are near the altar, are able to perceive what is read.

One who utters aloud in Mass what is to be said softly also cannot be excused from venial, since it is against the Rubric, which prescribes that the priest hear himself and not be heard by those standing around. "I would easily agree that one can sin mortally who would utter the words of consecration or of a great part of the Canon so loudly that they could be heard at forty paces ... Outside this case I am unable to recognize grave sin in this." L. 414-416. Rubrics, rite to be observed, etc.

657. **Is it lawful to change anything in Mass?** It is lawful to omit, add, or vary nothing.

To omit something of those things which in Mass are extraordinary and are not always said, such as *Iudica me*, Gloria, added Collects, Creed, Sequence, Tract, and Preface, special *Communicantes*, *Hanc igitur*, is not grave of itself, unless several things are omitted which make up notable matter. To omit those things which are constantly said and are ordinary in Mass is grave of itself, unless the lightness of the matter excuses. The gravity of matter is taken here both from quantity and from quality. And thus as to those things which are contained in the Canon, which proximately touches the sacrifice, a small quantity suffices for grave fault.

Hence it is commonly asserted to be grave to omit the Confession with the others at the beginning of Mass, the proper Prayers of the Mass, the Epistle, the Gospel, the Offertory, ten or eight names of Saints in the Canon, any prayer in the Canon, the Our Father, *Libera nos*, the fraction of the host or its mixing in the Blood, many signs over the offerings, the purification of the paten and chalice after reception, etc.

It is venial to omit only one of the three principal prayers, *Kyrie eleison*, the Gospel of St. John at the end, one or another sign over the offerings, the striking of the breast, the washing of fingers in Mass,

the wine in the purification of the chalice, the washing of hands before Mass. After Mass there is no sin, as also to omit the prayers before or after Mass; to omit them while putting on the vestments is venial. To mutilate words or introduce syncope, with the sense preserved and scandal excluded, is likewise venial. It is also venial if the priest omits to say softly in solemn Mass the things which are sung by the choir, since the priest and ministers in a Mass of this kind make one. L. 403-410.

To add is prohibited more gravely because of danger of novelty. Therefore if something is added which is notable and which is not contained in the Missal, it is grave, although it is done from devotion. "But if from importunate devotion several collects from the same Missal are added, or Creed, or Gloria, Our Father, Hail Mary, or something similar, this does not exceed venial fault ... It would be mortal to add Gloria and Creed in a Requiem Mass, because this seems a sufficiently grave disorder." L. 411. From special devotion and from a just cause to add a commemoration of some Saint, or a collect for the afflicted, to ask for rain, etc., is not even light sin. Sacred Congregation of Rites, Aug. 12, 1854; L. 412.

Here it must be observed that on the anniversary of the election and consecration of a bishop, since in Mass the prayer *Deus omnium* must be said for the bishop himself, the prayer commanded for the Pope must be omitted. Sacred Congregation of Rites, Jan. 22, 1876.

To vary is grave or light according as grave or light deformity in the rite arises from it. Therefore it is grave to read the Gospel before the Epistle. La-Croix, n. 437. But it is light of itself to read one Mass, epistle, preface, etc., for another. La-Croix, n. 371; L. 409. Scandal and contempt being excluded, it is not mortal to celebrate a votive or Requiem Mass on prohibited days. L. 420. Here it must be noted that Masses of the Dead cannot be said during the Exposition of the Most Holy Sacrament of the Forty Hours. L. 418. But when the Most Holy Sacrament is exposed, still in a double Mass a commemoration of it can be made. L. 411. St. Thomas, III, q. 83, aa. 4, 5; L. 418, 419, 421, 423, 424; E. M.

VII. Various Adjuncts of Mass

658. **Is it ever lawful to interrupt Mass?** It is never lawful to interrupt Mass essentially, or in such a way that the sacrifice begun remains truncated, unless a most grave or extreme necessity urges, as in the case of an imminent fire, or an enemy rushing in to kill. For then the priest, omitting the consecration of the chalice, could consume the host already consecrated, or carry it away with himself while fleeing. But if he has completed each consecration, let him consume each species immediately, if he can; or if he cannot, let him carry them with himself to be consumed very quickly in a nearby place.

Nor is it lawful to interrupt Mass accidentally except from a just cause before the oblation, for example because of a sermon after the Gospel, because of prayers for the dead to be recited, or because of proclamations of banns to be made.

Nor is it lawful to interrupt Mass except from a grave cause before the Canon, for example: 1. Because of a procession to be received, in favor of an arriving Prince, or a crowd of pilgrims on a feast day, if otherwise they cannot hear Mass. And if the oblation has not been made, the priest can begin anew, so that they may hear the whole sacred rite. 2. If the priest remembers some impediment, for

example that he is not fasting, or not in the state of grace, or is irregular, provided the Mass can be left without scandal or mark of infamy. 3. If the Church is polluted or an excommunicate to be avoided arrives.

Nor indeed is it lawful, once the Canon has begun, to interrupt Mass except from a graver cause; and after consecration has been completed, except from a most grave cause, for example if a dying person must be baptized or absolved. But it is not lawful to minister other sacraments between consecration and communion, because they are not of such necessity. Yet Holy Viaticum could be ministered to a dying person who was nearby, so that the priest would not have to take off the sacred vestments. But for this it is also required that the celebrant not lose sight of the altar. Sacred Congregation of Rites, Dec. 19, 1829. "Most theologians ... permit the priest to interrupt Mass so that he may administer extreme unction to a sick person near death, to whom no other sacrament could be conferred." Benedict XIV, *de Syn.*, l. 8, c. 6, n. 5; L. 728.

If Mass has been interrupted, if the celebrant returns shortly, it is to be resumed from the place where it was interrupted; but if after an hour, and consecration had not yet been made, it is to be begun again from the beginning; if consecration had been made, from the place at which the interruption was made. L. 352, 353, 555; St. Thomas, III, q. 83, a. 6, ad 1; Rubrics of the Missal *de Defect*.

659. **Can a sick priest celebrate, although he cannot observe all the Rubrics?** Response: affirmatively, if he omits only a few and lighter ones, especially if he celebrates privately. Indeed several authors of grave note permit a sick celebrant even to use a cane, if he needs it. St. Alphonsus, n. 492, reports and approves these things: "La-Croix, l. 6, part 2, n. 402, etc., says that one who could not celebrate without a cane can lawfully use it. And Gobat adds that if someone could not celebrate unless leaning with each arm upon the altar, he would lawfully celebrate thus privately, but not publicly, unless he did this from necessity. Yet I think this does not exceed venial, from which he who because of infirmity could not stand upright and wished to celebrate from his devotion seems able to be excused, provided wonder of the people is avoided. La-Croix, n. 427, etc., also say that if someone cannot elevate the host, but can do the rest, he can celebrate privately and even publicly if necessity is present and the people are warned; but I think it is enough to warn the people only if someone celebrates from devotion." E. M.

660. **Are the Rubrics of the Roman Missal preceptive?** Some are preceptive, some directive. Which are the former and which the latter is not sufficiently established. The more common opinion holds that those are directive which hand down the things that are to be done or said before or after Mass, and that the rest are preceptive; and therefore that these alone obligate according to the gravity of the matter. L. 395. Nevertheless Suarez not improbably thinks that those things which are contained under the title *de Defectibus* are doctrinal instructions, which obligate no more than the doctrine on which they are founded. D. 85, s. 1.

But if some doubt occurs to someone while he is performing this mystery, let him do that which has less danger, St. Thomas, III, q. 83, a. 6, ad 2; or what he judges more expedient. This must always be kept before the eyes, that scandal be avoided. Suarez, d. 84, s. 2. From the opinion of St. Alphonsus, *Exam. Ordin.*, n. 112, not all rubrics to be observed outside Mass are merely directive, but only some.

Trent, sess. 22, cc. 4, 5, 8, canons 6, 7, 9, decree on observance, etc.; sess. 23, c. 5; St. Thomas, III, q. 83, aa. 3, 4; Diana, tr. 1 *De Celebrat. Missar.*, R. 235, n. 3; L. 401; E. M.

On Penance

I. On the Nature and Remote Matter of Penance

661. **What is penance?** Penance is a virtue and is a sacrament. Under the first respect, it is a moral virtue inclining to detestation of sin insofar as it is an offense of God, namely insofar as it makes God turned away and indignant toward us, and consequently inclining to an efficacious purpose of avoiding it in the future and of satisfying divine justice. Lugo, d. 2, nn. 50, 52; St. Thomas, III, q. 85.

Under the other respect, it is a sacrament of the New Law, instituted by Christ the Lord after the manner of a judgment, for remitting through priestly absolution sins committed after baptism to a human being contrite and confessed. After the manner of a judgment, for the penitent is present at once as guilty party, witness, and accuser, and the priest as judge bearing sentence, who is held by the strictest obligation of secrecy. But this judgment tends to absolving the guilty person and reconciling him with God. Hence the difference between this sacramental and forensic judgment is clear. Florence, decree for the Armenians; Trent, sess. 14, chapters 1, 2, 3, 4, canons 1, 2, 3; St. Thomas, III, q. 84, a. 1; L. 246; E. M.

662. **In the sacrament of penance is it lawful to follow probable opinions?** Response: affirmatively in those things which pertain to judgment, provided that the form of judgment is preserved; for form gives being to a thing, and judgment pertains to the validity of the sacrament. And thus in those things which pertain to the integrity of confession, to the jurisdiction of the confessor, etc., it is lawful to follow probable opinions. L. 468; *Homo Apostolicus*, tr. 16, n. 29.

Negatively in those things which pertain to the validity of the sacrament, because the sacrament would be exposed to danger of nullity; except nevertheless in a case of necessity, for the sacraments are on account of human beings. Cf. n. 348.

663. **Is the sacrament of penance necessary?** Response: affirmatively, for those fallen after baptism. But it is necessary for justification both by necessity of precept and by necessity of means, at least in desire. Trent, sess. 6, c. 14; sess. 14, cc. 2, 4, 5; St. Thomas, III, q. 84, a. 5; q. 86, a. 6; Supplement, q. 6, a. 1. Hence the sacrament of penance is customarily called the second plank after shipwreck. Trent, sess. 6, c. 14; St. Thomas, III, q. 84, a. 6. But since no actual sin can be remitted in this life without the virtue of penance, it is also clear that this is altogether necessary for the justification of adults who have fallen after baptism. St. Thomas, q. 86, a. 2; E. M.

664. **What is the effect of the sacrament of penance?** The effect of this sacrament is absolution from sins and reconciliation with God, and, as follows, remission of eternal punishment.

Florence, decree for the Armenians; Trent, sess. 14, c. 3, canons 12, 15; sess. 6, c. 7; St. Thomas, III, q. 86, aa. 3, 4, 6.

"To him who through contrition has obtained remission of sins as to guilt, and consequently as to the guilt of eternal punishment, which is remitted together with guilt by force of the keys ..., grace is increased and temporal punishment is remitted, whose guilt had still remained after remission of fault, yet not the whole, as in baptism, but a part of it ... By force of the keys which operates in the sacrament of penance, not the whole punishment is remitted, but something of temporal punishment, whose guilt could have remained after absolution from eternal punishment, and not only from that punishment which the penitent has or receives from absolution in confessing ..., but also something is remitted of that punishment which is owed in purgatory, so that one absolved who dies before satisfaction is punished less in purgatory than if he died before absolution." St. Thomas, IV, dist. 18, q. 1, a. 3, q. 2; E. M.

665. **What are the parts of the sacrament of penance; what is their efficacy?** The parts of the sacrament of penance are, as in other sacraments, matter and form. The form is the words of absolution which the priest pronounces. The matter or quasi-matter is the acts of the penitent, which are distinguished into three parts. The first of these is contrition of heart. The second is confession of mouth. The third is satisfaction. Florence, decree for the Armenians; Trent, sess. 14, c. 3, can. 4.

"But every sacrament produces its effect not only by force of the form, but also by force of the matter; for from each there is one sacrament ... Whence remission of guilt is the effect of penance principally indeed by force of the keys which ministers have, from whose part that which is formal in this sacrament is taken, but secondarily from the force of the acts of the penitent pertaining to the virtue of penance; yet insofar as these acts are in some way ordered to the keys of the Church. And thus it is clear that remission of guilt is the effect of penance insofar as it is a virtue, but more principally insofar as it is a sacrament." St. Thomas, III, q. 86, a. 6; q. 90, aa. 1, 2; E. M.

666. **What is the remote matter of the sacrament of penance?** The remote matter is all sins committed after baptism. They are called the matter about which, because absolution is concerned with destroying them.

The necessary remote matter is all mortal sins committed after baptism, not yet directly remitted through the keys of the Church, although already destroyed by perfect contrition, or inculpably omitted in a preceding confession. Hence they must be manifested in the immediately following confession, since they are not free but necessary matter; and therefore the penitent must necessarily be absolved from these, and a new penance must be imposed, although someone confesses them immediately after absolution. L. 513.

Yet as to sins omitted from forgetfulness or another just cause, there is no obligation of confessing them as soon as possible, since they have already been destroyed, and therefore there is no danger to the soul in delay. Therefore their confession can be deferred until, by force of another obligation or spontaneously, someone confesses again.

The sufficient but free remote matter is all venial sins committed after baptism, and all sins, whether mortal or venial, already otherwise duly subjected to the keys of the Church. C. 12 *de Poenit.*; Extravagant 1 *de Privileg.*; 2 *de Haeret.*; Trent, sess. 14, c. 5, can. 7; proposition 11 condemned by Alexander VII; L. 425, 427.

For some greater security besides ordinary light sins, it is expedient to add either some certain sin about which one grieves more vehemently, or at least a generic accusation of all the sins of one's past life. Reuter, n. 202; Elbel, n. 10. St. Thomas, III, q. 84, a. 2; E. M.

I. On the Nature and Remote Matter of Penance

667. **Resolves:** 1. "Venial sins can be omitted, either all or some; likewise mortal sins once duly confessed, for example in a general confession. In this it is also not necessary to add to a mortal sin that it was committed after the last confession ..., unless some circumstance, for example changing the species, or reservation of the case, or proximate occasion of sinning, requires otherwise, and sufficient penance is imposed." L. 425; St. Thomas, IV, dist. 17, q. 3, a. 3, q. 5, ad 4; dist. 18, q. 1, a. 3, q. 2, ad 4.

668. Insufficient matter is imperfections which are not sins: that someone did not do the good he could have done, did not respond to divine inspirations in those things which are of mere counsel. La-Croix, l. 5, n. 211; L. 425.

669. The confession of all mortal sins which is certainly invalid must necessarily be repeated. For all mortal sins are of themselves to be subjected to the keys. Yet confession is not necessarily to be repeated unless its invalidity is morally certain. The reason is: first, because when the act has certainly been placed, if a doubt arises whether it was rightly placed, that rule of law obtains: one must stand for the value of the act. Second, because the obligation of divine law concerning making confession has probably already been satisfied. L. 505; La-Croix, n. 1221; Elbel, n. 263.

670. "Even if from culpable mortal error you omitted such a sin, for example of self-abuse, or the number, or another necessary circumstance, you are not therefore bound to repeat the intermediate confessions made in good faith and legitimately, in which from natural forgetfulness you did not confess that defect, since they were valid and remain valid." L. 503. Lugo, d. 16, s. 2, sections 1, 2.

671. **What is the proximate matter of the sacrament of penance?** The proximate, intrinsic, and essential matter from which the sacrament is made is the acts of the penitent, namely contrition, confession, and satisfaction to be accepted, which, however, as to its execution pertains to the integrity of the sacrament. Lugo, d. 12, n. 40. But those acts are called by Florence, decree for the Armenians, by Trent, sess. 14, c. 3, and by St. Thomas, IV, dist. 18, q. 1, a. 3, q. 1, quasi-matter, not because "they do not have the nature of true matter, but because they are not matter of that kind which is applied from without, as water in baptism and chrism in confirmation." Roman Catechism, n. 13.

Several, who with Scotus think that the whole substance of the sacrament consists in absolution alone, raise a doubt about the mind of St. Thomas, whom they affirm to stand for themselves. But, to

pass over other things now, this holy Doctor has, III, q. 84, a. 1, ad 1: "In those sacraments which have an effect corresponding to human acts, the sensible human acts themselves are in place of matter, as happens in penance and matrimony." Cf. ibid., ad 2, ad 3. And a. 2 of the same question: "The proximate matter of this sacrament is the acts of the penitent, whose matter is the sins about which he grieves, and which he confesses, and for which he satisfies." Cf. ibid., q. 90, aa. 1, 2.

669. **Note:** Sin is said to be remitted directly when it is remitted by force of the keys of the Church. For this it is necessary that the penitent confess the sin, and that the confessor have jurisdiction over it. It is said to be remitted indirectly when it is remitted by force of sanctifying grace which is infused in the sacrament of penance, because this is incompatible with any grave sin, and one grave sin cannot be remitted without another. This has place when a sin has been inculpably omitted or reserved. La-Croix, n. 597; L. 478, 504.

670. **Are mortal sins committed in the reception itself of baptism matter of this sacrament?** "They very commonly affirm ... But the reason which they bring forward ... does not seem to convince ... for the sin of fiction, namely if that person were to receive baptism existing in mortal sin without sorrow." L. 427. D'Annibale, 3rd ed., part 3, n. 301, denies generally for all sins admitted in the very reception of baptism, and says this is the true opinion. The reason is that the material object of penance from Trent, sess. 14, c. 2, is sins which someone admitted after he began to be subject to the Church through baptism. St. Thomas, III, q. 69, a. 10; IV, dist. 4, q. 3, a. 2, q. 3; Lugo, d. 16, s. 1.

671. **Must an adult to be baptized conditionally, in doubt of preceding baptism, confess sins already accused?** Response: negatively. The reason is that those sins either have already been destroyed if the prior baptism was valid, or if it was invalid, they are destroyed by the later valid baptism and are not matter of confession. Reuter, n. 118.

672. **Must the aforesaid adult confess sins committed since the last confession and not yet accused?** It is controverted. The first opinion affirms, because the obligation of confessing sins urges whenever it is not established that they were committed before baptism. Therefore, after the later baptism has been conferred, those sins are afterward to be accused. It is confirmed from the response of the Holy Office, Dec. 17, 1868.

The second opinion denies, because, the probable invalidity of the prior baptism being posited, those sins are probably not matter of confession, and therefore a certain obligation is not established. But if the prior baptism was in reality valid, those sins will be able to be remitted either through perfect contrition or indirectly through absolution with attrition. Nor indeed does the praised response of the Holy Office generally settle the controversy, because it was given for New Converts in England because of the special reasons of that region. La-Croix, l. 6, part 1, n. 324; L. 473, 474, 505; E. M.

673. **Is a sin accused only in general ever sufficient matter of confession, as to its validity and lawfulness, for example if someone says: I accuse myself of all the sins of my life?** Response: affirmatively as to validity. For all consent that, so that the sick in the article of death, soldiers when battle is imminent, sailors when shipwreck is imminent, etc., may be validly absolved, some external sign of confession suffices, for example taking of the hand, striking of the breast, etc. But since the essence of the sacrament is not changed outside a case

of necessity, but is always the same for various cases, both in a case of necessity and outside a case of necessity, the aforesaid confession will be sufficient as to the validity of the sacrament. La-Croix, n. 620; Reuter, n. 303; Lugo, d. 17, n. 8; L. 480, 481, 482, 486, 504.

It seems probably also to be affirmed as to lawfulness. For, the certain validity of the sacrament standing, unlawfulness cannot arise from elsewhere than from a positive divine precept. But this precept is not had, as is clear from Trent, sess. 14, c. 5, according to which the divine precept of explaining sins both as to number and as to species is had only for grave sins not yet directly remitted through the keys of the Church. Therefore where grave sins necessarily to be accused in confession are lacking, there is no remaining obligation of accusing the other sins by determinate number and definite species. Dicastillo, *de Sacr. Poenit.*, d. 9, n. 760ff.; Apicella, *Ai Confessori Studio sull' assoluzione*, etc.; A. S. S., vol. 4, p. 320.

674. **Is there an obligation of confessing doubtful sins?** There is no obligation of confessing a positively doubtful mortal sin, namely when "on each side there are probable reasons that mortal sin was or was not committed." Thus "the very common opinion ... The reason is that anyone can lawfully conform himself to a truly probable opinion." L. 473.

Likewise there is no obligation of confessing a mortal sin doubtfully committed, namely when there is no prudent reason for affirming that the said sin was committed. The reason is "because Trent, sess. 14, c. 5, does not obligate penitents except to confess all mortal sins of which they have consciousness ..., which imports having certain knowledge of sin; for conscience is nothing other than knowledge of the heart and practical judgment about sin committed. But a doubtful conscience is neither knowledge nor judgment, but suspension of judgment; whence he who has no reason that he committed it can by no means be said to have consciousness of sin." L. 474. And certainly, if from the very common opinion there is no obligation of confessing a positively doubtful sin, namely when it can probably be affirmed that it was committed, although it can also probably be affirmed that it was not committed, how will an obligation be able to be present when it could not even probably be said that the sin was committed? Since such a doubt is not supported by a solid foundation, it cannot arise except from empty suspicion and fear of sin committed, as frequently happens to scrupulous and timid consciences. Ithurriaga, case 44, nn. 15, 18, 20ff.

If it concerns a sin certainly committed, and certainly grave in itself or objectively, but it is doubted about consent given and sufficient advertence, the following rule is handed down by St. Alphonsus, n. 476: "Those who are of timid conscience must be exempted from the obligation of confessing doubtful mortal sins. For these in doubt can reasonably, indeed morally certainly, believe that they did not consent, because presumption is taken from things commonly occurring ... Conversely, the opposite is to be judged about one who is accustomed easily to fall into mortal sins, because in doubt he is presumed to have consented; for if he had resisted, certainly he would remember that effort which he imposed on himself for repelling the temptation. Hence La-Croix, n. 612, rightly concludes that scarcely ever in human beings of this kind, both of the first and second kind, is there given a merely negative doubt; for presumption founds probability of consent given or dissent." Ithurriaga, case 44, n. 15ff.

If it concerns a sin doubtfully grave, namely in itself and objectively, speaking per se, there is no obligation of confessing such sins. For after using diligence one can form for himself a practical

judgment from the very well-known rule "that no certain obligation is given where the delict is doubtful." L. 474. Speaking per se; for one "who is certain about his evil action, and does not know how to discern whether it was mortal or not, is certainly bound to stand by the judgment of the confessor, whose office it is to distinguish between leprosy and leprosy." L. 474; St. Thomas, IV, dist. 21, q. 1, a. 3, ad 3. But with the scrupulous excepted, generally speaking, it is useful to confess doubtful sins, both for greater peace of conscience, and so that the confessor, knowing the dangers in which the penitent is placed, can warn him and suggest opportune remedies for averting them. L. 476.

If there is doubt whether someone has or has not confessed a mortal sin certainly committed, and the doubt is negative, he is certainly bound to confess it. For the law of confession is certain, and no prudent reason suggests that it has been satisfied. But if the doubt is positive, St. Alphonsus, n. 477, holds that the penitent must confess it, "since the obligation of confession is certain, and satisfaction doubtful." But Lugo, d. 16, nn. 58, 59, says: "All commonly teach that someone is not bound to confess that sin which he probably judges he has already confessed ... nothing is more frequent among theologians than to excuse from repeating confession the one who has confessed ... according to some probable opinion about its validity." And St. Alphonsus himself handed this down in the Roman edition of 1757, dedicated to Benedict XIV, l. 6, n. 477, as common doctrine. The reason is clear, because although the general law is certain, nevertheless with probable satisfaction of it standing, its obligation in the concrete, in the particular case, already becomes doubtful.

Moreover the same holy Doctor adds in the cited place "that one who was diligent in confessing his sins, if afterward he doubts whether he omitted some sin, after much time has elapsed from when he committed it, is not bound to confess it, since in that case he can morally certainly believe that he has already confessed it ... If someone previously from a depraved custom had fallen into several sins, and afterward is truly converted by constant integrity of life, if then he doubts whether in a general or particular confession made with due diligence he omitted some sin or circumstance, let the confessor prohibit him even from thinking back over his past life." But the scrupulous, as the doctors very commonly say, are never bound to confess past sins unless they are certain that they were mortal and certain that they never confessed them. L., ibid.

Whether one who confessed a sin as doubtful must confess it again if he recognizes it as certain is controverted. St. Alphonsus, nn. 478, 504, affirms, because that sin was not accused as to its individual substance; for accusation of a certain sin is not included in accusation of a doubtful sin. Thus several other and grave theologians. Reuter, n. 332; Tamburini, *Meth. Conf.*, l. 2, c. 1, section 4, n. 24; and several other grave theologians deny, since that sin was directly remitted through the keys of the Church; therefore it is not to be subjected to the keys again.

"Sanchez, etc., most probably and very commonly say that if someone confesses a sin which neither he himself nor the confessor knew to be mortal, and afterward he knows it to be mortal from its kind, he is not bound to confess it again. The reason is that in this case the penitent has already exposed his sin to the confessor as it was then in his conscience and now is; and in the present nothing new occurs, except that he now knows the matter of that sin to be grave, which before he did not know." L. 478, 500.

Someone can, rigorously speaking, without previous confession, approach sacred synaxis with a doubtful or probable mortal sin. The reason is that Trent requires confession before communion only

for those who are conscious of mortal sin. Hence a priest doubting whether he adhered to a wicked thought, or judging probably that he did not adhere to it, can celebrate, contrition nevertheless being premised, without confession, although he has the supply of a confessor. L. 475. But in practice confession is to be counseled. Lugo, d. 16, s. 2, sections 3, 4.

I. On the Nature and Remote Matter of Penance

675. **When the penitent provides only doubtful sufficient matter, is the confessor bound to seek certain matter from the past life so that he can absolve?** Response: affirmatively, if he wishes to absolve, because otherwise the sacrament would be exposed to danger of nullity. Except unless a case occurs in which the penitent can be absolved conditionally, about which below.

Negatively, if he does not wish to absolve, but to dismiss the penitent with only a blessing; because a penitent who does not bring certainly sufficient matter does not have a right to absolution.

Likewise, if the penitent seems to have doubtful sorrow only about venials, ordinarily the confessor is not bound to use great diligence to move him to sorrow, although it is much better if he does this. But otherwise it would have to be said if doubtful mortal sins were involved, because of the danger of the penitent. L. 432.

676. **Must one who does not bring necessary matter, but free and certain matter, necessarily be absolved?** Response: affirmatively, speaking per se. The reason is that on one side, a duly disposed penitent, after he has completed confession, has an acquired right to absolution; but on the other side the confessor has no right of granting or denying absolution according to his own judgment, and thus of defrauding the penitent of those spiritual gifts of grace which follow absolution. L. 604.

II. On Contrition

677. **What is contrition, and of how many kinds is it?** Contrition is sorrow of soul and detestation for sin committed, with the purpose of not sinning thereafter. Sorrow is displeasure and bitterness of soul; detestation is reprobation and condemnation of sin. Trent, sess. 14, c. 4; St. Thomas, III, q. 85, a. 1, ad 3; Supplement, q. 1, a. 1.

One kind is perfect from the special motive of charity, and is customarily called contrition simply; another is imperfect from another motive, for example from consideration of the baseness of sin, from fear of hell and punishments, etc., and is customarily called attrition. Trent, ibid.; L. 435, 436; St. Thomas, III, q. 87, a. 1; E. M.

678. **What is the necessity of contrition?** Contrition, either perfect with desire of the sacrament, or imperfect with the sacrament itself, is altogether necessary for a sinner, by necessity of means, for obtaining justification and salvation. But that desire is implicit in contrition itself and does not necessarily have to be explicit. Trent, sess. 14, chapters 4, 5; sess. 6, chapters 6, 14; St. Thomas, III, q. 87, a. 1; L. 434, 437. It is moreover necessary by necessity of divine

precept at some time in life, Luke 13:3, 5, and in the article of death, because of the precept of attaining the last end. L. 437.

"Speaking per se, a sinner deferring penance outside danger of death probably does not commit a special sin. The reason is that affirmative precepts, as St. Thomas teaches in IV, dist. 17, q. 3, a. 1, q. 4, must have a determined time in which they must be fulfilled; but nowhere is it established what time has been determined for satisfying this precept of contrition. Whence the same holy Doctor, II-II, q. 14, a. 2, said that final impenitence is not a special sin, in these words: impenitence, not indeed in that way in which it means permanence in sin until death ..., thus it would not be a special sin, but a certain circumstance of sin, etc. Yet this must certainly be understood apart from a positive precept; for from the precept of annual confession prescribed by the Church, each person is beyond doubt held to penance at least once in the year." L. 437. Therefore the precept of penance does not obligate immediately after mortal sin has been committed.

But per accidens the aforesaid precept obligates when another precept urges which cannot be fulfilled without contrition, for example when one guilty of grave sin is about to receive or minister a sacrament; as often as the sacrament of penance is received even from cause of devotion.

Likewise, when someone existing in mortal sin would defer penance for a notable time. The reason is clear from what St. Thomas teaches, I-II, q. 109, a. 8, where he says: "without justifying grace, that one remain for a long time without mortal sin cannot be." "But what this notable time is, the doctors greatly disagree." L. 437. Concina and others think it is a week; St. Alphonsus in the cited place and others think it is a month; others a quarter-year; others a half-year; others a year. The more common opinion, as Palaus says, *de Poenit.*, d. un., part 3, n. 9, at least admits that delay which the precept of the Church about annual confession also admits; which doctrine St. Alphonsus, ibid., also attributes to St. Thomas, IV, dist. 17, q. 3, a. 1, q. 4, although he himself "does not altogether acquiesce." Cf. Laymann, c. 2, n. 6; L., l. 6, n. 473; St. Thomas, *Quodlibet* 1, a. 11. Moreover, as the same St. Alphonsus has in the cited place, "sinners, especially the uneducated, can for the most part, indeed almost always, be excused from this sin of delayed penance because of lack of advertence." Cf. Lugo, d. 15, nn. 55, 56; Suarez, d. 15, s. 6, nn. 7, 8.

679. **What are the qualities of contrition?** 1. Contrition must be altogether true and real, not supposed; altogether formal, and virtual does not suffice, even for venials. Trent, sess. 14, c. 4; L. 443, 449.

680. It must be supernatural, even for venials, because it is a part of the sacrament and a positive disposition to supernatural grace. But it must be supernatural not only because elicited by the help of grace, but also, at least in some way, on the part of the motive. The reason is that, as Lugo, d. 5, n. 141, says, "for every justification, even in the sacrament, there is required a conversion of the human being to God, at least imperfect." But since that conversion is to God as supernatural end, hence that motive must be supernatural, at least inadequately considered, proposed not by the light of natural reason, but by the light of faith. Busembaum, n. 433; L. 440; Suarez, d. 20, s. 2. This is openly established from Trent, sess. 14, c. 4, where, after it enumerated among other motives fear of hell and punishments, which seemed especially to be known by the natural light of reason, it immediately brings forward the example of the fear of

the Ninevites, whose object certainly was manifested not by natural reason, but by the light of faith.

681. It must be appreciatively supreme, even for venial sins; that is, so that one detests sin more than every other evil, whence the sinner is prepared in soul rather to lose and suffer all things than to commit sin. A formal comparison in appreciation between various evils and sin is not required; indeed someone would foolishly make such a comparison. St. Thomas, *Quodlibet* 1, a. 9; L. 433.

Nor indeed must contrition be supreme also intensively, since intensity is something merely accidental. Lugo, d. 5, nn. 84-87; L. 441, 442; St. Thomas, Supplement, q. 5, a. 3; II-II, q. 24, a. 12; q. 45, a. 4. Likewise no duration of time is required, because this too is something merely accidental. L. 433.

4. It must be universal, if it concerns grave sins, but by no means if it concerns venials. The reason for the first is that remission of mortal sins is made through infusion of sanctifying grace, which is incompatible with any mortal sin. But it suffices that contrition be universal from a universal motive; nor are individual acts of sorrow required for each sin. For then someone virtually detests each of his sins. Otherwise one could not be cleansed from hidden sins by universal sorrow. Trent, sess. 14, c. 5; L. 438; St. Thomas, *de Verit.*, q. 29, a. 5, ad 4; IV, dist. 17, q. 2, a. 3, q. 5, ad 2.

The reason for the second is that since sanctifying grace is not incompatible with venial sin, one can be remitted without another. "Hence it suffices to repent and purpose about only one venial, since venials are not necessary matter, but only sufficient. But Lugo, d. 14, from n. 133, etc., says that it also suffices if someone grieves over the multitude and frequency of venials, even if he does not grieve over each in particular ... La-Croix, n. 913, etc., also rightly says that someone can well grieve over deliberate venials and purpose to avoid all these; but concerning semi-deliberate ones it suffices to grieve that he committed them and to wish in the future to attend to avoiding them as much as human frailty permits. And these things are according to the doctrine of St. Thomas, III, q. 87, a. 1, ad 1." L. 449; E. M.

680. **Must the contrition required for the sacrament of penance also be vocal?** It must indeed be sensible, but by no means necessarily vocal. The reason for the first is because it is a part of the sacrament. The reason for the second is because otherwise the dying unable to speak, although they give other signs of contrition, could not be absolved, which is against common practice and doctrine and against the Roman Ritual. But it becomes sufficiently sensible by the sorrowful confession itself of sins, by the petition or expectation of absolution, and by other signs. L. 445; *Homo Apostolicus*, tr. 16, n. 20.

681. **Must contrition precede confession?** It must certainly precede absolution, or at least coexist with it; for to follow it certainly does not suffice, since one who has not yet detested sins neither deserves nor can be released from their bond.

For the validity of the sacrament, sorrow does not necessarily have to precede accusation. The reason is that all things required for the sacrament are present, provided sorrow precedes absolution; nor

can the precept of premising sorrow for sins before confession be proved. Lugo, Suarez, and others more commonly against others. Moreover when other theologians require sorrowful confession, and therefore that sorrow must precede, they seem to require nothing else except that confession not be a mere narration of sins, but that it be an accusation of oneself ordered to obtaining absolution. The Roman Ritual, on the sacrament of penance, favors this, where it is said: "having heard the confession, the confessor will try with efficacious words to lead him to sorrow," etc. From this the Ritual seems to suppose that sorrow elicited after confession well suffices. Thus St. Alphonsus, n. 445.

Yet the same St. Alphonsus, *Homo Apostolicus*, tr. 16, n. 20, says that the other opinion is probable and therefore to be followed in practice; and adds: "but they commonly agree ... that it suffices if the penitent after the acts of sorrow says again, I accuse myself of all the sins confessed." But the same holy Doctor himself had previously handed down the first opinion in the prior editions of the *Moral Work* and the Italian edition of *Homo Apostolicus*; then afterward he changed it in the later editions of the *Moral Work*.

Ithurriaga, case 11, n. 4, says: "Sorrow seems certainly to me sufficient for the sacrament of penance, even if it does not precede confession, provided it follows confession and together with confession is ordered to absolution. The very sense of the faithful and the practice of confessors sufficiently teach this, and it is founded in this: although the whole prior narration of sins, preceding sorrow in time, had not yet had the complete nature of accusation, nevertheless, afterward informed by subsequent contrition, and thus subjected to the keys by the penitent both asking and expecting absolution, it is sufficiently completed in the nature of sacramental accusation." E. M.

682. **For how much space of time does the act of sorrow morally endure for validly receiving the sacrament?** Suarez, d. 20, s. 4, n. 29, and others judge that sorrow suffices which preceded confession by a long time, provided it has not been retracted. For since such sorrow perseveres virtually in flight from sin and in confession itself, which is made for preserving the state of grace, no reason seems to be present why such sorrow should be held insufficient. And Ballerini seems to adhere to this opinion, Gury-Ballerini, n. 448. Cf. Lugo, d. 14, nn. 35, 50.

But others, such as Cardenas in proposition 1 of Innocent XI, p. 65, n. 88, etc., say that sorrow preceding by one day suffices; for since confession is the effect of that sorrow, sorrow perseveres virtually. Roncaglia, c. 3, q. 2, response 2, agrees, even if sorrow preceded by several days, provided it virtually perseveres in some means, as for example if the penitent by force of the conceived sorrow persisted in frequent prayer, flight from occasions, penances, etc. L. 446. Gury, n. 447, also agrees, even if sorrow preceded by one or several days, provided it was elicited from the intention of confession and was not retracted by another sin. D'Annibale, 3rd ed., part 3, n. 315.

683. **In order that sorrow be apt matter, must it be elicited from or with the intention of confession?** Several affirm, and St. Alphonsus says this opinion is probable and to be followed more safely. But Lugo, d. 14, nn. 37-40, and others deny; Tamburini thinks it probable, the same St. Alphonsus, n. 447, thinks it more probable, and Ballerini, Gury-Ballerini, n. 447, as certain. The reason is both because from Trent, sess. 14, c. 4, that attrition is said to dispose to obtaining grace in the sacrament which excludes the will of sinning, with hope of pardon, all of which are verified in our case; and because then sorrow, although it was not ordered to

confession by an antecedent relation, nevertheless is ordered by a concomitant relation from the fact that then sorrow is still verified to be opened by confession.

684. **Is a new act of sorrow required for receiving a new absolution when the penitent immediately after absolution confesses a mortal sin omitted from forgetfulness?** The first opinion denies, because the prior contrition certainly perseveres, which, as universal, was extended to all sins, even those omitted from forgetfulness; nor otherwise is it required that contrition be explicitly ordered to the sacrament. Moreover, a new accusation having been made, it is already sufficiently ordered. Indeed there seems to be had sorrow, in some way explicit, in the act of accusing that sin. For when vocal confession is repeated, at least virtually the sorrow of the preceding confession is repeated, still morally and virtually persevering.

The second opinion affirms, because by absolution the judgment has been completed; therefore if a new absolution is to be imparted, new proximate matter is required. And although sorrow perseveres in itself, nevertheless it does not persevere in order to absolution.

St. Alphonsus, n. 448, speaking of this second opinion, says: "Since it is probable, indeed more probable, Croix and Concina say that it must altogether be followed in practice; at least I judge it safer to be held." But of the first he says: "more common, and Lugo, Anacletus, Viva with Perez, Henriquez, and the common opinion hold this; Roncaglia calls it morally certain; Sporer; Elbel thinks it most probable with Gobat, Dicastillo, Henriquez, Bosco, etc.; likewise apud Croix, Leander, Salas, Escobar, and Moya, who says it is undoubted among all." But for it Lugo, d. 14, n. 27, says "the common practice also stands," which Dicastillo, *de Sacr.*, tr. 8, disp. 6, dub. 22, n. 160, also testifies, and Diana, tom. 1, tr. 3, R. 95, n. 3, and several other grave theologians adhere to it absolutely. Father Gury, n. 448, says that the second opinion rests on a slight foundation. But Ballerini, ibid., says that "neither authority nor any solid reason supports that same second opinion," while the first "can be held most safe in practice." D'Annibale, 3rd ed., part 3, n. 315, says: "to me, if you wish to confess something forgotten, the first opinion seems truer, since this is contained, as in the same confession, so also in the same sorrow; if you confess the same things again, the other, because it is a new confession, in no way pertains to the prior one." Elbel, n. 75.

685. **Does one sin who confesses some venial without sorrow?** If he opens to the confessor this very defect of sorrow and purpose, then the priest ought not absolve from such a sin, nor should the penitent say it for this end, as if it were matter of the sacrament, since in reality it cannot be such. Yet it can lawfully be said either because of humility, or for counsel, or for excitation to true penance.

If he opens a venial about which he does not grieve, just like the rest, as matter of absolution, "then," says Suarez, d. 39, s. 6, n. 7, "many think it is mortal sin ... But although it cannot be denied that this is some fault, nevertheless I do not judge it mortal, because the matter of such a fault is light: because the defect of that sorrow or purpose of itself and by its nature is not contrary to grace and justification, which is the primary effect of this sacrament signified through the form ..., nor does it impede the remission of other venial sins, about which true accusation capable of true absolution is made, notwithstanding the obstacle of some venial sin." Cf. Lugo, d. 14, n. 48. Moreover even that light fault about which Suarez speaks will often be absent, either because the penitent does not advert to this defect of sorrow or to the disorder of the same defect, or because all displeasure is

rarely absent, although this is not sufficiently efficacious; in this matter it is often difficult to avoid deception.

To approach the sacrament with light matter, without any sorrow, is grave because of the grave irreverence which is inflicted on the sacrament by frustrating it of its effect, whether from grave or from light matter. Lugo, d. 14, n. 108ff.; L. 449.

II. On Contrition

686. **Does fearful attrition, or attrition conceived from fear of hell, suffice for justification in the sacrament of penance?** Response: affirmatively, provided it is truly supernatural, absolutely efficacious, and only materially, not formally or servilely, servile. The reason is, first, because attrition of this kind is true conversion to God and true aversion from sin; second, because this is clearly drawn from Trent, sess. 14, c. 4, where it says that attrition conceived from fear of hell and punishments is honorable and disposes the sinner to obtain justification in the sacrament of penance. And this is certain and common among the doctors. L. 440; St. Thomas, *Quodlibet* 4, a. 10; IV, dist. 22, q. 2, a. 1, q. 3.

Moreover attrition is called servilely servile when someone indeed grieves about sin and wishes to avoid it because of the punishments which he knows are to be inflicted by God, yet would still be prepared to sin if those punishments did not subsist. But it is called simply servile when someone abstains from sin indeed because of fear of punishments, yet is not so disposed that he would wish to sin if those punishments did not exist. The former is evil, not because it is fear of punishments, but because of a depraved disposition of soul. L. 442; E. M.

687. **Whether attrition conceived from fear of the punishments of this life, insofar as they are inflicted by God the avenger of sins, suffices for the sacrament of penance?** The first opinion denies. The reason is that Trent, sess. 14, c. 4, speaks conjunctively of fear of punishments and hell, when it teaches that "sorrow conceived from fear of hell and punishments" suffices, taking each for the same thing. For the punishment of mortal sin is eternal, and the sinner must fear this.

The second opinion affirms. The reason is that the particle and is to be taken disjunctively in the obvious sense, understanding hell for inferno, Matthew 10:28, and punishments for temporal punishments, whether of Purgatory or of this life. It is confirmed by the example of the Ninevites, which Trent itself brings forward, sess. 14, c. 4. St. Alphonsus, n. 443, says that this second opinion is more probable, but that the first is not lacking its probability, at least extrinsic; whence he concludes: "I think it safer that it be observed in practice." But others call the second opinion most probable, La-Croix, n. 884, others morally certain, Elbel, n. 59, others altogether certain; and Ballerini, Gury-Ballerini, n. 452, seems to adhere to these.

688. **Does attrition from fear of the punishments of Purgatory for venial sins suffice?** Response: affirmatively, with the very common and morally certain opinion, because all the reasons brought forward above for the sufficiency of attrition from fear of hell also hold here. Gury, n. 452.

689. **Does attrition suffice for the sacrament of penance if it is conceived from the baseness of sin?** Response: affirmatively. Trent, sess. 14, c. 4. But that baseness, the motive of sacramental attrition, is that which offends the eyes of God, which stains the soul by disfiguring the image and likeness of God in it; by no means that which is contained in infamy among human beings and which naturally inheres in vice. The reason is that attrition must not be sorrow for sin in any way whatever, but with some respect to God, the supernatural end of the human being; for it must be a certain conversion to God, at least imperfect. Lugo, d. 5, n. 140ff.; Suarez, d. 20, s. 2, n. 10; E. M.

690. **Can there be a valid and unformed sacrament of penance because of defect of sufficient sorrow?** There can be two cases: 1. When someone guilty of two sins, from invincible forgetfulness, grieves only about one and confesses only this. 2. When someone, from invincible ignorance, believed that it was not a mortal sin to approach the sacrament without sorrow for all, while nevertheless sorrow was present for some sin.

Moreover the first opinion holds that such a sacrament is valid and formed, because the penitent places no obstacle to grace. The second opinion holds that it is not only unformed, but invalid, because the sorrow is insufficient. The third opinion holds that it is valid but unformed: valid, because no essential part of the sacrament is lacking; unformed, because one mortal sin cannot be remitted without another, and the other cannot be remitted because sorrow is lacking. The first opinion seems true to D'Annibale, 3rd ed., part 3, n. 312; the third is more probable to St. Alphonsus, n. 444. Moreover this question is raised for this reason: that it may be known whether the penitent is bound again to confess the sins which he has already confessed, which indeed in this variety of opinions is doubtful. Lugo, d. 14, n. 65ff.; St. Thomas, Supplement, q. 9, a. 1; IV, dist. 17, q. 3, a. 4, q. 1.

691. **Is one who in the article of death has received the sacrament of penance with attrition bound besides to elicit an act of contrition?** The first opinion affirms, and Suarez, d. 14, s. 6, n. 18, Sanchez, *in Dec.*, tom. 1, l. 1, c. 1, n. 34, etc., hold this. The reason is that at the time of so great a necessity the safer means for salvation are to be chosen.

The second opinion denies, and Lugo, d. 7, n. 263, Laymann, c. 11, n. 7, etc., hold this. The reason is that the obligation, whether at the time of life or at the time of death, is only of choosing safe means, not safer ones. But from Trent, sess. 14, c. 4, it is certain that attrition suffices in the sacrament for obtaining grace. L. 440.

Each opinion, says St. Alphonsus, n. 437, is probable, but the first is altogether to be counseled, which is clear of itself, since it concerns the supreme business of salvation. The holy Doctor adds besides that the first is altogether to be followed because of another reason, namely because of the obligation of eliciting then an act of charity. But since the matter is controversial also about this obligation, namely for a person already justified through the sacrament, who already has sanctifying grace and habitual charity, it does not seem that a certain obligation is to be imposed. Gury-Ballerini, n. 445.

692. **For obtaining grace in the sacrament of penance, besides sorrow are explicit acts of faith and hope also required?** Response: negatively. The reason is that it can be proved by no

probable argument that these acts are explicitly required. Moreover the penitent eliciting an act of sorrow also elicits these acts explicitly in some way and in exercise, although not reflexively; because then without doubt he believes in exercise and hopes that through the sacrament of penance, in virtue of the merits of Christ, sins are to be remitted to him. L. 439; E. M.

693. **For obtaining justification in the sacrament of penance with attrition, is the beginning of love also required?** Response: negatively, if by beginning of love there is understood some degree of perfect charity by which God is loved above all things. The reason is that for duly receiving the sacrament there is not necessarily prerequired an act which outside the sacrament essentially justifies. But an act of charity, and therefore "sorrow which suffices for the nature of contrition, however small it may be, destroys every fault," as St. Thomas says, q. 5, a. 3. Therefore. St. Alphonsus, n. 440, says this is morally certain.

But it can and must be conceded that some beginning of love is required, insofar as attrition, in order to dispose for the sacrament, must exclude, as Trent speaks, the will of sinning; and as St. Thomas, II-II, q. 17, a. 8, says, "someone is introduced to loving God through this, that fearing to be punished by him, he ceases from sin."

And here it must be noted that contrition not only remits guilt and eternal punishment, but can also, when very intense and perfect, abolish every punishment; yet from its nature it does not necessarily have this efficacy. Trent, sess. 6, chapters 6, 14, can. 30; sess. 14, c. 8, can. 12; E. M.

III. On Purpose

694. **What is purpose, and of how many kinds is it; what are its qualities and necessity?** Response to the first: purpose is the will of not sinning thereafter.

It is twofold: 1. Explicit or formal, by which someone, thinking about the future, establishes that he will not sin any more. 2. Implicit or virtual, which is included in contrition itself, without the future time being kept before the eyes.

To the second: true purpose must enjoy three conditions; namely, it is required that it be firm, efficacious, and universal.

1. Firm, namely the penitent must have a sincere will of not relapsing into sin, notwithstanding any inconvenience or human fear; otherwise he would not wish to be converted totally and sincerely to God. Yet the confessor ought not test the mind of the penitent by using comparisons suited to disturbing his imagination. But it must be firm even when it concerns only venials. L. 451.
2. Efficacious, that is, the penitent must not only firmly establish that he does not wish to sin any more, but also apply the means necessary for avoiding sin and fleeing proximate occasions, etc. Purpose must be efficacious also as to venials which are matter of confession.

But if the penitent immediately, and with almost no resistance, relapses, this can sometimes provide some indication, or at least suspicion, that he lacked a truly firm purpose; for one who firmly purposes generally does not so easily forget his purpose, but is accustomed to persevere constant at

least for some time and to use efforts for resisting temptations or occasions of sin, and therefore ordinarily falls with more difficulty and more rarely. L. 459; Lugo, d. 14, n. 160. Yet foresight and fear of relapse from past frailty and the inconstancy of the human will in no way impede a sincere, firm, and efficacious purpose. La-Croix, nn. 1733, 1822; Sporer, n. 310; L. 451.

Difficulty occurs in practice when a penitent otherwise of good will, but frightened by the arduousness of the matter, says that he cannot promise this or that, lest afterward he break the faith given. Let the confessor raise him up, replying that it suffices that now he seriously wills, that he strive, that he pray; for to one doing what is in him, God does not deny grace. Therefore it suffices that the purpose be efficacious affectively, that is, it suffices that the sinner be prepared in soul to use the necessary means; future amendment in fact is not of the essence of purpose. E. M.

3. Universal, or it must extend to all mortal sins, not only those committed but also those which could be committed. The reason is that full and true conversion to God cannot be given without aversion from every mortal sin. But it is enough "that, with the baseness of sin, the goodness of God, and the danger of damnation, etc., proposed in general, the penitent conceive a general purpose of never again sinning mortally." Suarez, d. 33, s. 2, n. 2; Cajetan, *Summ.*, v. *Confessio*, at the 12th quality; Lugo, d. 7, nn. 199, 238; Laymann, c. 4, n. 8.

Therefore neither is there required, nor indeed is it always expedient, a special purpose about avoiding individual grave sins. But as to venials, just as universal sorrow is not necessary, so neither is universal purpose. L. 451; St. Thomas, III, q. 87, a. 1; cf. n. 679; E. M.

To the third: purpose, at least implicit, is altogether necessary for remission of sin, because purpose is a necessary consequent of contrition and is included in it at least virtually, as is established from its nature and definition.

But whether explicit purpose is also required is controverted. According to St. Alphonsus, n. 450, the opinion is threefold. The first, which certain few hold, affirms absolutely, because although sorrow necessarily includes purpose, nevertheless an explicit purpose seems to be required by Trent saying: "with the purpose of not sinning thereafter."

The second opinion, which Cardenas calls morally certain, absolutely denies. The reason is that sorrow, if elicited from a general motive, includes a plainly efficacious purpose. Otherwise, from Trent, when attrition excludes the will of sinning, it sufficiently disposes a person to obtain grace in the sacrament. Elbel, n. 87; Laymann, c. 4, n. 6; Salmanticenses, c. 5, n. 54; Lugo, d. 14, n. 51, who says that this opinion is common among the more recent.

The third opinion, which St. Alphonsus testifies is called common, teaches that if the penitent thinks about future life, he must formally purpose amendment; otherwise, if the penitent thinks nothing about the future. But if he thinks about the future, all agree that it can scarcely happen that a sincere penitent does not at the same time elicit an explicit and formal purpose.

But St. Alphonsus in the same place inserts his judgment about these things thus: "These two latter opinions are indeed more probable; but because the first is not without its probability, in practice before the fact it is safer to follow it."

But since, as St. Alphonsus testifies in the cited place, most even of those who are alleged for the first opinion agree "that if in good faith you confessed with true sorrow without formal purpose, you are not bound to repeat the confession," it is clear that in this conclusion, which alone serves practice, all opinions and the suffrage of all doctors finally agree. But although the holy Doctor says that he "cannot acquiesce in this opinion," nevertheless this most openly conflicts with the doctrine which he himself hands down elsewhere, n. 505: "it must diligently be noted that penitents are not to be compelled to repeat confessions unless it is morally certain that they were invalid, as La-Croix, Gobat, etc., with the common opinion rightly say."

There is added the authority of the Roman Council under Benedict XIII, celebrated in the Lateran Basilica in the year of the universal Jubilee 1725. In title 32, c. 3, it is read: "Instructions pertaining to the use and worship of the Sacrament of Penance and Eucharist, to be received first by children, brief and at the same time clear, we will give at the end of this our Council." Moreover in the Instruction for children about to approach the Sacrament of Penance, which is seen appended to the end of the same Council, these things are had, part 3, p. 303: "Penitent. Whoever confesses without sorrow for sins and without purpose of sinning no more, does he receive pardon? Confessor. If he does not have at least imperfect sorrow, that is attrition, with firm purpose, at least implicit, of never sinning again, certainly, if he confesses, the Confession does not avail, and he does not receive pardon of sins."

In these words, imperfect sorrow or attrition, and implicit purpose, are manifestly equated together as to sufficiency. Hence D'Annibale, 3rd ed., part 3, n. 313, asserts that this opinion today can be called certain. And St. Thomas, according to Bellarmine himself, who stands for the third opinion, does not distinguish between implicit and explicit; and altogether rightly, for tacit and expressed have the same efficacy.

IV. On Confession

695. **What is confession?** Confession is the accusation of sins committed after baptism, made to an approved priest, with a view to absolution. Trent, sess. 14, c. 1, 5; L. 445.

696. **Is confession necessary? and when does it oblige?** Confession is necessary by divine law for all who, after baptism, have fallen into mortal sin. Trent, sess. 14, c. 5, can. 6, 7. This precept certainly obliges of itself in danger, and all the more in the article of death, and sometimes in life. The first reason is that all positive precepts oblige at least in a time of necessity; otherwise they would never oblige, and would be imposed in vain. The second reason is that affirmative precepts do not oblige only in extreme necessity, but also when their fulfillment is judged reasonably necessary.

It often obliges accidentally, namely: 1. When the Eucharist is to be received. 2. When the precept of reconciling oneself with God presses, or the state of grace is required, for example, for administering sacraments, or for receiving those which are called sacraments of the living, and an act of perfect contrition cannot be elicited. 3. When grave temptation presses, which otherwise cannot be overcome. But "hardly can an occasion be thought of in which temptation cannot be overcome, or sin avoided, except through the means of confession." Suarez, d. 35, s. 3, n. 10. Therefore a scruple about this obligation is not to be injected into the faithful. 4. If it is probable that one will never afterward have access to a confessor. L. 665; E. M.

697. **Does the divine precept of confession oblige immediately as soon as a sin has been committed; or at what time does it press?** It does not oblige immediately after sin. The reason is that such an obligation rests on no certain foundation. It cannot easily be determined how often in life and at what precise time the divine precept presses. Whatever the case, there is no reason to doubt that he satisfies who confesses even only once a year, because it is not established that the divine precept presses more frequently. According to many, Christ left the time of the obligation to be determined by the Church. Moreover the Church prescribed that confession be made once a year. Lateran Council under Innocent III, c. *Omnis utriusque sexus*; Trent, sess. 14, c. 8.

698. **Must confession be vocal, or must it be made by the voice itself?** Response: affirmatively. Florence, Decree for the Armenians. "Holzmann and Sporer adduce the reason that, although confession is prescribed by no law to be made vocally, nevertheless, since the manner of confessing in this way has been received by the common usage of the Church, hence it now obtains the force of a precept, and therefore a confession otherwise made would be illicit without a grave cause." L. 429.

Moreover a grave cause would exist "if someone, because of constriction of the throat, an impediment of the tongue, or if a girl, exceedingly bashful, feels a very grave difficulty in explaining her sins by her own voice." L. ibid. Speaking about this last case, Busembaum, n. 493, says: "After the written statement has been read by the confessor, let her add by voice: of these things I accuse myself." And thus there will be no difficulty. St. Alphonsus, n. 493, says besides: "Tamburini thinks the same about a scrupulous person who thinks he explains himself better in writing."

For the rest, confession by writing to a confessor present is valid. Confession made by letters to an absent confessor is invalid, even if afterward absolution is given by the confessor present. Decrees of Clement VIII, June 20, 1602; Paul V, July 14, 1605; L. 428.

But one who cannot confess by voice, because he is, for example, mute, is bound at least to confess by nod or sign, according to the common opinion, L. 493; but he is not bound to confess by writing, both because of the danger of revelation, and because writing is an extraordinary means which in fact has never been held in the Church as prescribed, and because writing is of itself public, while confession of itself is secret. Diana, t. 3, r. 72, n. 2; Ithur., cases 38, nn. 6-10. Yet the opposite seems more probable to St. Alphonsus, n. 479. St. Thomas has these words, IV, dist. 17, q. 3, a. 4, q. 3, ad 2: "It must be said that in one who does not have the use of the tongue, as a mute, or one who is of another language, it suffices that he confess by writing or nod or interpreter: because more is not required from a person than he can do... and therefore, when we cannot in one way, we ought to confess according as we can." Cf. also *Quodlibet* 1, a. 10; E. M.

699. **Resolutions.** 1. Mutes and deaf persons are bound to confess in some way, at least by signs, unless they are so ignorant and dull that nothing can be drawn out of them. The reason is that the precept of confession regards all the faithful who can manifest their sins in some rational way. Hence sufficiently instructed mutes are bound to confess integrally, at least by signs, if these are understood by the confessor; but if they are less instructed, or can be understood by the confessor only with difficulty, it will suffice for them to manifest only one or another sin, or only to confess in general, and to give signs of sorrow. But deaf persons, having the use of the

tongue, are bound on their part to confess the sins which occur to memory; but the confessor is not bound to question them in order to procure the integrity of confession, because of the excessive difficulty of questioning and the danger of revelation. Mutes who know how to write are not bound to confess in writing in order to procure the integrity of confession. For the matter is at least controversial among the doctors, and therefore the law is doubtful.

700. Those ignorant of the language of the place where they are staying, and lacking a confessor by whom they can be understood, are bound, when the precept of annual confession presses, and in the article of death, to confess in some way, at least by general signs. The reason is that the divine and ecclesiastical precept presses. For although they cannot confess integrally, nevertheless they are bound to do what they can. Nor indeed are they bound to confess through an interpreter; for it is a most grave burden, and subject to many dangers, for example, revelation, ridicule, etc. And the Lateran Council, c. *Omnis utriusque sexus*, on Penance, says: "Let him confess his own sins alone." Likewise Trent, sess. 14, c. 5: "As to the manner of confessing secretly before the priest alone," etc. Ithur., case 38, nn. 11ff.; L. 479; E. M.

V. On the Integrity of Confession

700. **Must confession be integral; what kind of integrity is this; what is its force?** Response: confession must be integral. The reason is that no judgment can be exercised when the cause is unknown; because the confessor must impose salutary penances and prescribe efficacious remedies. Trent, sess. 14, c. 5, can. 7.

Integrity is one thing material, another formal. Material integrity is situated in the accusation of all mortal sins which have simply been committed, or which after diligent examination of oneself occur to the mind. Formal integrity consists in the accusation of all sins which after diligent examination of oneself occur to the mind, and which someone here and now, with circumstances considered, morally can or is bound to confess. Material integrity is not always necessary; for sometimes it is morally impossible from inculpable forgetfulness; and although sins occur to the mind, from other just causes confession becomes morally impossible. Therefore only formal integrity is necessary. Trent, sess. 14, c. 5.

By reason of integrity, under grave obligation, the lowest species of sins and their exact number must be accused; so that it is permitted neither to increase nor to diminish the sins. If someone cannot confess the lowest species of sins, he must confess them according to the higher species or genus which he can. Likewise, if someone cannot confess the precisely determined number, he must confess the number which more closely approaches the truth, using, for example, the particle "about"; or, if he cannot even do this, he must say about how often in a year, in a month, in a week, in a day, whether frequently, whether rarely, etc. "Sporer well observes that the confessor ought not be too anxious about seeking out the number of sins in a habitual penitent, because often it is impossible to have such a certain number." L. 466; Ithur., case 38, n. 3.

Moreover the particle "about" is generally understood by theologians in this way: about three is 2-4; about ten, 8-12; about thirty, 27-33; about one hundred, 95-105; about one thousand, 950-1050. L. 466; Lugo, d. 16, nn. 78, 81, 94ff., 644ff.; E. M.

701. **Resolutions.** 1. "Long-lasting hatred, as also carnal concupiscence toward a woman, must necessarily be expressed in confession... because of the number of sins which are repeated in that long delay." L. 467.

702. One who has declared the number of sins about as much as he can, if he afterward finds a notable excess, must declare it, because the greater number is not contained in the lesser; but if, on the contrary, he afterward finds a notably smaller number, he is bound to nothing: for the true number was comprehended in the greater.

703. For the integrity of confession a diligent examination is required beforehand, Trent, sess. 14, c. 5, according to the capacity of the penitent, the length of time, and the other circumstances. Moreover for this, moderate diligence suffices, such as a prudent man uses in difficult business, such as, morally speaking, learned and God-fearing persons are accustomed to use, even if someone thinks that with greater diligence he would find more. Bonacina, l. 1, d. 5, q. 5; Laymann, l. 5, tr. 6, c. 8. Moreover by reason of inadvertence, it rarely happens that a confession is sacrilegious because of defect of previous examination. This examination can prudently be supplied by the confessor through discreet questions, and not with greater diligence than the penitent himself is bound to use, according to his condition, especially as to the rude and others, concerning whom it is to be feared that, once dismissed, they will not return further. But it is not necessary to write down sins lest they slip from memory; nor is this to be counseled, because of the danger of publication. L. 471, 504; Lugo, d. 16, nn. 573ff.; E. M.

704. **Must the external act of sin necessarily be accused?** Response: affirmatively, because it is one and the same thing with the internal act in the genus of morals, and these two constitute one whole. Besides, the external act is directly prohibited by divine law, for example, "You shall not commit homicide." Moreover, without declaration of the external act the confessor for the most part could not fulfill his office as is fitting, concerning admonitions to be given, etc. It is also established from the universal custom of the faithful, which explains the law in this sense, and from proposition 25 condemned by Alexander VII; E. M.

V. On the Integrity of Confession

703. **Must the effect of sin necessarily be expressed in confession?** Some affirm, because it is evil or at least a sin in its cause; others deny, because it is evil or a sin only denominatively.

St. Alphonsus affirms, bk. 5, n. 10. "A voluntary omission," says the holy Doctor, "in its cause is also imputed as sin, even if afterward the will cannot operate, as if someone intoxicates himself, foreseeing that by reason of drunkenness he will omit Mass; then he is bound to confess the cause and its effect, namely drunkenness and the omission of the sacred rite, as the Salmanticenses, etc., with others commonly, say better against Vazquez, etc., provided that before the effect follows the will is not retracted, as Sanchez, etc., probably teach; for then it is probable that he is not bound to confess the effect which followed. From this it is also deduced that if the effect happens after retraction, the censure imposed against sinners is not incurred, because this requires contumacy in the act of sin." Cf. also bk. 4, n. 149, and bk. 7, n. 40.

But Lugo denies, and has these words: "It must be supposed that in a sin, for example, by which you killed another by poison, there intervenes first of all an internal act of the will, by which you willed to give him poison; then the external action by which you prepared and gave the poison; then the effect which followed, namely his death... The first and sufficiently common opinion affirms that the external effect must be explained... The contrary opinion is defended at length by Father Vazquez, etc. This opinion has always seemed truer to me... The more common reason... is that the external act, which is denominated free from the actual liberty of the internal act, is truly and properly sin; but the effect afterward following, for example in sleep, is not properly sin... but the effect of sin. In confession, however, all and only sins must be explained. Therefore the external act must be explained when it is a free act, but not the effect afterward following... because there cannot be actual sin in him who does not actually sin, nor can one actually sin who does not actually act; but he who sleeps, while his enemy dies by poison, then does nothing; therefore he does not then sin." *De Poenitentia*, d. 16, nn. 437, 439, 440, 449.

But this opinion must be limited, unless the penitent has incurred a censure or reserved case because of the effect which followed. Lugo himself has this limitation, indeed he adds: "It can also happen that a censure is incurred by him who has already been justified from the past sin by contrition, or by attrition with the sacrament," n. 453. Cf. also n. 460 and Laymann, bk. 1, tr. 2, c. 2, n. 5. But, as Ithurriaga very well observes, case 40, nn. 31ff.; case 50, nn. 26ff., reservation does not exist where there is no subject of reservation, or sin, since it has already been absolved. For of a nonbeing there are no properties. What is not, is not such either. But where only retraction of the will has preceded, the cause having been retracted through the will, the effect is no longer culpable in itself. Moreover reservation or censure cannot be incurred when there is no sinning through the act.

The same opinion must also be limited unless the confessor, functioning not only as judge but also as teacher and physician, prudently questions the penitent about the effect which followed. *Instruction for children*, etc., part 4, at the end of the Roman Council, published by order of Benedict XIV.

704. **Does it prejudice the integrity of confession if someone accuses venials to his ordinary confessor, but mortals to another?** Response: negatively, speaking of itself, provided that he never receives absolution unless he has first manifested all mortals to one confessor, and is absolved by the same. The reason is that grave sins are necessary matter of confession, and that confession is integral which includes all mortals, since venials do not have to be accused necessarily.

But in practice attention must be given to the circumstances of penitents and to the motives by which they are led. For they are not to be condemned who sometimes confess graver sins to an unknown confessor, while they subject lighter ones to the ordinary, if from shame, with which they would be overwhelmed before a confessor familiarly known, they would expose themselves to the danger of confessing sacrilegiously. Therefore a confessor would inquire about this matter only from imprudent curiosity; "unless, however, on that occasion the penitent remains in a moral occasion of sinning, or goes around for this reason, that he may sin more freely; for then he will sin gravely, and because of defect of attrition the confession will be null."

Hence, although neither occasion nor habit is of itself necessarily to be accused, nevertheless the confessor has the right to inquire both about proximate occasion and about habit: first, if there is

prudent suspicion that he is being deceived by the penitent concerning his dispositions; second, if a special sin is had from it; third, that he may impose a salutary and suitable satisfaction. Proposition 58 condemned by Innocent XI; Lugo, d. 14, nn. 172, 173; d. 16, n. 57; Suarez, d. 22, s. 3, n. 10; L. 471; cf. 707.

705. **Does it prejudice integrity if someone disguises another voice, lest he be recognized by the confessor?** Response: negatively, of itself; for provided that he opens all mortals, he makes an integral confession. Nor is it necessary that he be known by name to the confessor; for it suffices that the confessor intend to absolve the present sinner. Moreover the intention of the confessor is of itself always determined to the penitent. La-Croix, bk. 6, part 1, n. 68.

706. **Must circumstances of mortal sins which notably aggravate them necessarily be confessed?** "There are three opinions, all very probable.

"The first opinion affirms. It is proved, first, from the Roman Ritual, on the Sacrament of Penance, and from the Roman Catechism, part 2, c. 5, n. 47. It is proved, second, by reason, because the same reason which persuades that circumstances changing the species must be confessed also presses for circumstances notably aggravating, since each notably changes the judgment of the confessor.

"The second opinion says that the circumstance 'what' must necessarily be confessed, namely that which touches the substantial integrity of the sin in the individual, as the quantity of theft. The reason is that otherwise the confessor will not be able to form the due judgment about the substance of the sin.

"The third opinion, more probable to me, denies that there is an obligation of confessing aggravating circumstances. It is proved, first, from St. Thomas, IV, dist. 16, q. 3, a. 2, q. 5, who by his authority indeed has furnished great weight to this opinion. It is proved, second, by reasons. The first reason is that from the words of Trent, sess. 14, c. 5, the Council seems not obscurely to exclude the obligation of confessing other circumstances than those changing the species, because it sufficiently indicates that these suffice for this, that the confessor form a right judgment about the gravity of crimes and about the penalty to be imposed. The second reason is that otherwise penitents would always be tossed about among anxieties, since they could always doubt about the integrity of their confessions in determining which circumstances are or are not notably aggravating. St. Thomas, loc. cit., q. 5, ad 2. Hence Lugo assigns the a priori reason of this opinion, saying that Christ prescribed nothing other than the confession of sins; but he who explains circumstances changing the species of sin already truly confesses and explains the essence of the sin, since the quiddity or essence of sin is taken from its specific character. The third reason is that if we were bound to manifest circumstances notably aggravating, we would also be bound to confess those notably diminishing, namely if someone sinned from anger, fear, more intense passion, from the inducement of others, and the like, which obligation even the adversaries deny. The last and stronger reason is that no one is bound to observe a doubtful law; hence, since the law of confessing aggravating circumstances is very doubtful, we are not bound to it; and therefore, Lugo rightly says, Trent did not explain this obligation of confessing them, because the Council could not sufficiently gather it from Christ's words and from the institution of the sacrament." L. 468.

Exception: "if the circumstance brings in a censure, or reservation, or is prudently asked about by the confessor for the necessary direction of the penitent." L. 467; *Instruction for children*, etc., part 4, at the

end of the Roman Council, published by order of Benedict XIII; Lugo, d. 16, s. 3.

707. **Does the circumstance of habit of sin change the species; and must it be manifested in confession?** Response to the first: "It must be said that duration is not a circumstance drawing into another species; similarly neither is frequency or assiduity, unless perhaps accidentally from something supervening. For something does not acquire a new species from this, that it is multiplied or prolonged, unless perhaps in an act prolonged or multiplied there supervenes something which varies the species, such as disobedience, or contempt, or something of this kind." St. Thomas, I-II, q. 88, a. 5, ad 1.

To the second: "It is necessary to distinguish a twofold habit: one which induces to similar sins to be perpetrated with one's liberty and advertence; another which induces to sins to be perpetrated without liberty and advertence, and therefore in such a way that they are not a new sin, but the sin in its cause consists in this, that the habit has been freely acquired, or in this, that the due effort is not applied to obliterate it; as happens when someone from habit blasphemes or perjures himself, without adverting here and now to the malice of blasphemy or perjury. This latter habit, freely induced or not uprooted, must be confessed as a special sin; for we are gravely obliged to lack that habit. For although he who perjures himself or blasphemes without advertence does not sin here and now, nevertheless he sins if he does not try to tear out the habit of so perjuring himself or blaspheming.

"But that former habit is then also to be subjected to the keys when someone adverts that through it he is placed in proximate danger of perpetrating new faults. For since exposing oneself to proximate danger of sinning is a sin, he who adverts that through the habit of sinning he is in that danger commits this special sin, that he subjects himself to this danger, or that he does not try to turn himself away from it. Yet because people rarely advert to this, therefore rarely do they accuse themselves of this habit, and thus rarely is there given an obligation of manifesting it before the confessor asks about it.

"It is indeed true that he who exposes himself to danger of sinning, and immediately sins, sufficiently explains both sins by confessing the sin committed, with which that other sin, by which he exposed himself to the danger of sinning, makes one thing morally; but when between the one and the other sin there intervenes a notable delay sufficient for moral interruption, or when someone only exposes himself to proximate danger of committing some sin, without nevertheless committing it, then that must be explained separately, by which someone exposed himself to proximate danger of sinning. For in that very thing there is sin, according to Ecclesiasticus 3: 'He who loves danger will perish in it.'" Viva on proposition 60 condemned by Innocent XI, last paragraph; Lugo, *De Poenitentia*, d. 16, nn. 200ff.; cf. 704; E. M.

708. **Must the penitent declare the different persons with whom he sinned?** Response: negatively of itself. The reason is that it suffices that the number of sins and their species be declared; but sins do not change species because they were committed with several persons.

Hence he who has fornicated with three different persons, or three times with the same, satisfies by saying that he has fornicated three times; nor is he bound spontaneously to say whether the accomplice was one or several, whether they were prostitutes or others. Nevertheless, if the

confessor asks about this, the penitent is bound to respond, because it is expedient that the confessor know whether perhaps there is a proximate occasion of sinning, as is obvious if the sin has been with the same person several times. Moreover both satisfaction and remedies must be prescribed by the confessor differently according to the multiplicity and diversity of persons with whom someone has sinned. La-Croix, n. 1040; Bonacina, *De Integritate*, diss. 3, n. 14; Tamburini, *in Decal.*, bk. 7, c. 7; Elbel, *De Actibus humanis*, n. 103.

V. On the Integrity of Confession

709. **Is one bound by a vow of chastity, sinning with another similarly bound, required to declare both circumstances?** Response: affirmatively. The reason is that there are two plainly distinct sins there, namely the sin against one's own vow, and the sin of cooperation with another toward violating that person's vow. Exactly the same must be said about a married man having intercourse with the wife of another. "The obligation is diverse in species by which he himself ought not violate his own marriage, and by which he ought not procure that another violate his." Lugo, d. 16, n. 258; La-Croix, n. 1063; Salmanticenses, c. 6, n. 63; L. bk. 2, n. 46.

710. **Must a priest, or religious, sinning against chastity, disclose his condition, or only the circumstance of the vow of chastity?** It probably suffices that each manifest the circumstance of the vow, because the species of the obligation does not seem to be changed by the special condition either of priest or of religious. For the vow of each is solemn. Therefore the sin of each pertains to the same species of personal sacrilege. There can only be controversy about a simple vow, concerning which cf. vol. 1, n. 500. Lugo, d. 16, s. 4, § 2.

711. **Must one who has committed incest explain the quality, namely: 1. whether with a blood relative or with an affine; 2. the degree of consanguinity or affinity?** Response to the first: Lessius, bk. 4, c. 3, n. 79, and others affirm. Lugo, d. 16, nn. 313, 316, and others deny. This opinion is considered more probable by St. Alphonsus, n. 469, and is proved by the authority and reason of St. Thomas, II-II, q. 154, a. 9, ad 2. "An affine person," he says, "is joined to someone because of the person joined by consanguinity, and therefore, because one thing is on account of another, consanguinity and affinity make an impropriety of the same character."

To the second: Suarez, d. 22, s. 3, n. 12; Diana, t. 1, tr. 7, r. 107, and others, from St. Thomas, II-II, q. 154, a. 9, and Cajetan there, think that all incests are of the same character, and that, as far as degree is concerned, there is from this only an aggravating circumstance because of the same virtue of piety and the reverence owed to relatives which is injured; but greater or lesser conjunction does not change the species. Ballerini apud Gury, n. 486, seems to approve this opinion.

Navarrus, *Manual*, c. 7, n. 4, and others hold that the species of incest is changed from the varying degree of conjunction, because between one degree and another there is special reverence. St. Alphonsus, n. 470, calls this opinion less probable.

The Salmanticenses, *De sexto Decalogi praecepto*, c. 5, nn. 28, 36, and others, relying also on the authority of the Angelic Doctor, hold that incest differs in species only in the first degree, both of the

direct line and of the collateral line, because the reverence owed to relatives in that first degree is of a different character. St. Alphonsus, loc. cit., says that this opinion seems equally probable with the following.

Tamburini, *Methodus Confessionis*, bk. 2, c. 5, § 2, n. 6, and others judge that all incests between consanguineous persons, except only the first degree in the direct line, are of the same species. The reason is that only in the said first degree is there present a special reason of conjunction and of reverence owed. "And for this opinion," says St. Alphonsus, loc. cit., "St. Thomas, II-II, q. 154, a. 9, seems undoubtedly to stand," and he says that it seems altogether to be held; and he adds: "indeed Lugo, d. 16, n. 314, etc., rightly teach that it must be explained whether a father sinned with a daughter, or a son with his mother, whose fault has a diverse malice by reason of the special reverence owed to the mother."

But Tamburini, ibid., c. 7, n. 48, states that any incest, whether because of consanguinity or because of affinity, whatever the degree may be, does not differ in species. And by reason of parity he affirms that the same is also not improbably to be said about other injuries inflicted upon parents, brothers, a wife, concerning which he had properly treated, c. 5, § 2, n. 6.

712. **Must the nearness of persons be declared in sins of hatred or injury?** Response to the first: as to hatred, affirmatively, if it concerns nearer kinship because of the strict bond of the virtue of piety. Hence grave hatred toward parents, children, grandparents, grandchildren, a spouse, brothers, sisters, affines in the first degree, must be declared. But more probably negatively if it concerns a more remote kinship, namely among other consanguineous persons or affines. For with a more remote conjunction standing, there is had only a circumstance aggravating, and not also changing the species, which must necessarily be expressed in confession. Lugo, d. 16, nn. 303ff.

To the second: Lugo has these words, *De Poenitentia*, d. 16, nn. 299ff.: "I think that in this point one universal rule cannot be given; for sometimes the circumstance of the joined person against whom the sin is committed will have to be explained; sometimes it will not be. This indeed depends on the quality of the offense and on the degree of conjunction. Hence, if parents are struck by a son, if they are killed, if they are affected with insults, if they are defamed, those sins without doubt have a special circumstance against piety, love, and reverence owed to parents, which are gravely injured by sins of this kind. Yet from this it does not follow that every grave injury which is done against a father has that other specific malice against piety and must be explained in confession. For if a son steals from his father what suffices for a mortal sin of theft against justice, he does not always sin gravely against piety, or is bound to explain that circumstance... because... it is not... gravely opposed to that which piety and reverence toward the father requires."

713. **Must the circumstance of dignity and office of the person necessarily be accused, for example if the sinner is a superior, magistrate, priest, etc.; if he is a confessor?** Response to the first: more probably negatively of itself, that is, with the reason of scandal or office or a particular obligation set aside. The reason is that the circumstance of the dignity of the person sinning does not of itself change the species of sin, but at most aggravates the sin. But the crime of lese majesty is equated with parricide, for example if someone kills the Pope, emperor,

king, or prince, because of the same virtue of piety to which it is opposed. Lugo, d. 16, nn. 309-311.

To the second: more probably negatively, provided that it has no relation to confession. The reason is that the confessor from his office is bound only to right direction in the tribunal of penance; from this direction no spiritual kinship arises. Moreover by this sin no injury is done to the sacrament, since it has no respect to confession. Yet it is easily clear that both such a penitent must altogether be deterred from confessing further to that priest, and such a confessor from admitting that penitent further to confession. Lugo, d. 16, nn. 351ff.; L. bk. 3, n. 451.

Therefore a distinction must be made between the excellence and dignity of the person and his office. The circumstance of the excellence and dignity of the person of itself is only aggravating, because from it no special virtue is gravely injured. But the circumstance of office changes the species if the office is one inducing a peculiar obligation of procuring the spiritual good of another. "For a bishop, for example, or a parish priest, from his own office, is shepherd and physician of his subjects, and therefore is specially bound to impede their sins and to procure their salvation. Therefore they sin against the duty of their office if they positively try to stain those souls for whom they ought specially to watch; which sin not only pertains to the species of scandal, but is also specially against the duty of satisfying one's own office of bishop, or pastor, etc.... On the contrary, however, that malice is not found in any confessor whatever; for although in the very act of confession he is shepherd and physician, and has a peculiar obligation of governing and curing the penitent, afterward, however, one who does not have that office by office does not retain some peculiar obligation merely because he once heard that person's confession... More easily this could be conceded in one who, although he is not parish priest or prelate, nevertheless has been specially chosen and taken by the penitent himself as a spiritual father by whom he may be governed, which office he has habitually accepted and retains, and therefore from the habitual office itself seems to be bound to at least moderate diligence concerning the salvation of his client, and much more to not positively bringing upon him so grave a danger of eternal damnation." Lugo, *De Poenitentia*, d. 16, nn. 356-358, 179-181; L. bk. 3, n. 451; Elbel, *De Actibus humanis*, n. 97.

714. **Must the circumstance of sacred time necessarily be accused?** Response: negatively. It is clear from the universal practice both of confessors and of penitents, since it is established that neither are the former solicitous about asking about such a circumstance, nor are the latter accustomed to declare it. Therefore the circumstance of sacred time does not seem to have to be explained, unless certain things are specially prohibited because of reverence for the time, for example, that someone not exhibit public games, comedies, or ludicrous spectacles on Good Friday. Lugo, d. 16, n. 520; L. bk. 3, n. 273.

715. **Does he satisfy the integrity of confession who accuses a recent sin as if committed long ago?** "Response: 1. Affirmatively, of itself, because the circumstance of time in no way pertains to confession. Hence the penitent satisfies the obligation of confession who mixes new sins with old ones, or who, making a general confession, does not distinguish from the others the mortal sins committed since the last confession, although he does this deliberately in order to conceal the time at which he committed the sins.

"2. But if the penitent lies about the time, for example, if he denies that he sinned today, and declares the sin as if committed at another determined and remote time, the doctors more commonly think that he does not satisfy his obligation. The reason is that the act which the penitent placed today is not the act placed last year. Hence he lies in two ways, namely by concealing the sin committed today and by accusing a sin committed at another time. Thus Tamburini, loc. cit. Yet theologians are not lacking who think this lie light." Thus Father Gury, n. 488.

The reason which is adduced for the second case does not exceed mere probability. And indeed it seems to prove too much, for then a lie about any accidental circumstance whatever would render confession invalid. Moreover Gury himself in the first case says: "The circumstance of time in no way pertains to confession." And rightly indeed: for the intrinsic substance of the sin, which pertains to confession, is one thing; an extrinsic accident of the sin, which of itself is not pertinent to confession, is another. Hence the aforesaid reason, insofar as it is pressed for denying the sufficiency of that confession, Lugo himself, d. 16, n. 53, calls merely probable. Ballerini, ibid.; D'Annibale, 3rd ed., part 3, n. 309; Lugo, d. 16, s. 2, § 1.

716. **Is it always a mortal sin to lie in confession?** Of itself one then sins mortally only when the lie concerns necessary matter of confession concealed without a just cause, or grave matter falsely supposed, namely by accusing a grave sin not committed.

Therefore a lie about things not pertaining to confession or to the conscience of the penitent is not of itself mortal, because it is neither gravely harmful to the penitent, as is supposed, nor gravely injurious to the sacrament, since it is not referred to the sacrament itself. "Hence denial of a venial committed, or of a mortal already confessed, does not exceed the malice of a simple lie"; L. 496; and therefore of itself it is neither mortal nor does it invalidate the sacrament. Of itself: for "it is sacrilege and the absolution is null... if you deny or lie about sins otherwise rightly absolved, when the confessor, as judge or physician, asks something about them as necessary to the present confession, Lugo, d. 14, s. 10; Tamburini, bk. 2, c. 10, § 2; otherwise, if it does not make for the present confession." "If someone affirms a mortal sin which he did not commit, or denies having committed what he did commit, he commits a twofold mortal sin: one of sacrilege against the virtue of religion because of the reverence owed to the sacrament, the other of a lie gravely harmful to himself against the virtue of truthfulness." L. 495-497; H. A. 28; Lugo, d. 16, s. 2, § 6.

V. On the Integrity of Confession

717. **Is the penitent bound to repeat the whole confession if he notices that the confessor, because of sleep or distraction, did not perceive some sins, and he does not know which ones; or that he did not judge rightly about them?** Response to the first: affirmatively, if the confession was brief, because he can prudently doubt concerning each sin whether it was understood by the confessor or not; but otherwise if the confession was long and only a few seem not to have been perceived, because then he can prudently presume that each one was understood. Nor does it appear likely that Christ imposed the precept of integrity with so great a burden. If, however, the doubt concerned only one or another sin, that one would have to be repeated. But the confession will be invalid if the confessor understood no sin, whether because of sleep, deafness, or distraction.

To the second: "The Salmanticenses, etc., teach that a confession made in good faith to a confessor who does not know how to discern species and number, nor between mortal and venial, even in obvious cases, is not to be repeated. The reason is that... absolution is valid, provided that on each side the requisites for the value of the sacrament already concur. For thus Christ the Lord must be thought to have instituted this sacrament, since such defects happen everywhere. Yet I say this must be understood unless it is established that the number or species were not explained; otherwise the integrity of confession must certainly be supplied." L. 500. In good faith, because if in bad faith, when the penitent knows the confessor to be insufficient, or when he clearly sees that the confessor does not perceive the gravity of his sin, the confession must be repeated. L. 498, 499.

718. **Are there sometimes causes excusing from the integrity of confession?** Response: affirmatively, because sometimes that integrity is physically or morally impossible.

In order that someone by reason of moral impotence be considered excused from the integrity of confession, although sins occur to the mind, these conditions must be observed: 1. That only those sins be omitted which cannot be declared, or from the manifestation of which there would follow a most grave extrinsic inconvenience, whether spiritual or temporal, either to the penitent, or to the confessor, or to some third party. 2. That another confessor cannot be found to whom an integral confession may be made without such inconvenience. 3. That confession be here and now necessary. According to the common opinion of the doctors, this necessity is judged to be present if the precept of annual confession or communion must be fulfilled; if the reception of the Eucharist or the celebration of Mass cannot be omitted without disgrace or scandal; if otherwise someone must be deprived for a long time of the benefit of the sacraments; indeed, as Suarez adds, *De Poenitentia*, d. 23, s. 2, n. 7, if someone otherwise would have to be deprived of the great utility which the sacrament of itself brings.

But difficulty intrinsic to the confession itself, however grave it may be, never excuses. The reason is that confession from its own nature is essentially laborious; and therefore if grave difficulty, for example great repugnance or shame or the loss of one's own reputation before the confessor, excused from integrity, the faithful for the most part would be excused from accusing mortals, and therefore the institution of the sacrament of penance would for the greatest part collapse. Besides, the Church could not reserve atrocious crimes, because this creates no slight inconvenience for penitents.

When the cause excusing from material integrity ceases, the divine precept of confessing all omitted mortal sins again presses; for when an impediment occurs, the obligation of confession does not cease simply, but is only suspended. Therefore, when the excusing cause ceases, the obligation of the law revives integrally; and since the precept of confession is not fixed to a time or circumstance, but affects the whole life, therefore sins not yet accused must afterward, if it can be done, necessarily be accused. It is established besides from proposition 11 condemned by Alexander VII. L. 487, 490; Lugo, d. 16, s. 13.

719. **Resolutions.** The following especially excuse from the integrity of confession:

720. Extreme infirmity, that is, when a dying person can express only one or another sin, or, already deprived of the use of the tongue, shows penitence and asks absolution by only some sign.

721. Defect of speech and hearing; thus mutes and deaf persons are exempted from integrity who cannot confess integrally by signs; likewise travelers entirely or almost entirely ignorant of the language of the region in which they confess.

722. Defect of time, for example, if soldiers must immediately go to battle. But the mere multitude of penitents does not excuse.

723. Danger of life to the penitent, confessor, or a third person, for example, if enemies arrive, if many are in danger of shipwreck or contagion.

724. Danger of reputation, for example, if a priest soon about to celebrate, and needing a general confession, could not confess integrally without bystanders suspecting the matter.

725. Danger of revelation or violation of the seal, for example, if a confessor cannot confess integrally without manifesting sins heard in confession, or if the penitent from a grave cause fears that the confessor will infringe the law of the seal.

726. Danger of scandal or fall, both on the part of the penitent and on the part of the confessor, for example, if a woman knew certainly the very great frailty of the confessor.

727. Some other grave extrinsic damage, whether one's own or another's, whether spiritual or temporal, deservedly feared, for example, in a scrupulous person who is perpetually anxious about forgotten sins. L. 479-488, 494.

728. **Is there an obligation to confess a mortal sin which cannot be explained without manifestation of an accomplice?** "For explaining a venial sin, or a mortal sin otherwise confessed, it is not permitted to manifest the grave crime of another. But the penitent is bound, when he conveniently can, to seek another confessor to whom the person of the accomplice is unknown, so that the accomplice's reputation may be preserved; nor does the opinion seem sufficiently probable... that this is only of counsel, for commonly they say this is of precept." L. 489.

Therefore the proposed question regards only the case in which necessary matter is at issue, and one cannot conveniently approach another confessor to whom the accomplice is unknown; and for this case there is a twofold opinion: one affirming that he is bound to confess the sin; the other affirming that he is bound to keep it silent until another confessor is found. The reason of the second opinion, which Ballerini apud Gury, n. 499, holds, is that the natural precept of preserving the reputation of one's neighbor is to be preferred to the precept of preserving the integrity of confession. The reason of the first opinion, which St. Alphonsus follows, loc. cit., is "because the precept of confessing integrally must always be observed when it can licitly be observed; but it can be observed sufficiently licitly in our case, since the manifestation of another's crime is not illicit when it is done for a reasonable cause, as St. Thomas teaches, II-II, q. 73, a. 2. Therefore it must be observed. And thus answer is made to the opposite reason of the contrary opinion." L. loc. cit.; Suarez, d. 34, ss. 1, 2; Lugo, d. 16, s. 7.

721. **What are the causes excusing from seeking another confessor to whom the accomplice is unknown?** 1. If danger of death presses, or the precept of annual confession. 2. If it is grave for the penitent to omit confession or communion. 3. If someone would with difficulty open

his conscience to another confessor. 4. If someone otherwise would have to remain in sin even for one day. 5. If someone otherwise would be deprived of the benefit of some extraordinary indulgence. 6. If, by approaching the confessor to whom the accomplice is known, better direction or notably greater consolation would be had.

Hence by reason of seeking counsel, of relieving sorrow, etc., mothers and wives are often excused when manifesting to a confessor the sins of sons or husbands, although he knows them. For it would be too hard that they be bound to seek another confessor. But generally there is not held to be a grave obligation of approaching another confessor for the sake of concealing the accomplice, unless perhaps it concerns a very grave crime. L. 490.

722. **What is the necessity and utility of general confession?** General confession is to be judged necessary whenever preceding confessions were morally certainly invalid or sacrilegious, either on the part of the penitent because of defect of contrition or integrity, or on the part of the confessor lacking jurisdiction; but in other cases it can never be prescribed. The reason for both is clear.

It can be advised when, although the invalidity of preceding confessions is not established, nevertheless a grave doubt about this can be had. For then it is useful for removing anxieties of soul, which harm both peace of conscience and the exercise of virtues.

General confession is to be permitted, or even prudently advised, although not necessary, when, the circumstances considered, the penitent is going to perceive notable spiritual fruit from it, for example, by reason of humility, devotion, fervor, knowledge of himself, manifestation of conscience for more perfect direction or greater purity of soul, for obtaining divine helps more efficaciously, etc.; because the confessor from charity ought to promote the greater spiritual good of the penitent when he easily can.

It is to be prohibited in other cases as useless, and also harmful, when other inconveniences besides loss of time are prudently to be feared, namely scruples, anxieties, disturbance of conscience, etc. For if so great a burden for confessor and penitent is not to be undertaken without hope of notable fruit, all the more it is not to be undertaken with fear of notable harm. Benedict XIV, const. *Apostolica Constitutio*, June 26, 1749, §§ 16, 17; Lugo, d. 16, s. 15.

723. **Resolutions.** 1. General confession is easily to be permitted, indeed advised, in the principal epochs of the Christian life, namely before first communion, before election or reception of a particular state of life, for example before the priesthood, religious profession, or even before marriage; likewise when someone decides to lead a more perfect life.

724. Besides the confession made at the time of first communion, another general confession of the whole life is easily, generally speaking, to be permitted; but a further one should be conceded with difficulty, when the prior one was made rather accurately, in good faith and with good will, unless perhaps it was made already long ago.

725. A partial general confession, namely of one year or from the time of the last general confession, is easily to be permitted to devout persons, according to the custom observed among most religious families.

726. General confession is not to be permitted even in doubt about the validity of preceding confessions, where from it notable inconveniences of disturbance of conscience are to be feared, because grave and certain inconveniences are not to be undergone because of a doubtful obligation.

727. Regularly, general confession is not to be permitted to scrupulous or fearful persons; because if one is permitted, when it is finished, they will immediately wish to make another, and after the second, even to undertake a third, with importunate prayers, to the greatest detriment of the soul. For it is established by experience that often in these persons general confession generates many more scruples than it destroys.

728. **How is a general confession to be made?** Supposing that the confessor prudently judges that there is place for making a general confession, if the penitent is sufficiently instructed and himself desires to declare his sins, it is altogether better to hear him, without questioning, as much as can be done. If the confessor judges some questions necessary or opportune, let him make them whenever and then when there is need, lest afterward they slip from the mind. Nevertheless, here it must be noted that if the confessor patiently and attentively hears the penitent, both the confessor himself and the penitent will be freed from the burden of many questions, since penitents, while later explaining other sins, are often accustomed to add necessary circumstances about sins previously said, and which the confessor would have had to ask about.

But if the penitent either is not sufficiently instructed, or desires to be helped by the work of the confessor, he will be able chiefly to ask these questions: 1. About past confessions and communions, whether and how often they were sacrilegious, so that it may become known whether the present general confession is necessary or only useful. If it is only useful, then both confessor and penitent can be less solicitous about the integrity of confession, since it is altogether free to the penitent to declare the sins he wishes. But if it is necessary, then the penitent will have to be heard, questioned, and helped with much greater diligence. 2. About his age, about the condition of marriage and office, for judging the number and species of sins. 3. About the general precepts of the Decalogue and of the Church and about the special obligations of one's own state, selecting questions about sins into which it is prudently judged that the penitent could have fallen, given his condition and the circumstances of the person considered. 4. Let this be added in the last place: whether the penitent has anything else to say, about which he experiences remorse of conscience.

VI. On Satisfaction

725. **Is the confessor bound to impose penance, and what kind?** Response to the first: affirmatively. The reason is that satisfaction is an integral part of the sacrament of penance; but the confessor, as minister of the sacrament, is bound, as far as lies in him, to procure its integrity, even accidental integrity; otherwise he would not be a faithful dispenser. Trent, sess. 14, c. 8, can. 12-15; L. 506; St. Thomas, III, q. 90.

To the second: the confessor is bound to enjoin suitable and salutary penances, both vindicative and medicinal, that is, in some way proportioned to the number and gravity of sins, and also to the

faculties and dispositions of the penitent. The reason is clear from the nature of the thing, since sacramental satisfaction is ordered toward vindication of sins, which are greater or lesser, more or fewer, and also toward preventing new faults. Trent, sess. 14, c. 8; L. 508, 509; St. Thomas, Supplement, q. 12, a. 3; E. M.

726. **Resolutions.** 1. The quantity of penance cannot be determined, but is left to the judgment and prudence of the confessor. Roman Ritual. Nevertheless, a grave penance is regularly and of itself to be imposed for mortal sins. Moreover that penance is to be judged grave which corresponds to a work that is prescribed under grave obligation by the Church, or would oblige under grave obligation if it were prescribed, for example, to hear Mass, to fast, to recite the Little Office of the Blessed Virgin Mary, the Rosary, etc.; on the contrary, one *Miserere*, etc., is light.

727. Perpetual penances are not to be imposed, both because they would induce danger of forgetfulness or excessive anxiety, and because, if perhaps such penances were imposed by various confessors on the same penitent, he would hence be bound by innumerable chains at once and for his whole life. Indeed, not even ordinarily are penances to be imposed for a long time, for example, for a year or for five months.

728. Those satisfactions are never to be imposed which can expose the penitent to the mockery of others, for example, that he recite five Our Fathers in the middle of the church, with arms extended, etc. All the more are penances not to be imposed which cannot be fulfilled without revelation of confession easily following.

729. Nor are excessively grave penances to be imposed, such as fasts on boys and on workers worn out by continual labor. Nor are pilgrimages or lengthy prayers to be enjoined, or generally alms, on women constituted under the power of a husband, just as neither on the poor who procure their living for themselves by constant labor.

730. Penances involved in many diverse works are not to be imposed, because they could not be held in memory; nor, ordinarily at least, penances too repugnant to nature, for example, to make the sign of the cross with the tongue on the ground, to visit enemies, etc. It is also generally imposed imprudently on children that they ask pardon from parents, or from others, because of disobedience, irreverence, or small thefts; because they often make confession odious and are generally omitted. L. 508, 515; H. A. 52; E. M.

731. **How great is the obligation of imposing penance?** This obligation is grave from its kind. The reason is that the obligation regards a grave thing, although because of smallness of matter one can sin only venially against it. Lugo, d. 25, n. 49; L. 506.

Yet as to venials there is controversy. Some affirm that it is grave, because the enjoining of satisfaction pertains to the rite of this sacrament; and since this rite was instituted by Christ, it must be held as a grave thing. But others say that it is light, because a grave obligation of enjoining penance for light faults only cannot be proved, since no grave disorder appears in this. Indeed, it does not seem that the confessor can sin more by not imposing penance than the penitent by not carrying out a light penance. Moreover the judgment can be complete even if no satisfaction is imposed,

namely when the accused is judged worthy of no penalty. Each opinion is probable, as St. Alphonsus says, H. A. 47.

728. **Note.** "From this obligation," says Lugo, d. 25, n. 47, "it is established that some cases are excepted. The first is when the penitent is unable, as if he is near death, especially if he already lacks the senses and cannot perceive the penance imposed... The second case is when the confessor understands from the confession and other circumstances that the penitent has fully satisfied for the penalty due; and although this can rarely, or never, be established, nevertheless Peter de Soto adds... that it suffices that he seems probably to have satisfied. The third case is similar to this, which others add, when without satisfaction a remedy of perfect remission is at hand, for example, if martyrdom to be undergone is imminent; which others extend to gaining a plenary indulgence, at least one which is morally certain. The fourth case is when, because of his frailty, the penitent is believed going to accept no penance; for sometimes it will be necessary to condescend to his weakness in order to avoid graver evils; nevertheless it will never happen that he is not going to accept some penance, at least a light one." Cf. St. Thomas, Supplement, q. 25, a. 1.

But Benedict XIV has these words about the case of a plenary indulgence and of a Jubilee, const. *Inter praeteritos*, § 65: "One thing only remained, that we should speak about the imposition of penance not to be omitted by the confessor, because the penitent who had obtained an indulgence was said not to be bound to fulfill it. But since this kind of reasoning seemed too lax to us, in the Instruction of which at n. XXVI we declared our mind, establishing that a salutary penance is to be enjoined by the confessor on the penitent, even if he is prepared to receive the Jubilee, from which certainly there arises the obligation of the penitent to fulfill the same." Cf. also the Jubilee Bull of Leo XII, *Caritate Christi*; L. 519.

729. **When is penance to be imposed?** Generally speaking, it is to be imposed before absolution. The reason is that thus the order of judgment is preserved, which requires that the accused first promise satisfaction before he is absolved. But if the confessor from forgetfulness has not enjoined penance before absolution, he must impose it after absolution. Yet it is not grave to impose penance after absolution; indeed it is probably free of all fault, if it is presumed that the penitent will accept the work enjoined on him. L. 514.

730. **For what cause can a lighter penance be imposed?** 1. If the penitent is very weak and infirm in body. Roman Ritual. But if the infirm person is constituted in danger of death, then he can be absolved without any penance, although it is always expedient to impose some penance on him.

731. If there is prudent fear that he will not fulfill a greater penance, or that because of a more grave penance he will be turned away from confession.

732. If probably a greater penance will do him more harm than good.

733. If the penitent appears very contrite.

734. If the time is present for gaining a plenary indulgence, especially of a Jubilee. L. 508-510; H. A. 49; St. Thomas, Supplement, q. 25, a. 1.

To the point St. Thomas, Supplement, q. 18, a. 4: "Just as medicines determined in art are not fitting for all, but must be varied according to the judgment of the physician, who follows not the personal will of the one following, but the knowledge of medicine; so satisfactory penalties... are fitting for all, but must be varied according to the judgment of the priest regulated by divine instinct. Therefore, just as a physician sometimes prudently does not give an efficacious medicine which would suffice for curing the disease, lest greater danger arise because of the weakness of nature; so the priest, moved by divine instinct, does not always enjoin the whole penalty which is due to sin, lest someone weak despair because of the magnitude and withdraw totally from penance." And *Quodlibet* 3, a. 28: "It seems quite fitting that the priest not burden the penitent with a grave weight of satisfaction; because just as a small fire is easily extinguished by many logs placed upon it, so it could happen that a small affection of contrition recently excited in the penitent would be extinguished because of the grave burden of satisfaction, with the sinner totally despairing."

Cardinal Cajetan, *Summa*, v. *Satisfactio*: "To those weakly disposed," he says, "let a small satisfaction be given according to the weakness of their soul, and let the small fire be fostered by adding straw, and not be suffocated by great logs placed on top." And St. Antoninus, part 3, title 16, c. 20: "The confessor ought to give such a penance as he believes that person likely to fulfill, lest by violating it he turn out worse... The confessor in no way ought to permit a desperate sinner to depart from him, but rather let him impose on him one Our Father, or something else light, and that the other good things which he has done, and the evils which he has suffered, be for him as penance." E. M.

731. **Can penance be imposed under the condition of relapse?** Response: affirmatively, provided that a proportionate penance is imposed for the sins confessed. Confessed, for the confessor is neither judge nor physician of sins perhaps to be committed. L. 524.

732. **Can a public penance be imposed?** Response: negatively, if it concerns occult sins. Thus the Roman Ritual. But otherwise for public sins. Nevertheless, if public penance is not necessary, the confessor ought not impose it on one refusing it, since his salvation can be obtained otherwise, and scandal repaired. If it is not necessary. It will indeed be necessary "in the sole case in which otherwise scandal could not be repaired except through that public penance, for example, by publicly restoring honor to someone publicly dishonored." But in this case, independently of sacramental penance, the penitent is bound to that reparation by natural law. For the rest, public scandals of this kind can be repaired otherwise, apart from public penance, "namely through public frequentation of the sacraments, visits to churches, hearing Masses, entry into some Congregation where works of piety are exercised, and the like." L. 512; c. *Manifesta* 1, de Poenit. et rem.; Trent, sess. 24, c. 8, de Reform.; St. Thomas, IV, dist. 14, q. 1, a. 5, q. 1; Francolini, *Vet. Eccl. Sever.*, bk. 1, calumny 7.

733. **Can a work otherwise owed be imposed as penance?** Response: affirmatively. The reason is that since that work is satisfactory, it can well be elevated by the keys to the merit of sacramental satisfaction. "Yet this is not to be done except after considering the frailty of the penitent. Moreover the doctors commonly say that, unless the confessor expressly imposes a work otherwise prescribed, a supererogatory work is understood to have been imposed. But if the confessor imposes hearing Mass for a month, there is no obligation to hear two Masses on a feast." L. 513.

734. **What are the works which can be imposed as satisfaction?** "Prayer, almsgiving, and any other good work whatever enjoined in the sacrament of penance, also an internal work, also a work to be applied for the dead, also cessation from some good work, namely from Communion, fasting, etc., are valid as a penal and afflictive work... because cessation of this kind can well sometimes be an act of virtue, at least for preserving obedience to the confessor. But Lugo rightly observes that regularly it is not expedient to impose this kind of penance." L. 514.

Moreover it is common among the doctors that entry into Religion and marriage cannot be imposed as penance. For each requires complete freedom. L. 511; St. Thomas, Supplement, q. 15, a. 3; E. M.

735. **Is the penitent bound to accept and fulfill the imposed satisfaction, and when?** Response to the first: the penitent is bound to accept and fulfill a reasonable penance sacramentally enjoined, because, from what has been said, the confessor is bound to impose penance, and indeed one in some way proportioned to the sins. But if penance must be imposed and accepted, by that very fact, by reason of the obedience owed to the confessor, it must also be fulfilled. Trent, sess. 14, c. 8; L. 515, 516; H. A. 55.

To the second: the penitent is bound under grave obligation to fulfill a grave penance imposed for grave sins, because grave matter of itself obliges under grave obligation. But more probably he is bound only under light obligation to a light penance imposed for light faults, because light matter is not capable of a grave obligation. L. 517.

To the third: the penitent must fulfill the penance at the time designated by the confessor, or as soon as he conveniently can; and if the penance obliges under grave obligation, he will sin gravely if from grave negligence he delays it for a long time. The reason is that of itself it is grave to put off a notable debt for a long time. Moreover whenever the penance has not been fulfilled at the appointed time, the burden of performing it always remains, because the time is intended only accessorily. E. M.

VI. On Satisfaction

736. **Note.** 1. "Yet it is probable that if that penance seems to the penitent more grave than is just, or too burdensome with respect to his weakness, then, if the confessor were unwilling to moderate it, he could at least without grave fault depart without absolution and approach another confessor, as they say with Busembaum, etc. Yet this must be understood if that penance is truly unreasonable, etc." L. 516.

737. "From the common doctrine of theologians the confessor can sometimes oblige the penitent to fulfill the penance before absolution, etc." Lugo, d. 14, nn. 170, 171.

738. The penitent is not bound to fulfill the penance when the confession was invalid, because the sacramental sentence of the judge was null, and therefore there is no sacrament to be completed; otherwise satisfaction would have to be made twice for the same sins. The same must be said for the same reason about penance imposed without absolution. Exception: if the penitent approaches several times for completing the same confession, and meanwhile the

confessor, as often happens, imposes some penance each time, so that a smaller one remains to be imposed at the end. E. M.

739. **Does a penance in itself grave, but imposed only for venials, or for mortals already previously confessed, oblige under grave obligation?** Response: more probably negatively. The reason is that then satisfaction is not necessary insofar as it is grave. Hence, just as the confessor was not bound, indeed was not even able, to prescribe it under grave obligation, so neither is the penitent bound under grave obligation to fulfill it. L. 517; Suarez, d. 38, s. 7, n. 7.

740. **Can a confessor impose for grave faults a penance which is indeed grave, but obliges lightly?** Response: affirmatively, because any legislator can prescribe grave matter under light obligation; nevertheless this is generally not expedient. St. Alphonsus would prefer that at least something be enjoined under grave obligation, with which afterward something else, even graver, could be imposed under light obligation. But he himself does not deny that the opposite opinion is more common; and from this very fact it is argued that the argument which he tries to elicit from Trent for his own opinion is less firm. L. 518; Suarez, d. 38, s. 3, n. 3.

741. **Is the penitent bound under grave obligation to fulfill the added circumstances of the penance, for example, that he pray on bent knees, etc.?** The solution depends on the greater or lesser affliction of the flesh which the circumstance brings, either of itself or with respect to the penitent. This can also depend on the intention of the confessor, which either he has expressly manifested, or the penitent can presume. L. 517.

742. **Does he satisfy who fulfills penance while in mortal sin?** Response: affirmatively. The reason is that for satisfying the precept it suffices to place the enjoined work of satisfaction, although the end of the precept is not obtained. L. 552.

743. **Does he sin who fulfills penance while in mortal sin?** It is certain that he does not sin gravely. According to some, he sins venially. The reason is that one who voluntarily places an obstacle to even a partial effect of the sacrament does not seem able to be excused from some fault. Nevertheless, several grave theologians probably hold that he is exempt from all fault, because it is no fault to place an obstacle only to the remission of punishments. But when the obstacle is removed, then the effect of satisfaction is obtained. L. 523.

744. **What delay of penance is grave fault?** If the penance was light, delay, however great it may be, will never be grave, since the omission itself of the penance more probably does not exceed light fault.

If the penance is grave and imposed for grave sins, a delay of two or three months is more probably to be reckoned grave. But others extend this to six months, yet St. Alphonsus says this seems too benign; others even to a year, and this the holy Doctor rightly says is commonly rejected. Yet there is no need that someone fulfill the sacramental penance before he confesses again. He can still fulfill it after another confession, and continue it, if it is long-lasting, for example, if he is to hear Mass daily for a year. Diana, tom. 1, tr. 6, rr. 44, 45; Lugo, d. 25, nn. 90ff.; L. 517, 521.

743. **If the penitent has forgotten the enjoined penance, is he bound to repeat the confession in order to receive another penance?** Response: negatively. The reason is that fulfillment of

the penance already once enjoined, through forgetfulness even culpable, has been made impossible. But no one is bound to the impossible. Yet if the penitent prudently presumes that the confessor is still mindful of the enjoined penance, he ought, if he conveniently can, to approach him so that he may learn from him what it is. L. 520.

744. **Who can commute penance, and for what cause?** Response to the first: it can never be commuted by the penitent himself, not even into something better, although a vow can be changed by the one vowing it into an evidently better work. The reason is that penance cannot be elevated to the merit of sacramental satisfaction unless it has been imposed by the minister himself of the sacrament of penance.

It can be commuted: 1. by the confessor who imposed it, because a legislator can change his own law; 2. by any other confessor, because any other confessor can be judge of the same cause if the penitent submits himself to his tribunal; for a successor in the same authority can do whatever the predecessor could do. Yet, according to the more common opinion, an exception seems to have to be made if the penance was imposed by the superior himself for reserved cases, because an inferior cannot change the sentence of a superior; unless, however, a grave cause is present, or the consent of the superior can easily be presumed. Yet others deny this, because, once the reservation of sins has been removed by absolution of the superior, the power of the superior and of the inferior confessor is the same.

To the second: for licitly making commutation a just cause is required, such as: 1. if the penance seems difficult; 2. if it is foreseen that the penitent is not going to satisfy it because of repugnance, frailty, forgetfulness, etc. L. 528, 529.

745. **Is the penitent bound to repeat the confession in order to obtain commutation of the penance?** If he approaches the same confessor, it will not be necessary to repeat the confession when the confessor in some way confusedly remembers the state of conscience of the penitent.

If he approaches another confessor, or even the same one no longer mindful of the sins, it suffices that he confess summarily, so that the confessor may acquire a confused knowledge of that person's state.

Is this summary confession also required if the confessor, at least in a confused way, does not know the state of the penitent? The first opinion affirms. The reason is that the confessor cannot commute penance except by sacramental judgment; but he cannot exercise this judgment unless the penitent opens the state of his conscience to him. The second opinion probably denies this, because the issue is not a judgment to be rendered about faults deleted in the preceding confession, where judgment about them was already formed, but only the commutation of penance; for this, knowledge of the former penance and a notion of the frailty or difficulty for fulfilling it suffice, so that a new one in some way equivalent may be imposed. L. 529.

746. **Can the confessor commute penance outside confession?** Response: negatively, if the confessor is different. The reason is that the confessor has no power except in sacramental judgment.

If that confessor is the one who imposed the penance, he can change it immediately after absolution, before the penitent departs; but not afterward, at least more probably. The reason is that for this it is required and suffices that the preceding judgment of the confessor morally perseveres, which does not seem to have place if the penitent approaches the confessor outside the tribunal of penance.

St. Alphonsus, n. 529, says that this is the truer and more common opinion. Yet others say that commutation of penance can be made by the same confessor outside confession within the space of one day, within two days, a week, and an even longer time, because then it still seems morally to be united with the preceding sacramental judgment. For just as a longer space does not prevent sorrow, or confession, or even the fulfillment of satisfaction, from being morally united with absolution, so one can judge also about the change of penance. Lugo, d. 25, nn. 111, 112.

747. **Note.** If the penitent, having accepted penance from one confessor, repeats the confession before another in order to obtain a milder penance, or even for another cause, he is by no means freed from the prior penance unless he makes mention of the preceding confession and of the accepted penance. The reason is that, for commuting penance on the part of the confessor, a positive act of the will is required by which the prior obligation is revoked.

VII. On the Form of the Sacrament of Penance

748. **What is the form of the sacrament of penance; what is its force and obligation?** The form of absolution is had thus in the Roman Ritual: "May almighty God have mercy on you, and, your sins having been forgiven, lead you to eternal life. Amen. May the almighty and merciful Lord grant you pardon, absolution, and remission of your sins. Amen. May our Lord Jesus Christ absolve you, and I by his authority absolve you from every bond of excommunication, suspension, and interdict, insofar as I can and you need; then: I absolve you from your sins in the name of the Father, and of the Son, and of the Holy Spirit. Amen. May the Passion of our Lord Jesus Christ, the merits of the Blessed Virgin Mary and of all the Saints, and whatever good you have done and evil you have endured, be for you unto remission of sins, increase of grace, and the reward of eternal life. Amen."

The hand is raised from the word "Pardon" up to the word "Passion of the Lord"; and the sign of the cross is made over the penitent while saying: "In the name of the Father..." The word "suspension" is omitted for laypersons. It is a pious custom that the confessor before confession, while he blesses the penitent, say: "May the Lord be in your heart and on your lips, that you may rightly confess all your sins," or recite a similar prayer. But this does not fall under obligation.

The words "May he have mercy," "Pardon," "Our Lord," "Passion," etc., "the doctors commonly say can be omitted without any sin... And this seems truer, since Trent, sess. 14, c. 3, says that these prayers are added only laudably; for the word 'laudably' certainly seems to import no precept. Nevertheless no one doubts that it is more suitable... to add prayers of this kind, especially those which follow, 'May the Passion of the Lord,' etc., since it is probable that through those words all the good works of the penitent are elevated to sacramental satisfaction." L. 430, 507; St. Thomas, *Quodlibet* 3, a. 28. The rubric says: "in more frequent confessions it will suffice to say: 'May our Lord,' etc., up to 'May the Passion of the Lord,'" exclusively. Sacred Congregation of Rites, Feb. 27, 1847. The word "then" is

written in a different character in the Ritual, which seems to indicate that it does not pertain to the formula itself of absolution, but to the order of the things to be said. The raising of the hand and the making of the sign of the cross are certainly not required for the validity of the essential form. Florence, Decree for the Armenians; Trent, loc. cit. It is commonly asserted that they can be omitted without grave sin, and several learned authors assert that they can be omitted without any sin. They say the same about uncovering the head. L. 425.

Absolution from censures precedes absolution from sins: "May our Lord," etc. This absolution is valid if it is said "from every bond of censures," or "from censures." Absolution from censures can validly be given by the same form by which one is absolved from sins: "I absolve you from your sins," because these words involve absolution from any bond whatever arising from sins, and nothing prevents the confessor from being able to direct his intention to each absolution, from censures and from sins. Yet this is not excused from venial fault, since it is contrary to the usage of the Church. But probably it is altogether excused if there is present no probable suspicion that the penitent has incurred some censure. For the rest, a priest would sin mortally who against the prohibition of the Church wished to absolve the penitent first from sins and then from censures. From censures, namely of excommunication. For suspension and interdict of themselves do not deprive one of reception of the sacrament of penance. But the penitent would validly be absolved from sins, if he were in good faith, with absolution from censures not having been premised. The reason is that the prohibition of the Church cannot invalidate a sacrament whose value depends on divine law, since all the essentials required for it concur. L. 430; La-Croix, n. 1567.

Absolution from sins essentially and certainly consists in words. Given by nod or writing, and by other signs, it is invalid. Florence, Decree for the Armenians; Trent, sess. 14, c. 3; proposition condemned by Clement VIII, June 20, 1602; Paul V, July 14, 1605; L. 428; St. Thomas, III, q. 84, a. 3, ad 3. Hence it is essentially required that the penitent to be absolved be morally present. The cited proposition was condemned by Clement VIII and by Paul V. The confessor, while he pronounces the form, seems to speak with the penitent himself. Hence the aforesaid moral presence is reckoned to be that within which people can and are accustomed to speak with a common voice, although a louder one. Such presence extends to about twenty paces, especially where the penitent has not yet gone out of the sight of the confessor. But the penitent is to be recalled when he can in any way be recalled. For the rest, without scruple a penitent can be absolved who has withdrawn from the confessional, if it is known with certainty that he is still within a few paces. But it is not enough for moral presence if the priest sees the penitent or perceives him by another sense; for presence for absolution requires a greater nearness than for hearing a sermon or Mass. Hence, if someone at some time could not be absolved except from a distance, as if he were falling from a roof, then absolution would have to be given under condition. L. 429.

Absolution from sins is contained in the words: "I absolve you from your sins, in the name of the Father and of the Son and of the Holy Spirit. Amen." It is altogether certain that the due form is not deprecatory, but indicative: "I absolve you," etc. Trent, sess. 14, c. 3. It is likewise certain that the words "I absolve you" pertain to the essence of the form.

If it is said, "I absolve from your sins," it more probably is valid, because the pronoun "you" is sufficiently expressed by the pronoun "your." But most commonly they deny it; and because this

opinion is also probable, in practice it is altogether to be followed, from proposition 2 condemned by Innocent XI.

But if it is said, "I absolve you," omitting "from your sins," they very commonly say that it is valid from the Roman Catechism, n. 14, and from St. Thomas, III, q. 84, a. 3; yet that it is a grave sin, since it is contrary to the custom of the Church. But others hold that those words pertain to the essence from the words of Christ: "Whose sins you shall forgive." And this opinion is also probable, and therefore in practice one must not depart from it. Finally, if only "I absolve" is said, the form will be invalid, because it has no determinate sense and falls upon no determinate subject.

Moreover the common and true opinion denies that the words "in the name," etc., pertain to the essence of the form. For in the institution of this sacrament Christ made no mention of the Trinity, as he did in baptism. Some think their omission is mortal, others that it is no sin; others, better and almost commonly, say that it is venial, since the aforesaid invocation is according to the custom of the Church. L. 430.

There is no need that the penitent hear the words of absolution, and much less that he understand them. It suffices that the priest truly pronounce them, and it is advisable that in the presence of others, in order to preserve secrecy, they be said in a low voice.

Although insofar as it is a sentence it can be deferred longer, and, for example, can be given even after a week, yet insofar as it is a form it cannot be deferred beyond an hour. For the rest, it can also be given on another day if the penitent renews the accusation: "again I accuse myself of these things which yesterday," "which the day before yesterday," etc., "I confessed." L. 9, 429; E. M.

749. **When the confessor absolves, is it necessary that he remember the sins accused?** Absolution is a sentence. Therefore it is necessary that, when the confessor gives it, he have at least a confused knowledge of those things which the penitent confessed and of which he himself already had a distinct knowledge. Otherwise he scarcely does not seem to pronounce sentence with the cause unknown.

Therefore if the confessor does not retain the individual sins in memory, because the confession was long and involved, because he deferred absolution, because hitherto the penitent confessed invalidly and, with the sin previously kept silent now accused, or sorrow conceived which he had lacked, asks absolution, it suffices that "he remember in a confused way the state of the penitent, or resume, if he does not remember, knowledge of it in a confused way, and that the penitent in common accuse himself of all things previously confessed." L. 502.

But if previously the penitent had narrated sins to the confessor outside confession, as to a friend, whether in that case too it suffices to resume knowledge of them in a confused way is disputed. Lugo, d. 16, n. 638, and others affirm; for if that confused knowledge suffices in the preceding cases, it ought to suffice also in this. But St. Alphonsus and many more others deny, because in the preceding cases there was not lacking a sacramental confession of all and each of the sins, which Trent requires; but in this case it is altogether wanting. L. 502.

750. **Is conditional absolution valid and licit?** It is certain that absolution imparted under a condition of the present or past is valid in every case, provided the other requisites for the

validity of the sacrament are present. For the condition in no way changes the sense of the sacramental form, which it in no way affects, but affects only the will of the confessor, who does not intend to absolve unless the condition appended is fulfilled; but when this has been fulfilled, the form becomes absolute, and therefore nothing is found which can prejudice its validity.

It is likewise certain that conditional absolution is sometimes licit; for if it is valid, it must also be licit when necessity presses. When necessity presses. Hence, as plainly lax, the doctrine of some is to be rejected, who hold that conditional absolution can be imparted for any light cause whatever, even if in any way whatever there is doubt about the sufficient disposition of the penitent burdened even with mortal sins. For the confessor then would no longer be a prudent dispenser of the sacraments, but would cast pearls before swine; and by this facility in absolving he would bring it about that penitents waste away in sins.

But no more is the doctrine of those to be admitted who hold that absolution under condition is not to be imparted except in extreme necessity, or in extreme danger of life; for doctrine of this kind is exceedingly harmful to penitents who can return to the confessor only with difficulty and, dismissed without absolution, incur danger of eternal damnation. L. 481, 432.

751. **In what necessity can or must absolution under condition be imparted?** Absolution can and must be given under condition whenever, if granted absolutely, it would expose the sacrament to danger of nullity, and, if denied absolutely, it would expose the penitent to danger of grave spiritual damage.

Even if necessity of this kind does not press, absolution can nevertheless be given under condition whenever, if granted absolutely, it would expose the sacrament to danger of nullity, and, if denied absolutely, it would deprive the penitent of some notable spiritual good, although not a necessary one.

For the sacraments are indeed for human beings; but they are holy things. Therefore provision must be made for both, for the utility of human beings and for the sanctity of the sacrament.

752. **Resolutions.** 1. A penitent constituted in mortal sin is to be absolved under condition whenever there is prudent doubt about absolution having been imparted, or rightly given, and certainty about this cannot easily be had.

753. Likewise a doubtfully disposed penitent who is in grave danger of death, for example, a woman in difficult childbirth, a sailor or anyone else about to undertake a long voyage, a soldier before battle, an infirm person before a very laborious surgical operation, and all the more one guilty and to be punished capitally.

754. Children and half-witted persons can be absolved under condition in doubt about the use of reason or sufficient disposition, serious diligence having first been applied to dispose them as far as can be done, chiefly in the following cases: if they are in danger of death; if the precept of annual confession presses; if they have confessed some mortal sin. The reason is that they are exposed to danger of proximate damnation if death presses, or to danger of remaining long in mortal sin. Besides, there is no way and hope that, with absolution delayed, they will soon

return disposed and be more securely absolved, as perhaps can be hoped of others. Indeed, they will be able to be absolved conditionally several times a year, even if they bring forward only light sins, lest they be deprived of sacramental grace so long, or remain in mortal sin if perhaps they are in it.

755. Probably also spouses doubtfully disposed, and soon about to contract marriage, can be absolved under condition, because otherwise they are certainly going to profane that sacrament, and, dejected in soul because of absolution denied, they will not return to confessing and will waste away in sins.

756. Devout penitents can also probably sometimes be absolved conditionally, in doubt whether they subject sufficient matter to the keys. But it is much better that they provide certain matter from their past life, and thus not be deprived of the grace of the sacrament.

757. A relapsing sinner, about whose sufficient dispositions there is doubt, can be absolved under condition "if it is prudently feared that that sinner will no longer return to confession and will waste away in his sins." L. 432, 442; La-Croix, n. 1797.

758. **What especially concerning the dying?** Any dying person who in some way, by voice or sign, confesses or asks absolution can and must be absolved, and indeed absolutely. The reason is that all the requisites for the sacrament and for a formally integral confession are present.

Any dying person in whom attrition and confession can be presumed in some way, however slightly probable, can and must be absolved, at least conditionally; because in the case of extreme necessity, even in the administration of the sacraments, it is permitted to use even a little-founded opinion.

A dying person who altogether refuses the sacrament of penance, or who can in no way be presumed attrite, can in no way be absolved. The reason is most plainly clear. L. 480, 482; E. M.

754. **Resolutions.** 1. All dying persons not yet deprived of the senses and consenting to absolution, and obeying the commands of the confessor, are to be absolved: absolutely, if they spontaneously request confession, or if they propose to confess with willing soul; conditionally, if they are scarcely induced with difficulty to some confession, or if there is prudent doubt about their sufficient disposition.

755. All dying persons deprived of the senses, who before deprivation of the senses expressly showed a desire for confession, for example, by ordering a priest to be called, etc., are to be absolved, at least conditionally. The reason is that they are judged truly to confess through the testimony of bystanders. This is established from the Councils and from the Roman Ritual.

756. All dying persons entirely deprived of the senses who lived as Christians are to be absolved under condition, even if then they gave no sign either of sorrow or of desire for confession. The reason is that since sorrow and desire of absolution can be presumed in these persons, confession can also be presumed in some way.

757. Other dying persons deprived of the senses, who lived not very Christianly, are also to be absolved conditionally, because penitence and confession can still be presumed in some way in them.

758. Probably a dying person deprived of the senses in the very act of sin, for example, in a duel, adultery, theft, etc., can be absolved under condition. The reason is that even he can be sufficiently disposed. This especially has place for one who was perhaps led to sin by fear, human respect, etc. L. 481-483; La-Croix, n. 1162; Elbel, nn. 208, 211.

VIII. On the Approval of the Confessor

755. **What is required for the adequate power of the minister of penance?** Three things, namely power of order; power of jurisdiction; approval. Power of order is required, that is, that which belongs to the minister by force of ordination and is intrinsically joined to the priestly character. The reason is that to priests alone Christ said: "Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them." John 20:22. It is established besides by the manifold definition of the Church. Trent, sess. 14, c. 6, can. 3, 9, 10.

Power of jurisdiction is required, that is, the power by which the priest as judge can pronounce sentence on some persons as his subjects. Trent, sess. 14, c. 7.

Approval is required for receiving confessions both licitly and validly, or a public judgment about the suitability of a priest for receiving confessions. Trent, sess. 23, c. 15, de Reform.; L. 539, 540; E. M.

VIII. On the Approval of the Confessor

756. **What is approval?** Approval can be defined: the juridical judgment of a prelate concerning the suitability of a priest for hearing confessions. Hence an examination is not essentially required for granting approval; for a prudent judgment about suitability can be had even without examination, when this is otherwise established. Moreover this judgment ought to be adequate, namely both on the part of the intellect as to knowledge and prudence, and on the part of the will as to holiness of morals, fitting to a vicar of Christ in this ministry. Yet these things do not pertain to the essence. Therefore the Ordinary would indeed illicitly, yet validly, approve one who perhaps lacks these endowments. "And although the bishop internally disapproves, external approval is valid for conferring jurisdiction." L. 545; L. 542.

757. **Whether approval is required only for liceity, or also for validity?** Approval is required for receiving confessions both licitly and validly. It is established from Trent, sess. 23, c. 15, de Reform., where it is thus established:

"No priest, even a regular, can hear confessions of secular persons, even priests, nor be reputed suitable for this, unless either he has a parochial benefice, or is judged suitable by the bishops, through an examination if it will seem necessary to them, or otherwise, and obtains approval, which is to be given gratis."

"No priest, even a regular," understand even a regular prelate, "although it is not fitting that doctors and licentiates, or lecturers in theology, be examined, provided they have lectured on Moral Theology." L. 542. "Unless either he has a parochial benefice," namely actually has it; and therefore canons who have the care of souls only habitually, without the approval of the bishop, cannot licitly and validly hear confessions. Sacred Congregation of the Council, April 1, 1876. "Unless he obtains

approval." "Whether confession of venials made to a simple priest is illicit and invalid? That it is illicit today is certain from the Decree of Innocent XI on Daily Communion, Feb. 12, 1679... But whether it is invalid? The first and most common opinion denies... but the second opinion affirms, and I think this sufficiently probable." L. 543; L. 541, 546, 549; E. M.

758. **Who can approve?** Only the bishop can approve. The reason is that it pertains only to prelates of the Church to judge concerning the suitability of ministers to be deputed for hearing confessions. It is also established from the cited Trent. Moreover the bishop can approve either by himself or through another delegated by himself, because approval is an act of jurisdiction; but ordinary jurisdiction can be delegated.

"Moreover under the name of bishop are also understood prelates having episcopal jurisdiction, as certain abbots, and the Chapter when the See is vacant, but not Provincials or Generals of Orders. A confirmed bishop, even if not yet consecrated, can rightly approve, because he already has jurisdiction. Otherwise if he has only been elected and not confirmed; or one who has renounced the episcopate, because then he lacks jurisdiction." L. 547.

It must be noted that according to the present discipline of the Church, together with approval, jurisdiction is also usually conferred by the prelate on priests, and therefore by common usage jurisdiction too is comprehended under the name of approval. But formerly, namely before Trent, since approval of the bishop was not necessary, jurisdiction was commonly granted by parish priests. This faculty now has scarcely any exercise in parish priests, since now hardly any priest can be found who together with approval has not also already received jurisdiction from the bishop. Bertagna, *De Casuum Reservatione*, part 1, c. 1, note; Ferraris, v. *Approbatio*, a. 1, n. 15; L. 550, 558; E. M.

759. **From what bishop must approval be had?** Approval must be bestowed by the bishop of the diocese in which confessions are to be received; hence approval either of the bishop of the penitent or of the bishop of the priests does not suffice. This is established from the Bull of Innocent XII, April 19, 1700, where it was sanctioned:

"Confessors, both secular and regular, whoever they may be, by force of the Bull of the Crusade can in no way hear penitents without the approval of the bishop of the place in which the penitents themselves dwell; nor for this does approval once or several times obtained from other Ordinaries of other dioceses avail, even if the penitents are subjects of those Ordinaries who approved such confessors."

Then the Pontiff declares null "confessions which are made without the approval of the bishop of the place in which the penitents themselves dwell." What is clearer? But if even with the privilege of the Bull of the Crusade approval is required from the bishop of the place, how much more without privilege. But the Salmanticenses say that the opposite opinion has not been condemned by this Bull if someone had a privilege of a different kind than that of the Crusade, for example of a Jubilee, or something similar. But against this stands the Bull of Benedict XIV, which begins *Benedictus Deus*, where it is said that faculty is given in the Jubilee both to seculars and to regulars to choose for themselves a confessor, provided he is from those approved by the Ordinary of the place; but nuns from the same can choose for themselves a confessor, yet only from those approved for confessions of nuns in that place, although for other monasteries. L. 548. There also stands against it the

constitution *Apostolica Indulta*, Aug. 5, 1744, of the same Benedict XIV, who established and declared that those things which the Roman Pontiff predecessors Innocent XII, Innocent XIII, and Benedict XIII had decreed "concerning the understanding and use of the indult of the Bull of the Crusade, also ought to be valid and obtain in the remaining indults of the same kind in like manner." L. 548, 549; E. M.

760. **Does presumed future approval, or interpretative approval, suffice?** Response: negatively. The reason is that from Trent approval actually and absolutely existing, and already obtained, is required. But for approval of this kind actual consent is required, declared by some sign. Indeed, neither is it licit to begin confessions before that consent, requested by letters, has been received, even if it seems certainly obtained. Nor indeed is ratification of approval valid, even if prudently presumed, because ratification cannot make valid an invalid act which no longer exists, namely the form of absolution, which consists in words. And the same holds for assisting at marriages. Gousset, n. 478; L. 570, bk. 3, n. 700; Lugo, d. 19, s. 2; Sanchez, *De Matrimonio*, bk. 3, d. 35, nn. 18ff.; d. 36, nn. 6ff.; Barbosa, *De Officio Parochi*, part 2, c. 21, n. 75.

761. **Can a bishop validly and licitly limit approval as to a certain time, place, and persons?** Response: affirmatively as to validity, even without cause. The reason is that it is an act altogether dependent on the will of the bishop as superior. Hence, just as he can validly refuse approval, although unjustly, so he can grant it only with restriction. This is also established from proposition 13 condemned by Alexander VII. It is also established from Trent, sess. 23, c. 15, where it is said: "Unless he obtains approval." But one who obtains it with restriction simply does not obtain it for the excluded cases.

As to liceity, the bishop can indeed restrict or even altogether deny approval for a just cause, as is clear; because the necessity of approval was introduced for this end, that the suitable be separated from the unsuitable. But otherwise if he does this without just cause. Benedict XIV, const. *Apostolica Indulta*, Aug. 5, 1744, § 3; L. 542, 550, 552; Lugo, d. 21, n. 51.

762. **What are just causes for limiting approval to a time?** They are for the most part the following: 1. If now there is necessity of having more confessors, which later ceases. 2. If the one to be approved indeed has sufficient knowledge, but greater knowledge is rightly desired for perpetual approval. 3. If it is prudently feared that after once having perpetual approval, he will neglect study. 4. To test how he conducts himself in receiving confessions. Lugo, d. 21, n. 58.

763. **Can a bishop validly and licitly revoke approval granted?** Response: affirmatively by reason of validity, even without just cause. The reason is, first, that such revocation is made in a matter so subject to the bishop that it can proceed only from him. Moreover, because approval, even unjustly revoked, no longer exists, or cannot be said simply to be had or obtained.

By reason of liceity, the bishop can indeed revoke approval granted even without limitation for just causes; for this follows from the necessity of approval, which demands that whoever ceases to be suitable be removed from office. But he cannot revoke approval without a just cause. For from what has been said, a bishop cannot deny approval without cause; therefore all the more he cannot without

cause revoke one granted, since according to the saying: "A guest is more shamefully cast out than not admitted."

Yet there are not lacking those who think that a bishop cannot, either licitly or validly, revoke approval granted without a just cause. The reason is that approval once granted, after previous examination, is not a gracious act and favor depending on the liberality and good pleasure of the bishop; but it is an act of justice and a right acquired from a juridical sentence, and therefore owed from justice, once aptitude is posited. Therefore, from mere good pleasure, it can cease neither licitly nor validly. Thus hold Suarez, d. 28, s. 8, n. 7; Lugo, d. 21, n. 64; Castro-Palao, tr. 23, p. 18, n. 6; Salmanticenses, c. 11, p. 6, n. 107, etc. Casajoana in the annotations to Father Gury, n. 543, 2nd Spanish edition, says that this opinion is very probable; but St. Alphonsus, n. 551, judges it scarcely probable in practice; he nevertheless implicitly judges the same probable where the injustice would be evident, and any danger of error would be absent. But as to practice, this also must be added: that there be no scandal. Hence it is better to appeal to the Metropolitan, or to the Sacred Congregation. L. 551; Billuart, diss. 6, a. 5; E. M.

764. **Can a bishop approve an external priest?** A bishop can approve any suitable person actually existing in his own diocese, even if only passing through. This is established from universal practice and the common opinion of theologians. The reason is that delegation or mandate can be committed to anyone, provided that he is capable.

IX. On the Jurisdiction of the Confessor

765. **Is jurisdiction required for hearing confessions licitly and validly?** Jurisdiction, taken generally, is a certain moral power of governing subjects. Ecclesiastical jurisdiction is twofold: one in the external forum, and it is the power of making laws, inflicting penalties, etc.; the other in the internal forum, and it is the power of absolving or binding in the tribunal of Penance. This latter is either ordinary, which belongs to someone by reason of an office having the care of souls annexed; or delegated, which is given to another by one having ordinary jurisdiction.

The power of jurisdiction is necessary for receiving confessions, and the power of order does not suffice. The reason is that absolution is a judicial sentence, which cannot be pronounced except upon subjects. Therefore subjects must be assigned to the confessor; but this pertains to him who possesses authority over those subjects. This is altogether required for the right governance of the Church. And this is established from Trent, sess. 14, c. 7, declaring "that the absolution which a priest pronounces on one over whom he does not have ordinary or subdelegated jurisdiction must be of no moment." L. 557.

766. **To whom does jurisdiction belong?** Ordinary jurisdiction belongs: to the Pope for the whole Church in each forum, since he has the primacy of jurisdiction. Vatican Council, const. *Pastor aeternus*. The Major Penitentiary acts in his stead in many matters.

To the bishop for his own diocese, also in each forum, since it has been committed to him for this reason, that he may rule and direct it; likewise to the archbishop toward the subjects of his bishops,

only when he is actually visiting; and, according to the more common and truer opinion, to the vicar general, since he makes one tribunal with the bishop. C. *Non putamus* 2, de Consuetud. in 6; C. *Romana* 3, de Appellat. in 6. But when the bishop dies, the jurisdiction of the vicar ceases, not because his jurisdiction is not ordinary, but because, when the bishop is lacking, he himself ceases to be vicar.

To parish priests for their subjects in the internal forum, Trent, sess. 23, c. 15, de Reform.; and to the canon penitentiary in his own diocese, and to all those who have a benefice or office to which the obligation of hearing confessions is annexed.

To abbots and prelates of regulars for their own subjects, from several privileges granted to them by the Supreme Pontiffs.

Delegated jurisdiction is granted by the Church to any priest in a case of extreme necessity, or in the article of death. Trent, sess. 14, c. 7. In the article of death, that is, whether in the article or in danger of death; because the necessity of the penitent is almost the same in danger as in the article of death, and because in this matter article and danger are taken for one and the same, c. *Si quis suadente* 29, can. 17, q. 4. And indeed danger and article of death are either taken for one and the same among the doctors, or, if they are distinguished, that distinction is such that article designates death proximately imminent, morally certain, and almost inevitable; but danger designates when there is a probable doubt, and death frequently is accustomed to occur in such a case. Suarez, on III, t. 4, d. 26, s. 4, n. 2; Lugo, *De Poenitentia*, d. 18, n. 20; Ithur., case 49, nn. 1-3, 10-16; Giraldi, *Expositio Iuris Pontificii*, part 2, s. 39, paragraph *Verum*; L. 561.

Moreover such danger is judged to be present in battle, in a long and dangerous voyage, in difficult childbirth, in a dangerous illness, in probable danger of falling into insanity, in slight hope of liberty for captives among unbelievers, if they are believed to be going to have no other priests, etc.; namely whether death threatens from within or from without. L. 557, 558, 559, 561.

767. **Can delegated jurisdiction be subdelegated?** Response: negatively, generally speaking, namely unless a special concession of the one delegating is added; and then it is judged to be subdelegated in the name of the one delegating. The reason is that the delegate has only that power which is granted to him; but there is granted to him only the power of exercising jurisdiction, not of committing it to another, unless something else is expressed.

Exceptions: 1. If jurisdiction is delegated to someone as a privilege perpetually annexed to his office or dignity; for then such jurisdiction is reckoned as ordinary, as is the faculty imparted to bishops by Trent, c. *Liceat* 6, sess. 24. 2. If an office to which jurisdiction is annexed is committed to someone; and this holds even if the office is not proper, but that of a vicar, for example, of a vice-parish-priest, or vice-rector for an absent parish priest, or one not yet a priest. A vicar of this kind can well subdelegate his jurisdiction, not indeed the whole, but a part, namely for one or another cause. The reason is that then not only the exercise of the parish priest has been committed to him, but also the office of the parish priest, to which belongs not only the use but also the delegation of jurisdiction. L. 566; St. Thomas, *Quodlibet* 12, a. 31.

768. **Does delegated jurisdiction for hearing confessions expire by the death or removal from office of the one granting it?** There is a twofold opinion. The first, which Thomas Sanchez

says is sufficiently probable, affirms. But the second, which the same Sanchez holds as more probable, denies, whether that license has been granted by the bishop, or by any other Ordinary who can grant it. The reason is: 1. "because all laws deciding that the power of delegated jurisdiction perishes by the death of the one delegating, while the matter is intact, deal with contentious power, which this is not... 2. Because, although a license for hearing confessions is in favor of penitents, it is deservedly counted among graces already made. For since it is not granted with respect to a determined person in that person's peculiar favor or at his request, it is reckoned rather as a grace made to the priests themselves, as one which redounds to their greatest favor, and, as soon as it is granted to them, is perfectly granted and depends on the execution of no one. This is the definition of a grace already made. But a grace already made does not expire by the death of the one granting it, even if the matter is intact. 3. Because practice itself thus testifies. For when the bishop has died, confessors exposed by him are accustomed to hear confessions until the license is revoked by the Chapter or by the successor bishop." Sanchez, *De Matrimonio*, bk. 8, d. 28, nn. 71, 72.

He adds besides these things, which make for a fuller knowledge of the present matter: 1. "Yet when a license to hear confessions of a determined penitent had been granted to a priest in favor of that penitent, the faculty would expire by the death of the one granting it, while the matter is intact, that is, as to confession not yet previously begun. Because, since that grace is in favor of that penitent and is not yet perfected, but must be executed by the confessor, it does not have the character of a grace made, but of one to be made, which we have said expires by the death of the one granting it while the matter is intact... 2. A license granted by a bishop or another prelate of choosing a confessor... more truly... does not expire by the death of the one granting it, even while the matter is intact, or by removal from office... because this faculty is to be judged not as delegation, but as a grace already made," loc. cit., nn. 73, 74. Lugo, *Responsa Moralia*, bk. 1, d. 20.

"It is certain," says Bouix, *De Iure Regularium*, vol. 2, p. 247, "that an unlimited license does not expire through the death of the one granting it; and about this there is no doubt. Likewise it is certain that a license for a determined time does not expire through the death of the one granting it, but perseveres until the expiration of the fixed term; this likewise is outside controversy. Concerning licenses at pleasure, Clericatus indeed asserts, after Diana, that they expire by the death of the one granting them. But on the contrary side is the common opinion of the doctors, which Ferraris thus sets forth, v. *Approbatio*, a. 1, n. 10, etc." Cf. St. Alphonsus, nn. 551, 552, 558, 559, where the holy Doctor affirms that the faculty given in this way expires by the death of the one granting it: "until our good pleasure, or at the judgment of our will, and similar." But bk. 1, appendix 2, n. 13, he thinks the contrary opinion probable. Cessation is favored by c. *Si gratiose* 5, de Rescr. in 6; but duration by the Sacred Congregation of Bishops and Regulars, June 17, 1866, and c. 16, de Reg. Iuris in 6; E. M.

IX. On the Jurisdiction of the Confessor

769. **Does the Church supply jurisdiction when penitents invincibly do not know its defect?** It must first be noted that defect of jurisdiction can occur in different circumstances of things. For the error can be either common among the faithful, or only private to some person. Again, a priest lacking jurisdiction can have a colored title, or only an estimated title. Title signifies a

cause, and therefore title is that by which some right is acquired for us. Moreover a colored title is a title indeed false in itself, but nevertheless truly conferred by a superior, and therefore presenting the appearance of a true title, although from some cause it labors under a hidden defect of nullity. Thus a priest who is simoniacally appointed parish priest obtains an invalid title from Canon Law; and, if he has been constituted in the parish by a legitimate bishop, he has a colored title. Cf. c. *Statuimus* 107, causa 1, q. 1. But a merely estimated title is that which is judged by the faithful to be present, although it does not exist.

The Church certainly supplies if the error is common among the faithful and at the same time joined with a colored title. The reason is drawn from the common interpretation of theologians resting on diverse places of law. For, as they say, the Church, like a loving mother, is deservedly judged to supply jurisdiction for the good of souls, since she can do this. This holds equally whether someone has ordinary or delegated jurisdiction. It holds moreover even if the confessor knows that he does not have jurisdiction, for example, one who knows that the time of his approval has elapsed, or that he, by force of a sentence secretly intimated to him, has been suspended from hearing confessions. L. 572.

More probably the Church also supplies if there is common error, or error public by law, without a colored title, but with only an estimated or fictitious title. For the same reason presses as in the preceding case, since even in this hypothesis innumerable souls could perish; especially since the title here is neither accustomed to be asked for nor exhibited when someone receives from a superior the power of receiving confessions or absolving from reserved sins. Thus several grave doctors; and St. Alphonsus thinks this probable, loc. cit. And this holds whether it concerns simple absolution of sins or absolution from reserved sins. In each case the reason is the same, namely the good and necessity of souls.

The Church is not judged to supply jurisdiction if the error is private, for example, if it is of one or of a few. The reason is that the Church is not judged to supply except by reason of the common good, namely after the manner of a provider or general governor, who attends only to the general good of society and leaves the good of private persons to the care of particular providers. Ithur., case 33, case 47, nn. 9, 13; E. M.

770. **Is it licit to absolve with doubtful jurisdiction, in a doubt of fact whether it is present?**
Doubtful: the question concerns a negative doubt, by which the mind remains uncertain and suspended, without being determined to judgment, namely to a positive judgment, even only probable. Whether it is present; for example, whether the fixed time of approval still lasts; whether one is within the territory of the one delegating and approving; whether such a sin is contained in the catalog of reserved sins, etc. Therefore the question concerns a doubt of fact, namely of a particular or private fact.

Response: negatively, unless some necessity presses. For the sacrament is exposed to danger of nullity, and thus the penitent is exposed to grave harm. But in necessity one's neighbor must be aided in the best way possible. Necessity is present: 1. if the precept of annual confession presses; 2. if the penitent must celebrate Mass or communicate and otherwise would incur a mark of infamy; 3. if a priest is bound by obligation to celebrate. But because of reverence for the sacrament, absolution is to be given under condition, and the penitent must be warned about the doubt of valid absolution, so

that provision may be made for his salvation; consequently he is both to be excited to contrition by the confessor and afterward must confess his sins to another having jurisdiction, because they certainly must be subjected to the keys. Castro Palao, tr. 23, p. 14, n. 25; L. 571, 432.

771. **Is it licit to absolve with speculatively probable jurisdiction, or with a positive doubt of law?** Doubt properly so called is negative doubt. Positive doubt is improperly called doubt, namely only by reason of the fear with which judgment is made, although judgment is made determinately, yet uncertainly, namely a probable judgment, in which there is breadth and variety, because each side can be judged equally probable; or one probable, the other more probable; or only one side probable, because its motive is neither evident nor certain, although the opposite does not have a foundation of probability. Speculatively probable jurisdiction, or a positive doubt of law, is, for example, that common error without a colored title gives jurisdiction; that one not approved absolves a dying person when an approved confessor is present; that even one not approved validly absolves from venials, etc. Therefore a doubt of law falls back into a doubt of fact, certainly not of a particular fact, but of a universal fact; or the doubt concerns a common question of law, not of private fact.

Moreover St. Alphonsus, n. 573, says: "the common opinion teaches that it is licit to absolve with probable jurisdiction, provided the opinion is truly probable, supported by grave reason and authority. Thus Sanchez, Lugo, who thinks it very safe, etc... and Sanchez, Tamburini, Cardenas, Dicastillo, Illsung, Gormaz, Stoz, etc., apud La-Croix, bk. 6, part 1, n. 117, call it morally certain." But the same holy Doctor proposes another opinion, which he says he follows, in this way: "It is indeed licit to administer this sacrament of penance with probable jurisdiction, but only when there is a grave cause of necessity or of great utility... or a reasonable cause... The reason of this limitation is that although the Church in that case can well be judged to supply jurisdiction for the good of souls, nevertheless she is not presumed, with no just cause added, to wish to connive at the mere liberty of priests."

But the weakness of this opinion is shown from the very reason of the prior opinion, which St. Alphonsus himself thus explains and proves: "In the Church there is a universal custom of almost all confessors of absolving with probable jurisdiction, as Suarez, Lugo, etc., and all the other authors cited for this opinion, commonly testify. Moreover the common opinion of the doctors founds moral certainty about the aforesaid custom. And although the contrary authors think it illicit to absolve with probable jurisdiction, nevertheless they set aside, and cannot deny, that this custom is present at least among by far the greater part of confessors. Therefore, with this custom posited as certain, it is certain that it is licit to administer the sacrament with probable jurisdiction, since the custom itself supplies jurisdiction, as Suarez, Navarrus, etc., teach; and they prove this from c. *Cum contingat* 13, de Foro compet. ... Jurisdiction can well be supplied by the Church, and it is morally certainly presumed to be supplied in this case for the good of souls. Hence the confessor, absolving, would not absolve with only a probable opinion, but with one morally certain, not direct, but reflex." These things concern positive doubt or probability of law. But what about positive doubt or probability of fact? Several affirm the same, among whom is D'Annibale, 3rd ed., part 1, n. 80, note 78; but others commonly deny. La-Croix, bk. 6, part 1, nn. 118, 120; Lugo, d. 19, nn. 20, 28ff.; L. 571, 573; D'Annibale, part 3, n. 321.

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772. **Do heretics, schismatics, excommunicates to be avoided, etc., validly absolve in danger of death, another priest being lacking?** Response: affirmatively. The reason is that all priests can absolve in danger of death. Trent, sess. 14, c. 7; L. 560.

773. **Can a simple priest validly absolve a dying person even when an approved confessor is present?** St. Alphonsus, n. 562, denies this because of the authority of the Roman Ritual, on the Sacrament of Penance, at the beginning, where it is said thus: "But if danger of death is imminent, and an approved confessor is lacking, any priest can absolve from any censures and sins whatever." Several grave theologians hold this opinion. But other theologians, also several and grave, affirm.

Indeed a very strong argument is ready from Trent, sess. 14, c. 7, where that faculty is given absolutely and universally to all priests, for any penitents whatever, and any sins and censures whatever; and the reason assigned is most universal, lest someone perish. Therefore where the law does not distinguish, neither ought we distinguish, unless an exception is made by the law itself, as for the case of a priest accomplice in a shameful sin, as is explained in its own place, from which exception also the present doctrine is confirmed where mere validity is at issue. Cf. 1282. Moreover the reason adduced by the Council, lest someone perish, demonstrates every sort of amplitude in this matter; for if this were set aside, someone certainly could sometimes perish because of defect of liberty. And this is added besides, that in the same Church of God it was always preserved that there be no reservation in the article of death; but where there is no reservation, one asks in vain who has power in the reserved matter. Finally, before Trent there was no need of the bishop's approval for hearing confessions; therefore the old law, as to the article of death, was not only not derogated, but confirmed, since the Council appeals to the old law itself when it says, "that in the same," etc. It is confirmed from the Response of the Holy Office, July 29, 1891. Ithur., cases 12, 42; Lugo, d. 18, n. 23; L. 560; E. M.

774. **Can someone absolve his own subject in another diocese without the approval of the Ordinary of the place?** Response: affirmatively, if the confessor is the proper parish priest of that penitent. The reason is that parish priests are exempted by the Council of Trent from that law of approval. Therefore outside their own parish or even diocese they need to be approved by no one in order to hear the confession of their own parishioner.

Negatively, if he is not the proper parish priest. The reason is that from Trent only parish priests are exempted. Therefore all others having delegated jurisdiction need approval of the bishop of the place.

Yet grave theologians are not lacking who think that the law in this matter is the same for one having ordinary power and one having delegated power. For the delegate uses the jurisdiction of the one delegating. But the difficulty in the present question is not about jurisdiction, but about approval. Therefore, if it concerned only absolution from censures, for which approval is not required, he certainly could absolutely; absolutely, namely unless by delegation he had received jurisdiction restricted to his own territory. The same would hold about marriage, at which outside the diocese both the proper parish priest and a priest deputed by the same parish priest would validly assist. L. 548; D'Annibale, part 1, n. 336, 3rd ed.; cf. 783.

775. **Can a parish priest call a parish priest of the same or a different diocese to hear confessions in his parish?** As to a parish priest of the same diocese, although by force of his office he has special jurisdiction only for his own parish, nevertheless from almost universal custom he can also hear confessions in the whole diocese, unless the bishop decrees otherwise. Yet the proper customs of places must be consulted.

As to a parish priest of a different diocese, various opinions are brought forward, as Benedict XIV says, Institution 86, n. 7. Those who affirm argue from Trent that the parochial benefice serves as universal approval. Others deny, to whom St. Alphonsus, n. 544, adheres. Declarations of the Sacred Congregation of the Council apud the same holy Doctor favor this opinion. The first opinion can be admitted in those places where such a custom is present.

776. **Can a priest approved by the bishop hear confessions of the faithful without the permission of the parish priest?** Response: negatively as to liceity, if confessions are received in a church subject to the parish priest. The reason is that due order altogether requires that, since the parish priest is the immediate superior in his own church, permission to exercise sacred ministries there be sought from him. Yet permission of the parish priest is not required for hearing confessions in a chapel of regulars or nuns, but permission of the superior or superiorissa of the place suffices.

As to validity, however, it is certain according to all that the license of the parish priest is not required outside the case of annual confession. Indeed, it is not required even for annual confession, at least of itself, or by common law. This is established from the common doctrine of theologians against certain persons, and also from the present custom and universal practice of the Church, as Benedict XIV testifies, Institution 18. L. 574.

777. **Can a priest approved in some place receive the confessions of travelers coming there?** Response: affirmatively absolutely as to regular confessors, who have this special privilege from the Holy Apostolic See. Const. *Inter cunctas* of Paul III; const. *Superna* of Clement X.

Affirmatively also as to secular priests. The reason is that such is the universal custom, which, having its origin at first from the tacit consent of Ordinaries, has now been prescribed by long use and obtains the force of universal law. L. 569.

778. **Can a bishop prohibit under penalty of invalidity that diocesan subjects go outside the diocese to confess?** Response: negatively, if they go outside the diocese to confess before regular confessors, who have the privilege of hearing the confessions of all the faithful coming from every direction. Suarez, *De Religione*, tr. 10, bk. 9, nn. 19, 20; Reiffenstuel, tr. 14, dist. 8, q. 1, n. 11; Laymann, bk. 5, tr. 6, c. 10. It is confirmed by the Declaration of the Sacred Congregation apud Fagnanus on c. *Omnis utriusque sexus*, n. 79, where it has these words: "The Sacred Congregation declared that regulars within the diocese of the approving bishop can also absolve penitents of another diocese, since they have jurisdiction from the Pope... whose jurisdiction is not restricted to the limits of some territory, but the whole world is his diocese."

Negatively also as to secular confessors. There are many decrees of the Sacred Congregations by which prohibitions of this kind are disapproved. Cf. *Collectanea* of the Sacred Congregation de

Propaganda Fide, nn. 928ff. The reason is that the bishop cannot universally, and with particular cases set aside, prohibit what is permitted by universal custom legitimately prescribed, or by the universal law of the Church. Nor does what is objected stand in the way, namely that it is repugnant to divine law that someone choose for himself a confessor without the license of his own pastor. For this is readily conceded; but one who, with the Supreme Pontiff permitting through universal custom, chooses a confessor for himself does not choose him without the license of his own pastor. "Custom," says St. Thomas, Supplement, q. 20, a. 2, "gives or takes away power in such things." *Quodlibet* 1, a. 12; L. 564; E. M.

779. **Does a delegate validly and licitly absolve after the term of delegation to be renewed yearly has elapsed, for example, if a crowd of penitents flows to some great solemnity?** He absolves invalidly of itself, or by reason of jurisdiction, because in fact he has none. Nevertheless he more probably absolves validly, at least generally, by reason of common error, because of which the Church is judged to supply for the good of souls.

But the priest sins gravely of itself if he knowingly does this. The reason is that he exercises the office of confessor without legitimate authority; and although the Church then supplies, nevertheless he is guilty because he himself unduly compels her to supply.

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780. **Can military chaplains absolve soldiers everywhere without the approval of the bishop of the place?** Response: affirmatively, if they have been specially delegated by the Supreme Pontiff to the spiritual care of soldiers, or by a major chaplain approved by the Pope.

But if they lack this special delegation, they can indeed hear confessions in the diocese of the approving bishop, and also outside it on a journey and in camps, from the tacit consent of bishops, as is clear from universal custom; nevertheless they cannot validly absolve in stations or in garrisons without the license of the bishop of the place, because they have no jurisdiction. This is established from various Declarations of the Sacred Congregation, March 6, 1694, Jan. 29, 1707; A. S. S., vol. 1, p. 681; Zacharia apud La-Croix, n. 1518; L. 577; E. M.

781. **Can parish priests, bishops, and cardinals choose a confessor for themselves?** Response to the first: negatively, from proposition 16 condemned by Alexander VII.

To the second: affirmatively, from c. *Ne pro dilatione*, final, de Poenit. et rem. But the Sacred Congregation apud Fagnanus on the said chapter, n. 62, declared that this is understood only that bishops outside the diocese can choose a priest subject to themselves.

To the third: affirmatively, but only at Rome, both for themselves and for their household; and the one whom they have chosen in the City they can conduct with themselves outside the City. Fagnanus, loc. cit., nn. 53, 65, 66; L. 565, de Priv. 65; Lugo, d. 20, n. 64; E. M.

X. On Regulars and Nuns

782. **From whom do regulars obtain jurisdiction and approval?** Regulars for hearing the confessions of their own receive approval from the superiors of their own monastery, province, or order; but jurisdiction is delegated to them by their superiors. And this is understood not only of professed religious, but also of novices, and also of secular servants who are truly of the household and continual table-companions; such are not those who merely serve them, but those who remain day and night in the house of the religious, are fed there, and live under their obedience, although not by reason of a vow.

As to the confessions of secular persons, all mendicant religious, and those who participate in their privileges, have jurisdiction immediately from the Pope. Cf. 784, 778. But they must receive approval from the bishop of the place where confessions are to be received; this approval is required not only for liceity but also for the validity of absolution. And this must also be understood of nuns, although they are of the same order and subject to them, for whom special approval of the bishop of the place is still required. This is established from the privileges granted to regulars by the Supreme Pontiffs, Clement, *Dudum de Sepulturis*, etc.; from Trent, sess. 23, c. 15; from the constitution *Superna* of Clement X; from the common opinion of the doctors. L. 549, 552; Ferraris, v. *Approbatio*, a. 1, nn. 64ff.; E. M.

783. **Note.** "Religious approved by the bishop for hearing confessions of secular persons in his own diocese cannot hear them in another diocese without the approval of the diocesan bishop, although the penitents are subjects of that bishop by whom the same religious had already been approved." Const. *Superna*.

784. **Does a religious validly absolve secular persons, with the superior not knowing or unwilling, from the faculty of the bishop of the place alone?** Response: affirmatively. The reason is that the bishop can well confer jurisdiction over his own sheep on a religious, no less than on an external secular priest. For whoever enjoys ordinary jurisdiction can delegate it to any priest. Moreover a religious, as is established from Pontifical Bulls, cf. brief of Paul III, *Cum inter*, June 3, 1545, etc., directly receives jurisdiction from the Supreme Pontiff, but with subordination to the approval of the bishop, since the Supreme Pontiffs by their supreme power confer jurisdiction on the same religious, and, with all privileges abrogated, the bishop's approval is required from the Council of Trent. And this is had in so many words in the brief of Leo XII, *Plura inter*, July 11, 1826. Hence the ignorance or prohibition of the superior renders the act illicit gravely or lightly, but by no means invalid. A. S. S., vol. 1, pp. 680, 683. It is confirmed from the Declaration of the Sacred Congregation of Bishops and Regulars, March 2, 1866. E. M.

785. **Can boarders of colleges or seminaries be absolved by regulars without the approval of the bishop, as being of the household?** The first opinion denies, because boarders of this kind are not of the household, as servants are. For these, through service, are almost incorporated into the house and household; hence they are called domestics and members of the household. Boarders are persons external to the household, who pay money so that they may receive food, instruction, and education from the masters.

The second opinion affirms. The reason is: 1. because nothing is lacking in them whereby they would not be truly of the household and continual table-companions. 2. Because if servants are truly of the household and continual table-companions because they depend on regulars because of material service, how much more are boarders to be held as of the household, who live under the perfect dependence and obedience of regulars. 3. Because to several orders and congregations belongs the privilege of familiarity for their boarders; and this also belongs to others because of communication of privileges. 4. The same doctrine is confirmed from practice and custom. Thus Pichler, Pellizarius, Schmalzgrueber, and very many others. Lugo, *Responsa Moralia*, bk. 3, d. 33; Bouix, pp. 204ff., p. 626; A. S. S., vol. 3, pp. 47ff.; Lucidi, 3rd ed., pp. 370ff.; Bizzarri, *Collectanea*, ed. 1885, pp. 563ff.; E. M.

786. **Can a bishop deny approval to regulars?** A bishop can: 1. omit or require a previous examination for approval, even if someone has been approved by his predecessor, or even by his vicar general. 2. Recall to examination after approval, even one granted simply, but without previous examination. 3. Give approval with limitation of time, persons, places, cases, or even deny it, if they are not judged universally suitable. 4. Subject those who have been approved with limitation to a new examination, and restrict that limited faculty, or altogether take it away, even without a new cause concerning confessions. This is proved from the constitution *Superna* and various Declarations of the Sacred Congregation. Bouix, pp. 221ff.; L. 552, 792.

The bishop cannot: 1. deny approval generally to regulars without cause. 2. Revoke approval from all regulars of the same community, or at least restrict regular confessors to two for any church. 3. Deny examination to a regular seeking absolute approval for confessions, and grant either no approval or only limited approval, unless, however, it is certainly established to the Ordinary that the regular is not generally suitable. 4. Approve with limitation those who, after previous examination, have been found generally suitable for hearing confessions. 5. Revoke or limit licenses granted, or examine again, if someone after previous examination has been approved without limitation by the bishop himself, because he was found universally suitable, unless from scandal, or some delict, or another new supervening cause which concerns confessions. 6. In approving regulars, even with limitation, prohibit them from receiving confessions during Paschal time, or receiving the confession of the infirm and dying; concerning this, nevertheless, the parish priest must be informed, either by living voice or by writing retained with the sick person, so that he can safely administer the last sacraments. Here it must be noted that for hearing confessions of the infirm the license of the parish priest is in no way required. This is likewise proved from the constitution *Superna* and various Declarations of the Sacred Congregation. Benedict XIV, const. *Apostolicum*, May 30, 1753, § 9; const. *Apostolica Indulta*, Aug. 5, 1744, § 3; Lugo, d. 21, n. 54; L. 550, 552, 792; Pignatelli, *Consultationes Canonicae*, t. 4, c. 163; Bouix, p. 252, *De Episcopo*, vol. 2, pp. 249ff.; Bizzarri, pp. 326ff., ed. 1885; E. M.

787. **When the See is vacant, can the capitular vicar examine regulars approved by the deceased bishop after previous examination, and, if he finds them less suitable, take away from them the faculty for confessions?** If the regulars obtained an unlimited license, it is certain that he can do neither. The same is probably to be said if they had obtained a license for a determined time, namely as long as that time has not expired. The same must be said from the common opinion if they had obtained a license at pleasure. This threefold assertion is established from the constitution *Exigentibus* of Clement IV, the constitution *Romani Pontificis* of

St. Pius V, the constitution *Superna* of Clement X, and the decision of the Sacred Congregation of Bishops and Regulars, June 19, 1806. After previous examination: for if they were approved with no previous examination, and are found inexperienced and scandals are generated, then the capitular vicar can call them to examination and approve those whom he finds suitable, and disapprove those unworthy. Sacred Congregation of the Council, Feb. 5, 1688; L. 552; Bouix, pp. 246ff.; E. M.

788. **Does a regular once approved in some diocese need new approval if, after changing habitation, he returns there?** Response: negatively. The reason is that one approved indefinitely and without limitation remains approved at least until implicit revocation of the approval; but in the present case no revocation intervenes, not even implicit. La-Croix, n. 1541; Lugo, d. 21, nn. 44, 91.

789. **Does a regular approved in some diocese need new approval for validly absolving if, having changed place, he passes through the same diocese?** Response: negatively, because approval granted indefinitely and without limitation lasts until revocation. La-Croix, n. 1541.

X. On Regulars and Nuns

790. **Can regulars freely choose a confessor for themselves?** Regulars living in a convent must confess to priests of the order designated by the superior, nor can they be validly absolved by any others, whether inside or outside the house, without the license of the superior.

"It is not licit for superiors of regulars to hear the confession of subjects unless they have committed some reserved sin, or the subjects themselves spontaneously or by their own motion have asked this from them." Decree of Clement VIII, May 25, 1594.

"Let superiors in individual houses depute two, three, or more confessors according to the greater or lesser number of subjects, and let these be learned, prudent, and endowed with charity, who may absolve them from non-reserved sins, and to whom absolution from reserved sins may also be committed when a case occurs in which the confessor himself first of all has judged that it ought to be committed." Decree of Clement VIII.

On a journey, if they have a suitable companion of the same Order, they must confess to him. But if a suitable companion is lacking, they can confess to any priest, whether regular or secular, whether approved or not, unless particular Constitutions of the order stand in the way. This faculty, however, has no place with respect to reserved cases. A companion is suitable if he is neither excommunicated, suspended, nor irregular, nor lacks sufficient knowledge.

Moreover under the name of regulars here are not comprehended religious of more recent congregations, which are not religions strictly so called and do not have canonical institution and approval, unless they have a special privilege in this matter. L. 574, 575; appendix on privileges, n. 111; La-Croix, bk. 6, part 2, n. 1524; Lugo, d. 20, nn. 66, 67; E. M.

791. **Do confessors of nuns need special approval, and can nuns freely choose a confessor for themselves?** It does not belong to nuns to choose a confessor for themselves, unless they have

this right from foundation or custom; in which case the confessor elected by them must be approved by the Ordinary.

If the nuns are not exempt, or if they are exempt and immediately subject to the Apostolic See, deputation of the confessor pertains to the bishop. If the nuns are exempt and subject to regular prelates, deputation of the confessor, nevertheless of the same order, pertains to the regular prelate. But it is necessary that the bishop approve him, and indeed specially for confessions of nuns; indeed also for such a convent, so that it is not enough that he has already been approved by the bishop for another convent. And he must be approved as often as he is deputed to that office.

The Sacred Congregation of Bishops and Regulars, May 2, 1617; June 7, 1620; Sept. 2, 1642, etc., established that confessors of nuns must be above the age of forty years, and that ordinary confessors must be changed every three years. Yet this is not observed everywhere; and, unless it is done, it does not import invalidity of absolution. Sacred Congregation of Bishops and Regulars, July 20, 1875; *Collectanea* of the Sacred Congregation de Propaganda Fide, n. 436.

Moreover the confessor is bound to approach for hearing confessions of nuns as often as he has been called. For the rest, let him beware lest he conduct himself as superior of the monastery, since such authority belongs to him in no way.

Deputation of an extraordinary confessor pertains to him to whom deputation of the ordinary belongs, and one or more are to be offered at least twice or three times a year. Trent, sess. 25, c. 10, de Regularibus. Even from the sole reason of spiritual consolation and progress, a particular confessor whom a nun asks for must be granted extraordinarily, provided that both on the part of the nun and on the part of the confessor whom she requests for herself, nothing appears from which the said spiritual progress is not to be hoped. If a regular prelate neglects to give an extraordinary confessor, the bishop supplies his negligence. If the bishop himself neglects to give an extraordinary confessor, nothing else is conceded to the nuns than to have recourse to the Major Penitentiary.

Moreover it is prescribed that the extraordinary confessor at least once a year be either secular or of another order, and at that time the ordinary is to hear the confession of no one, neither of the abbess, nor of the novices. All nuns are bound to present themselves to the extraordinary confessor, so that provision may be made for the liberty of all; nevertheless they are not bound to confess to him.

By decree of the Sacred Congregation of Bishops and Regulars, Dec. 17, 1890, art. IV: "His Holiness admonishes prelates and superiors not to deny an extraordinary confessor to subjects whenever, in order to provide for their own conscience, the subjects are driven to this, without the same superiors in any way inquiring into the reason for the petition, or showing that they bear it with annoyance. And lest so provident a disposition become ineffectual, he exhorts Ordinaries that in places of their own diocese in which communities of women exist, they designate suitable priests furnished with faculties, to whom these women can easily have recourse for the sacrament of penance." But this, as is clear, does not proceed so far that they may constantly have recourse to an extraordinary confessor without ever approaching the ordinary confessor. Hence it was declared: "The dispositions of art. IV of the Decree *Quemadmodum* constitute only an exception to the common law for cases only of true and absolute necessity, whenever they are driven to it, while what has been prescribed by the Sacred Council of Trent and by the constitution *Pastoralis curae* of Benedict XIV remains firm." Sacred Congregation of Bishops and Regulars, Feb. 1, 1892.

In the article of death, to any nun requesting it, a particular confessor is to be granted by the bishop; and if the monastery is exempt, when the regular prelate does not grant it, he is to be assigned by the bishop, or, if the bishop also refuses, by the Major Penitentiary, if time permits. But if time does not permit, provision has been made by the Council of Trent, sess. 14, c. 7.

By the name of nuns here are understood only women properly so called living under a rule in cloister; but not those who are not bound to observe rigorous cloister. But the cited Decree *Quemadmodum* of the Sacred Congregation of Bishops and Regulars, Dec. 17, 1890, also regards more recent nuns of simple vows only and without papal cloister. Gregory XV, const. *Inscrutabili*; Clement X, const. *Superna*; Benedict XIV, const. *Pastoralis curae*; Ithur., case 16; Bouix, *De Episcopo*, vol. 2, p. 253; *De Iure Regularium*, vol. 2, p. 332; L. 576, 577; E. M.

X. On Regulars and Nuns

792. **Can cloistered nuns be absolved by any confessor while by chance they are outside the monastery?** Response: affirmatively. The reason is that the constitutions *Inscrutabili* of Gregory XV and of other Supreme Pontiffs, which prohibit nuns from confessing to another priest than one specially approved by the bishop for nuns, are not to be understood except of nuns living in monasteries; for they suppose that nuns are always within cloister. Therefore any confessors, although not approved for nuns, can absolve nuns who accidentally come to them. Besides, it would generally be too great an inconvenience if traveling nuns had to confess only to confessors specially approved; for often they would have to lack the sacraments of penance and Eucharist. La-Croix, n. 1527; E. M.

793. **What is to be said about confessors of more recent Institutes of nuns?** As to special approval of the bishop in the confessor, this is not required from the general law. For the law speaks about nuns strictly such. But it is required from the particular disposition of the Holy See in approving the Constitutions of these Congregations, and from the particular disposition of bishops, who are accustomed to grant approval only with nuns excepted, comprehending also the more recent nuns.

As to an extraordinary confessor to be constituted by the bishop several times a year, again the bishop is not strictly bound to this from the general law, for the same reason. But he is bound to it, and under grave obligation, from the natural law of charity and justice, by which he must provide for the spiritual good of his subjects; and besides from the very condition under which the more recent Constitutions are approved, since the Sacred Congregation is accustomed to prescribe that, as to confessors, the constitution *Pastoralis curae* of Benedict XIV be observed. Moreover an admonition is had in the cited Decree *Quemadmodum*, already related above in n. 791.

Furthermore, what has been established about nuns, Benedict XIV wishes to be observed also in these who do not have canonical cloister; indeed in any communities or conservatories whatsoever of women and girls living together, which have one ordinary confessor designated by the Ordinary of the place. Therefore the Sacred Congregation of Bishops and Regulars judged that he must be renewed every three years, Sept. 27, 1861. But it is licit for such a woman to confess either outside the conservatory or monastery. The same Sacred Congregation, Jan. 22, 1847. But where nuns or women of this kind are accustomed to confess in churches, they can confess to anyone otherwise

approved, which has been introduced by custom, and is established from the Sacred Congregation de Propaganda Fide, Feb. 20, 1877, *Collectanea*, n. 437, although they have an ordinary confessor designated by the bishop. Ferraris, v. *Moniales*, a. 5, n. 19; E. M.

XI. On Reservation

794. **What is reservation?** Reservation of causes generally is the calling away of the judgment of some cause from an inferior judge to a superior; whence it happens that, while his ordinary power remains in the inferior judge, power is taken away from him as to other graver causes to be judged. Therefore reservation of cases in our matter, namely reservation of sins or censures in order to absolution to be given and received, is a restriction or limitation of jurisdiction, that is, a denial of the power of absolving from certain sins and censures, while power of absolving from others remains. Therefore in reserved matters a simple confessor can do nothing; in reserved matters, not in the penitent bound by reserved matters. The penitent can be absolved from other sins; he cannot be absolved from the reserved sins. Although the penitent in good faith confesses these, and the confessor absolves, then they are remitted only indirectly. Trent, sess. 14, c. 7, can. 11; Lugo, *De Eucharistia*, d. 14, nn. 87, 96; L. 265, 578, 579, 596; St. Thomas, Supplement, q. 20, a. 2.

795. **Who can reserve cases; and which cases have those who can reserve reserved in fact?** The Supreme Pontiff, by reason of his jurisdiction over the whole Church, can reserve cases in the whole Church. But cases in fact reserved to the Supreme Pontiff are some reserved with censure, others without censure. Papal cases reserved with censure are contained in the constitution *Apostolicae Sedis* of Pius IX on censures, to which a few others have afterward been added. Papal cases reserved without censure are calumnious accusation of solicitation, and acceptance of gifts from regulars, unless the gifts have not been restored. Cf. 285, 1279.

Bishops, by reason of their jurisdiction over their own diocese, can reserve cases in it. Episcopal cases are some reserved by common law itself, others by the bishops themselves. The former are contained in the praised constitution *Apostolicae Sedis*. But the latter, reserved to themselves by the bishops themselves, vary according to various dioceses and are contained in their own catalogs. Moreover Ordinaries cannot reserve to themselves cases which the Supreme Pontiff has reserved to himself. Sacred Congregation of Bishops and Regulars, Nov. 26, 1602. Cf. Suarez, d. 31, s. 4, n. 25; Lugo, d. 20, nn. 149, 151. Besides, they ought not be ready in reserving to themselves especially more frequent sins, for instance sins against chastity; but on the contrary they are admonished to be ready in granting the faculty of absolving, especially to confessors in places far removed from the episcopal city. Hence they are also admonished to constitute penitentiaries and other priests in the diocese who themselves can absolve and give the faculty of absolving to others. Sacred Congregation of Bishops and Regulars, Nov. 26, 1602. Finally, episcopal reservations made outside a synod, since at least in fact they are not held as perpetual laws, whether the chapter has been consulted or not consulted, cease when the Ordinaries cease from office or die.

Parish priests also, although they are not higher prelates and from this head it would not seem that they themselves can reserve cases, nevertheless absolutely can, because they have ordinary jurisdiction. But in fact there is no reservation by parish priests, since it would be almost useless.

Regular prelates can reserve, if they wish, the eleven cases designated by the Decree of Clement VIII, May 26, 1593. Other sins or censures they can in no way reserve without mature discussion and the consent of the general chapter in the whole order, or of the provincial chapter in the province. But nuns are subject to the reservation of the bishop if they are not exempt; otherwise, however, if they are exempt. But nuns subject to regulars are also subject to the reservation of the bishop in matter clearly pertaining to delegated jurisdiction. E. M. 565; L. 580-583, 600, 602; Benedict XIV, *De Synodo*, bk. 4, c. 5; E. M.

796. **What in fact are the conditions of reserved sins?** The Church is not accustomed to reserve except graver and external sins. Therefore reservation is not incurred unless the sin was grave by an act at once internal and external, and consummated. Nor likewise is it incurred either in doubt of law or in doubt of fact about the sin itself, although after absolution has been received the reservation appears certain.

Do age, fear, and ignorance excuse from reservation? They certainly excuse when reservation has the character of a penalty, as in the reservation of censures. Hence ignorance excuses from reservation in papal cases, because, with two exceptions, cf. 795, all the rest are reserved because of a censure, from which ignorance excuses. Therefore, when the censure has been removed, no reservation remains. For episcopal cases, if reservation is joined to censure, theologians disagree; but several grave theologians hand down the same for these as for papal cases, since in law no distinction is found between papal and episcopal censures. But not a few establish a difference between episcopal and papal cases, so that in the former, when the censure ceases, for example because it is unknown, reservation still remains, since the sin is reserved both by reason of the censure and by reason of itself. But the words of the reservation, custom, and the power of the one reserving must be considered, so that the matter may be defined. Suarez, d. 29, s. 2, n. 7.

They also excuse in the reservation of sins when the legislator positively declares that he establishes the reservation as a penalty for the crime; for then it is certainly penal. But do they also excuse when the sin is simply reserved? There are those who affirm, because reservation by its nature is a vindicative penalty, or at least medicinal, or because such at least is reasonably presumed to be the will of the legislator. This opinion is probable to many, and also to several of those who oppose it, who consequently conclude that it is licit to use it, provided that the confessor make the penitent more certain about the reservation, so that if afterward he falls again into reserved sins, he may be held by the reservation.

But much more commonly and more truly the doctors deny. The reason is that reservation by its nature is not a penalty, but merely a restriction of jurisdiction as to greater causes, which the superior judge calls to himself to be judged by himself and subjects exclusively to his own judgment. Nor indeed is the will of the legislator reasonably presumed, since this cannot be taken either from the intrinsic nature itself of reservation, or from the extrinsic words of the law and other circumstances. And certainly no excuse is to be admitted if the legislator explicitly declares that he wishes to comprehend in the reservation both children, those suffering fear, and the ignorant. L. 580-583, 596, 600.

XI. On Reservation

797. **Who can absolve from reserved matters and when?** Besides the Roman Pontiff and the Major Penitentiary, those who reserve and those who act in their place can absolve by ordinary law. Therefore bishops and their vicars general absolve from episcopal cases, c. *Non putamus* 2, de Consuet. in 6, each in his own diocese; but not canon penitentiaries. L. 599.

From reserved cases of regulars their superiors absolve. But at present regulars cannot absolve from papal cases, from the constitution *Apostolicae Sedis* of Pius IX on censures; nor can they absolve from episcopal reserved matters from proposition 12 condemned by Alexander VII. But they can absolve from matters reserved to bishops by common law itself, since this faculty is nowhere found revoked. L. 599; Holy Office, March 22, 1881. Likewise all who receive delegated special jurisdiction over reserved matters absolve from reserved matters.

Power of absolving from reserved matters given simply for papal cases, or given even for papal cases, does not hold as to cases reserved by Ordinaries. Benedict XIV, const. *Pias Christi*; L. 594. Power given by an Ordinary for absolving reserved matters does not hold for papal cases. But each power simply given does not hold for specially reserved matters, or matters reserved in a special mode. C. *Si episcopus* 2, de Poenit. in 6.

Since travelers by common custom confess and are absolved as inhabitants of the place in which they dwell, they cannot be absolved from matters reserved in the place of confession by a simple confessor; but they can be absolved from matters reserved in their homeland, unless they came there in fraud of the reservation, and it concerns censures reserved *ab homine*. Clement X, const. *Superna*, June 21, 1670; Sacred Congregation of the Council, Sept. 16, 1649, apud Benedict XIV, *De Synodo*, bk. 5, c. 8; Sacred Congregation of the Council, Nov. 12, 1612; Sacred Penitentiary, Nov. 21, 1873. He comes in fraud of reservation who comes for this principal end, of avoiding the judgment of his own pastor and obtaining absolution from reserved matters. Therefore if he comes in order to handle his other business and then to confess, or even in order to confess better, he uses his own right. Concerning censures reserved *ab homine*: for these universal custom cannot be invoked, as for censures, although reserved, imposed by law; yet others deny this. D'Annibale, n. 346, vol. 1, 3rd ed.; L. 573, 574, 587, 592, 593; Fillucci, tr. 7, c. 10, n. 284; Gury-Dumas; Gury-Ballerini, n. 582.

In the article of death all can absolve from reserved sins and censures, because then there is no reservation from Trent, sess. 14, c. 7. Therefore for absolving from papal cases there is no need of the bishop's permission, and anyone can absolve from reserved matters, even when the superior or another having power is present. Cf. 773.

A superior who has ordinary jurisdiction can remove reservation outside confession; and the penitent can then be absolved by any confessor. But one who has delegated jurisdiction, since it is given principally for absolving sins, can absolve from reserved matters only in sacramental confession. Suarez, *De Censuris*, d. 7, s. 5, n. 36; Lugo, d. 20, n. 74.

"But can a superior absolve a penitent from reserved matters and remit him to an inferior for the others? Some affirm universally... Others say this is licit only in a case of grave necessity, for instance if the superior could not extricate himself from some very grave business, and on the other hand judged it necessary personally to hear the reserved sin. And Lugo, d. 20, n. 78, the Salmanticenses,

etc., admit this. But in a very rare case, with the added condition that the penitent is under necessity of communicating and does not wish to confess the same sins twice. This last does not seem improbable, the case being posited with all these conditions." L. 595.

"One who has been absolved by a superior from reserved matters can afterward be absolved from the same by anyone, because they are no longer necessary matter of confession." L. 596; E. M.

798. **Note.** The superior ought not with difficulty give permission of absolving from reserved matters, "lest otherwise what ought to have tended to edification yield to destruction." L. 578; St. Thomas, IV, dist. 17, q. 3, a. 3, q. 4, ad 6; *Opusc*. against the impugners of Religion, c. 1. Therefore, regularly, he sins gravely if from denial grave detriment of the subject is feared. L. 586. Regularly, namely unless grave scandal and grave harm to the community threaten, to which only the superior, with the matter known, could bring remedy. L. 586; Suarez, d. 30, s. 4, nn. 8, 9; E. M.

799. **Is one absolved from reserved matters in the article of death by an inferior bound to present himself to the superior if he recovers?** Response: negatively, if the discussion concerns merely reserved sins. For from Trent, sess. 14, c. 7, in the article of death there is no reservation. Therefore there is also no burden of reservation, unless it is proved from elsewhere.

If the discussion concerns reserved censures generally, the first opinion absolutely affirms from c. *Eos qui* 22, de Sent. exc. in 6; the second opinion distinguishes as to papal censures: it affirms concerning papal censures reserved in a special mode, denies concerning others. The reason is that in the constitution *Apostolicae Sedis*, concerning the former it is said that the obligation of standing to the mandates of the Church remains firm as to those absolved if they recover, but concerning the rest nothing is said. The third opinion absolutely denies, even concerning the aforesaid censures reserved in a special mode, because Trent has not been corrected by the constitution *Apostolicae Sedis*, and that clause, neither from the law of the Decretals nor from the authority of theologians, necessarily signifies the obligation of presenting oneself to the superior; provided nevertheless that if the penitent recovers he perform those things which the superior would have exacted from him, the matter has not been notorious, nor brought to the contentious forum. Cf. cited c. *Eos qui*. For Trent removed that obligation, declaring without any ambiguity of words that in the article of death there is no reservation, and then immediately confirming the obligation of approaching the superior outside the article of death, sess. 14, c. 7. And this argument, taken from Trent, is confirmed from the constitution *Apostolicae Sedis* itself, since if cases reserved in a special mode are to be excepted, this is for this reason, that in the same constitution they are expressly excepted by force of the aforesaid clause, while concerning other simply reserved cases almost no question is moved further.

Moreover it has been declared by the Holy Office that the obligation of standing to the mandates of the Church imports the burden either personally or through the confessor of recurring to the Supreme Pontiff and obeying his mandates, or of seeking a new absolution from one having the faculty of absolving from censures reserved to the Supreme Pontiff in a special mode. And this obligation is under penalty of reincidence. But the same obligation does not press for other simply reserved cases. Holy Office, Aug. 19, 1891; Jan. 13, 1892; March 30, 1892.

XI. On Reservation

800. **When an impediment of approaching the superior stands, can someone be absolved by a simple confessor from reserved cases?** From the ancient law of the Decretals: bishops can, in the aforesaid case, by themselves or through others specially delegated by themselves, absolve in each forum from all cases and censures, however reserved to the Apostolic See. This is established: 1. from cc. 2, 3, 6, 11, 13, 17, 24, 33, 37, 50, de Sent. exc., etc.; 2. from the common opinion of theologians. Hence the saying: a papal case, when an impediment supervenes, becomes episcopal. L. 584, 599.

Although by no express law, nevertheless from common doctrine a threefold impediment is distinguished: for a short time, for a long time, perpetual. If the impediment is for a short time, that is, not up to a year or six months, then one bound by a reserved sin or a reserved censure cannot be absolved by another unless a grave cause is present. A grave cause is not only the Paschal precept, or necessity of communicating or celebrating, but also if the penitent otherwise would have to remain in mortal sin for a long time, that is, beyond two days. L. 585, bk. 7, nn. 84, 86, 88. In such a case the common and received opinion holds that someone is absolved from a reserved sin only indirectly; and therefore the penitent is bound afterward to be directly absolved by one having power. L. 585, 596. From a reserved sin: namely whether the sin is reserved without censure or with censure; for one can be absolved from a censure only directly; but when that grave cause stands, the censure does not prohibit sacramental absolution.

But there are several grave doctors who hold that absolution also in this case is given directly from the reserved sin, whether reserved without censure or with censure. Where it concerns reserved censures, the law does not distinguish between a long and short time, c. *Nuper* 29, de Sent. excomm.; c. *De cetero* 11, eod. tit.; c. *Quamvis* 58, ibid.; c. *Eos qui* 22, eod. tit. in 6, etc. Therefore, if it is valid to argue from a faculty positively made by law when the case is reserved with censure, the same must again consequently be said if the case is reserved without censure. And the Decree of the Holy Office, June 23, 1886, and of the Sacred Penitentiary, Nov. 7, 1888, indeed favor this opinion. But in this opinion too the penitent without doubt, when the impediment ceases, is bound to present himself to the superior; this is provided in the law itself for cases reserved with censure. But for cases reserved without censure, because by force of reservation the penitent is bound of himself to undergo the judgment of the superior whenever he can, the past impediment could not of itself absolutely exempt the penitent from this burden, although he could confess to the inferior confessor by a certain legitimate interpretation. Indeed, if the law makes that power of absolving when the case is graver, namely reserved with censure, it seems implicitly to make the same power when the case is less grave and is reserved without censure. But the penitent directly absolved in this way in either case must present himself to the superior, not in order to confess again to him and again be absolved by him, since he has already been directly absolved, but "to receive his mandate, and to satisfy according as justice persuaded." C. *Eos qui* 22, de Sent. exc. in 6; c. *Quamvis* 58, eod. tit., etc.

If the impediment is for a long time, that is, for a year or six months, and the sin is reserved with censure, absolution is indeed given directly, from the common opinion, which again the aforesaid Decree of the Holy Office, June 23, 1886, favors; but first with the burden imposed of presenting oneself to the superior when the impediment ceases. But one omitting to present himself falls again

into the same excommunication; and this reincidence shows that he had been absolved from the censure, otherwise there would be no place for reincidence. But one absolved from a reserved censure is now directly absolved from the sin, since when the censure ceases, the sin is no longer reserved. C. *De cetero* 11, de Sent. exc.; c. *Quamvis*, eod. tit.; c. *Eos qui* 22, eod. tit. in 6.

Several sustain this reincidence even after the constitution *Apostolicae Sedis* of Pius IX limiting censures; because, they say, it pertains to the very nature of a censure, which the aforesaid constitution does not change. Others limit reincidence only to cases reserved in a special mode in the aforesaid constitution, since for these alone, they say, reincidence is established for the article of death; therefore also in the case of impediment, reincidence is likewise to be admitted for the same cases; otherwise reincidence would be had when reservation ceases of itself, namely in the article of death, but by no means would be had when it ceases accidentally, namely in the case of impediment. Finally others judge reincidence removed by the cited constitution, because it is not read as renewed in it, from which censures at present are to be taken. And the same constitution, when in a particular case it wished to maintain a censure, expressed it, as in article 4 of excommunications simply reserved to the Supreme Pontiff. And therefore reincidence must be said to be removed in the case of impediment, because reincidence is not intrinsic to the nature itself of a censure; and thus, unless Boniface VIII had added it, no one, as before, would have incurred reincidence. At present censures are to be estimated from the constitution *Apostolicae Sedis* "no otherwise than if they had first been issued by it." Therefore, since reincidence is not had in it, it is not to be affirmed. This holds as far as it is from the force of the constitution itself, since reincidence is affirmed in the cited Decree of the Holy Office, June 23, 1886.

But if the sin is reserved without censure, from the common opinion no burden is imposed of presenting oneself to the superior. The reason is that as this is prescribed by law for reserved censures, so for sins merely reserved it is not prescribed. But this burden seems to have to be affirmed by the same reason as in the preceding case, and it is confirmed by the cited decrees of the Holy Office, June 23, 1886, and Sacred Penitentiary, Nov. 7, 1888.

If the impediment is perpetual, that is, for ten years or five years, absolution is given directly from the sin whether reserved with censure or without censure, and in either case the burden of presenting oneself to the superior is not imposed; for in this case reservation simply ceases, and that burden is incompatible with a perpetual impediment. C. *Eos qui* 22, de Sent. excomm. in 6. Thus from the common and received opinion. L. 585.

XI. On Reservation

Those perpetually impeded are judged to be sons under parental authority, regulars, elderly persons, even sexagenarians, servants, the poor, those perpetually condemned to prison or the galleys, the infirm, namely those laboring under a long and grave infirmity although not deadly, those bound by the care of feeding or administering a family, or of carrying out a public office which cannot be left without public hindrance, all women and not only nuns, unless an exception is had, as for nuns violating cloister, the impubescent, even if after puberty they seek absolution, and anyone who cannot undertake a journey without grave spiritual or temporal harm to himself or his own. Cc. 2, 11, 26, 32, 37, de Sent. excomm.; L. 594, bk. 7, nn. 84ff.

Those impeded from approaching Rome in person are not bound to send a letter, or a procurator, or to write to the Sacred Penitentiary, or to approach a delegate, although they can. For the law does not oblige the accused except to approach the superior personally. Holy Office, July 18, 1860; c. *Cum desideres* 15; c. *Quod de his*, de Sent. excomm., cited by the same Sacred Congregation; L., bk. 7, nn. 85-93; Schmalzgrueber, nn. 262, 246; Sanchez, *In Decalogum*, bk. 2, c. 13, n. 30; Roncaglia, tr. 4, c. 6, q. 4, r. 2. And although others have thought and still think otherwise, nevertheless the Decree itself of the Holy Office, June 23, 1886, favors this opinion, because in any case the aforesaid Decree rests on changed conditions.

Those still impeded from approaching the bishop for these cases and censures reserved to the Roman Pontiff can be absolved by any confessor. L. 585. Thus from c. *Nuper* 29, de Sent. excomm., "where the faculty of absolving seems indifferently to be conceded to the bishop and to one's own priest, namely to any confessor." Roncaglia, loc. cit., r. 3. Hence there is also a probable opinion, which several grave theologians hold, that absolution of cases and censures, when the impediment of approaching the Roman Pontiff stands, pertains not only to the bishop but indistinctly to any confessor. "As to reserved censures," says Roncaglia, "I warn that the opinion is well founded in law which asserts that one temporally impeded from approaching the Pope can be absolved by a simple confessor, and does not have necessity of approaching the bishop for absolution from a case reserved to the Pope." Tr. 19, c. 3, q. 3, and loc. cit., r. 3. This indeed is drawn from c. *Eos qui* 22, de Sent. excomm. in 6, from c. *Quamvis* 58, de Sent. excomm., and is clearly had in c. *Nuper* 29, eod. tit. Hence the opposite opinion, which became more common, rests rather on the authority of theologians than on some clear text of law. But theologians do not have the power of making laws. And this is so true that D'Annibale, who adheres to the opposite opinion, nevertheless admits, part 1, n. 349, 3rd ed., that this one "coheres very well with the words of the canon." For the rest, the constitution *Apostolicae Sedis* of Pius IX on censures favors this opinion; since it would have been very easy for the Legislator, with other cases reserved to bishops, to add this also, which on the contrary has been omitted. But what now chiefly matters in this question is that the praised Decree of the Holy Office, June 23, 1886, favors this opinion, and at present it must be stood by.

If it concerns episcopal cases and censures, St. Alphonsus, n. 585, bk. 7, n. 92, and several others deny that a simple confessor can absolve from reserved matters; but certainly probable, indeed perhaps more probable, is the opinion asserting that those who are impeded from approaching the bishop can be absolved from them by any confessor. And this is manifestly had in c. *Nuper* 29, de Sent. excomm.; c. *Eos qui* 22, eod. tit. in 6, where the discussion is about any superior whatever and not only about the Roman Pontiff. D'Annibale, part 1, n. 349, 3rd ed.

After the Decrees of the Holy Office, June 23, 1886; June 17, 1891; Aug. 19, 1891; March 30, 1892; June 16, 1897; and of the Sacred Penitentiary, Nov. 7, 1888, in papal cases and censures, whether simply reserved or reserved in a special mode, recourse must be made by letters to the Sacred Penitentiary, when the impossibility of personally approaching the Holy See stands. Nevertheless any simple confessor can directly absolve from them in truly more urgent cases in which absolution cannot be deferred without danger of grave scandal or infamy, about which the consciences of confessors are burdened; indeed even in the case in which there is neither infamy nor scandal in the delay of absolution, but it is very hard for the penitent to remain in grave sin through the time necessary for the petition and granting of the faculty of absolving from reserved matters, with the

things to be enjoined by law enjoined, and under penalty of reincidence into the same censures, unless at least within a month, by letter and through the medium of the confessor, the one absolved has recourse to the Holy See. And this holds also for the case in which the penitent has been perpetually impeded from traveling to Rome. And these things altogether oblige, and contrary practice is not to be tolerated.

This Decree rests on the practice of the Sacred Penitentiary and does not pertain to episcopal cases. Since no new Decree has appeared concerning them, the ancient doctrine founded on the ancient law of the Decretals remains unmoved until something else is defined. Therefore a penitent having reserved cases, if he is legitimately impeded from presenting himself to the superior, can indeed be absolved by another; but when the impediment ceases, he must present himself to the superior, to receive his mandates and to satisfy according to the requirement of the matter. C. *Nuper*; c. *Eos qui*, cited, etc.; E. M.

XI. On Reservation

801. **Can bishops absolve from occult papal cases and censures?** Response: affirmatively from the faculty granted to them through Trent, sess. 24, c. 6, except nevertheless cases and censures reserved in a special mode to the Roman Pontiff, as is established from the constitution *Apostolicae Sedis* of Pius IX. They can likewise absolve from several papal cases and censures by force of quinquennial faculties. Cf. the formula of these faculties. The same can also be done by approved confessors having the leaflet of the Sacred Penitentiary. Cf. this leaflet. L. 593, 594, 599.

802. **Is one bound by reservation, in necessity of communicating or celebrating, bound to confess, and to confess integrally, to a simple confessor, another being lacking?** Response: affirmatively, whether he has only reserved sins, or has besides non-reserved sins, according to the opinion that a simple confessor in such necessity directly absolves from reserved matters. The reason is that there is no reason for omission of confession and integral confession.

According to the other opinion, that a simple confessor in such a case absolves only indirectly, one must distinguish. For if he has no other mortal sin except a reserved one, the doctors agree that he is not bound to confession, but that it suffices that he be contrite. The reason is that a confessor not having jurisdiction is just as if he were absent. But if he has mortal sins at the same time reserved and not reserved, the common opinion holds that he is altogether bound to confession. The reason is that the precept of confession presses; and although the confessor does not have jurisdiction over the reserved matters, he nevertheless has jurisdiction over the penitent bound by reserved matters, and can absolve him at least from the non-reserved sins. Yet there are several doctors who deny.

But must someone in such a case also accuse the reserved sins? The far more probable opinion denies. The reason is defect of jurisdiction in the reserved matters. Yet the case must be excepted in which that knowledge of the reserved sins would be necessary for judging rightly about the actual disposition of the penitent and for prescribing opportune remedies to him, so that relapse may be avoided. According to the Decree of the Holy Office, June 23, 1886, cf. 800, this confession, and

indeed integral confession even of cases reserved to the Supreme Pontiff, must be made. L. 265; cf. 577.

803. **Is one who has confessed to an inferior a doubtfully reserved sin altogether freed from reservation, even if afterward he knows it as certain?** Response: affirmatively. The reason is that, since he confessed a doubtfully reserved sin, he has already been directly absolved, and therefore the reservation remains directly removed. L. 600; cf. 674.

804. **Can one be absolved from reserved matters who sinned in confidence of obtaining the license?** Response: affirmatively, since the faculty granted does not exclude this case. L. 601.

805. **Does the faculty granted of absolving from reserved matters extend also to reserved matters committed after it?** Response: negatively, if it was granted merely for past cases. Affirmatively, if it was granted indefinitely for such a penitent, this time, provided that a great distance is not interposed between the granting of the faculty and the new reserved sins committed, for instance not beyond a month; for that faculty is given for the present confession. L. 601.

806. **Is reservation removed in a confession made to the superior which was invalid, sacrilegious, or in which someone did not accuse reserved matters in any way?** Response to the first and second: more probably and from the common opinion, affirmatively; for sins, although accused to the superior in an invalid and sacrilegious confession, underwent the judgment of the superior.

To the third: at least probably, and from the opinion which St. Alphonsus calls most common, affirmatively, if someone inculpably omitted the reserved sins; for where the contrary will of the superior is not established, he certainly absolves as much as he himself can and as the penitent needs. Negatively, if they are passed over from malice, or indeed passed over inculpably in a confession otherwise sacrilegious. The reason is that the superior in this case does not actually wish to absolve; since in truth he does not wish to absolve a sacrilegious person, nor does he wish at least to absolve him from the bond of reservation, since the reserved sin has not undergone his judgment. L. 558, 597, 598.

XII. On the Various Offices of the Minister

807. **What about the office of father?** The confessor is a spiritual father, who gives spiritual life to the penitent, or repairs and fosters it; for in the tribunal of penance he bears the place of the best of all parents, namely Christ himself, and therefore is called by penitents with the sweetest name of Father. But that which stands out especially in the true name of father is notable and inexhaustible charity. For what love is stronger than a father's love? What love is truer, purer, more chaste, more constant, fuller of solicitude and more alien from one's own advantage, indeed more ready and prompt for every kind of privation and inconvenience? Therefore such ought the charity of the confessor to be, so that, clothed with the bowels of mercy of Christ Jesus, who came not to call the just but sinners, he may know how to deal studiously, patiently, and meekly with sinners. Leo XII, in the Bull for the great Jubilee of the

year 1825. Thus a good father will sustain all things for his spiritual children: for charity is patient..., bears all things..., endures all things. 2 Cor. 13:4.

The confessor ought to be full of charity toward penitents, both at the beginning, during the course, and at the end of confession. At the beginning, by kindly receiving all. Therefore they are especially to be reproved who, with men set aside, especially the rude, and mothers of families, hear only the confessions of young girls and devout women. Namely these hear confessions not that they may please God, but that they may indulge their own inclination. L., *Praxis*, n. 120.

During the course, by helping the penitent as much as he can, so that he may complete a good and salutary confession. Therefore, if penitents do not seem sufficiently instructed, the confessor ordinarily ought himself to examine them, because these persons, left to themselves alone, will not examine themselves better; and if they are dismissed, they will never return more disposed; indeed, frightened by the difficulty of examining conscience, they will easily abstain from confession. And if much time must be spent by the confessor in disposing the penitent, let him indeed spend it, nor ought he be concerned that other penitents are waiting.

At the end, by efficaciously exciting the penitent to sincere sorrow and purpose. And if the penitent does not seem sufficiently disposed, the confessor is bound to excite in him sorrow and purpose, because by absolving one indisposed he exposes the sacrament to danger of frustration; but if he dismisses him without absolution, he perhaps exposes him to danger of remaining long in the state of mortal sin, or even of not returning further. L. 607, 608; *Praxis*, nn. 4, 120.

But this charity of the confessor ought not be separated from prudence. Therefore "the confessor ought to be exceedingly cautious in receiving the confessions of women..., in the confessional itself he should regularly be rather stern than sweet with younger women." L., *Praxis*, n. 119. The same must be observed still more with spiritual persons, "with whom there is danger of greater attachment." L. ibid. St. Augustine apud St. Thomas, *Opusc.* 64, *De familiaritate domestica*, etc., says: "brief and stern conversation must be had with these women; nor, because they are holier, are they therefore less to be guarded against; for the holier they are, the more they attract." And St. Thomas adds: "although carnal affection is dangerous to all, it is nevertheless more pernicious to them when they associate with a person who seems spiritual; for although the beginning seems pure, nevertheless frequent familiarity is a domestic danger, and the more this familiarity grows, the more the principal motive is weakened, and purity is stained."

How widely this charity of the confessor extends must be taken from the end itself of confession, which is the spiritual salvation of the penitent. Therefore the temporal business of the penitent himself is foreign to the confessor; the spiritual and temporal business of others is also foreign. To involve himself in these things is not only sometimes ill-advised, but can also render the sacrament odious. Const. of Leo XII, *Caritate Christi*, Dec. 25, 1825; Salvatori, *Istruzione pratica pei confessori novelli*; L. 421, 452, 478.

808. **What about the office of physician?** The confessor is a true physician of souls, since he ought to rescue them from the various diseases of sin, remove the depraved affections of passions, and restore them to divine grace. Therefore the confessor, as a skilled physician, ought to know the cause of the evil, heal it, and prevent relapse.

To know the cause of the disease. "For the confessor, that he may meet the infirmities of his penitent with opportune remedies, the origin and cause of all his spiritual diseases must be known. Some inquire nothing besides the species and number of sins; if they see the penitent disposed, they immediately absolve him; but if not, without spending one word they instantly dismiss him, saying with an averted eye: Depart from me, because I cannot absolve you. Good confessors proceed otherwise; for these first investigate the origin and gravity of the disease, by asking about the habit of sin, about occasions, about time, place, persons with whom, with what conjunction of circumstances. For thus they will be better able to correct penitents, dispose them for absolution, and add salutary remedies." L., *Praxis*, n. 6.

To heal the disease. "Once the origin and gravity of the disease are known, let the confessor proceed to make due observations. And although he himself ought as a father to listen to penitents with charity, nevertheless as a physician he is bound, as much as is necessary, to admonish and correct them, especially those who, burdened by many mortal sins, rarely approach the sacrament of penance." L. ibid., nn. 7, 10.

To prevent relapse. The confessor will prevent relapse by assigning to the penitent suitable remedies for the disease. Moreover remedies are either general or particular.

General remedies are: pious prayer and love toward God; frequent invocation of the Blessed Virgin Mary, the holy Guardian Angel, and the patron Saint; frequenting of the sacraments and confession as soon as any mortal sin has been committed; consideration of the eternal truths, especially death and the last end, according to that saying: "Remember your last things, and you will not sin forever," Ecclus. 7:40; remembrance of God present when temptation presses, by saying: God sees me; evening examination of conscience with sorrow of soul and purpose; mental prayer and pious readings, especially for priests.

Particular remedies will be assigned according to the diversity of vices: for example, to one who is held by some hatred, let it be suggested, if this is prudently believed likely to be useful, that daily he commend to God the one whom he hates, reciting the Lord's Prayer for him, etc. And when he is disturbed by memory of the injury, let him remember the insults with which he himself has affected God. To one who has fallen into shameful sins, let it be enjoined that he avoid idleness, flee bad companions and depraved occasions. To one who has contracted a depraved habit for a long time in this vice, let it be prescribed that he not only avoid proximate occasions, but also certain remote ones, which for him, so weak, are as proximate. But especially let the confessor take care that this person communicate frequently, because the Eucharist is called: "wine bringing forth virgins." The confessor will assign other remedies to others according to his prudence, after inspecting the circumstances of occasions, persons, etc. For prudence is the chief quality which ought to stand out in a physician. L. ibid., n. 15.

XII. On the Various Offices of the Minister

809. **What about those habituated, about occasionaries, about recidivists? What about absolution to be given, denied, or deferred to them?** Diseases of the soul are habits, occasions, relapses; whence come the habituated or customary sinners, occasionaries, recidivists. The habituated or customary sinners are those who have contracted a habit of

sinning or a custom of sin, into which nevertheless they have not yet relapsed after confession. Moreover they are said to have contracted a habit or custom if regularly five times a month, indeed even once, they are accustomed to relapse into the same sins. A recidivist is one who after confession, although admonished, relapses into the same sins without any or almost any amendment. An occasionary is one who is found in some external circumstance which, either from its own nature or from the frailty of the person who is found in it, allures or induces to sinning. One occasion is necessary, another voluntary; one present or in being, which someone has with himself, for example, if someone keeps a concubine at home; another absent or not in being, which someone does not have but finds when seeking it, for example, if a concubine is in a neighboring or distant house; one is absolute with respect to all, another relative with respect to such a person; finally one is proximate, in which people commonly sin for the most part, another remote, in which people commonly do not sin for the most part.

Neither habit, nor relapse, nor occasions import a necessity of sinning, but only contain danger of sinning. Hence the question is raised whether they can and must be absolved, and when and how often, before they have amended the habit, prevented the relapse, removed the occasion. The reason of the difficulty is the doubt which arises from the habit itself, relapse, or occasion concerning the sincerity of sorrow and purpose.

The rigid wish them not to be absolved before the habit has been amended, the relapse avoided, the occasion removed. The lax wish them to be able to be absolved whenever they say they grieve from the heart. The moderate enter a middle way, which is broad. Many of these establish turns almost mathematically, namely once, twice, three times, four times, but not beyond, if they bring only ordinary signs of penitence; otherwise if they bring extraordinary signs. But all agree that absolution can be given the first time, and that those are more easily to be absolved who sin from the frailty itself of nature, and who are found in a necessary occasion. But others, and we adhere to these, say that the whole matter is in the prudent estimation of the confessor, and that it must be weighed and judged from the various circumstances of sins, persons, places, times, and causes. The following rules can be established. Salmanticenses, c. 5, n. 68; L. 452ff., 459ff.

The confessor can safely give absolution whenever he prudently judges the penitent to be sufficiently disposed, that is, "that neither diligence in enumerating sins nor sorrow in detesting them was altogether lacking to the penitent." Roman Catechism, part 2, n. 60. It is certain doctrine of the Catholic schools that any penitent can be absolved if he offers sufficient indications of true penitence. A prudent judgment about sufficient disposition need not necessarily be a certain judgment, but it suffices that it be only probable. The reason is that the sacrament of penance scarcely admits a more certain judgment of this kind. St. Thomas, I-II, q. 91, a. 3; II-II, q. 47, a. 9, ad 2; III, q. 68, a. 4, ad 2. But this prudent judgment about the sufficient disposition of the penitent must be formed from the assertion of the penitent himself, from his confession, from the manner of confession, and from the other circumstances of the same confession; nor indeed can it be taken from elsewhere. St. Thomas, IV, dist. 17, q. 5, a. 3, q. 6, ad 2; *Opusc.* 12, *Quodlibet* 1, a. 12; L. 459, 460, 461.

The confessor can safely defer absolution when the penitent, although sufficiently disposed, is nevertheless not unwilling, and the delay is going to profit him rather than absolution given immediately. The first reason is that on the one hand a sufficiently disposed penitent has a right to absolution; on the other, if he is unwilling, delay, speaking of itself, will either profit him in no way,

or certainly will not profit more than absolution given immediately. Indeed, if the penitent has desire of receiving absolution, he is offended by delay, and it is greatly to be feared that he will not return further. Likewise, if he has desire of receiving absolution, since this is a very good will, better hope certainly will be had from such a will aided by sacramental grace than if he is deprived of this. The second reason is that otherwise the penitent will be deprived without sufficient reason of sacramental grace, which is effective both for remitting and for preventing sins.

But that absolution can absolutely be deferred for a penitent, although sufficiently disposed, and even without his consent, is established first by reason, namely because although a sufficiently disposed penitent has a right to absolution, nevertheless he does not have a right to obtain it immediately; especially if the delay seems useful for conceiving greater horror about the sins committed, and for more and more confirming the constancy of a serious will of sinning no more. For it belongs to the confessor as judge to define when and how the sentence of absolution is to be pronounced. But the confessor is not only judge, but father, teacher, physician. And therefore as father he can, before absolution, send before an admonition and spiritual exhortation by which he may instruct and arm the penitent against temptations. Likewise as teacher, before absolution, he can teach the penitent whom he sees involved in much ignorance, which for the rest could induce him into many sins. Similarly as physician he can defer absolution when he rightly fears that the penitent now absolved will easily relapse at once into the same crimes, unless by the difficulty itself and delay of absolution the penitent better knows the gravity of sin and the necessity of amendment, and is rendered more cautious, and is confirmed in the purpose of not sinning. The experience of many weak penitents agrees with this: when this remedy is prudently used, they are accustomed to be cured in a short time; and for recidivists and occasionaries it seems more necessary and useful, because in this way they better conceive the necessity of perseverance in the purpose of not sinning. The authority of theologians is added; for very many grave theologians teach the usefulness of sometimes deferring absolution.

The utility required for deferring absolution for a penitent otherwise sufficiently disposed ought to be notable; and consequently absolution ought to be deferred only for a short time. For a short time, that is, for some hours, for a day, for two or three days, for a week, at most for fifteen days. The reason is that it is altogether grave to remain in the state of mortal sin even for a few days; and speaking of itself, absolution given immediately profits more than its delay. But this remedy of deferring absolution is not only useful but simply necessary, and the confessor not only can but also must use it when it is necessary for exploring the sincere sorrow and purpose of the penitent, about which there is not enough certainty, and about whose sufficient disposition there is doubt. Salmanticenses, c. 5, p. 4, n. 68; L. 461-464; St. Thomas, Supplement, q. 25, a. 1, ad 4.

Whenever the penitent is sufficiently disposed, and no notable utility from delay of absolution is present, the confessor is absolutely bound to give it immediately. Whenever grave damage to the penitent will follow from absolution denied or delayed, absolution is to be given to him conditionally if he is doubtfully disposed. The first reason is that absolution must be granted from justice and under grave obligation to every penitent rightly confessed and disposed. Nor indeed is there present any reason of delay, which could be none other than the utility of the penitent himself, which in the case is had rather from absolution immediately given. "Suarez, Sanchez, etc., say that to deny absolution concerning light matter does not exceed venial sin." L., H. A., tr. 16, n. 118. The second

reason is the common axiom: the sacraments are for human beings. When necessity stands, provision is made for the salvation of the person in the best way that can be done, and from this no irreverence toward the sacrament or other inconvenience is had. L. 431, 432, 462; bk. 3, n. 682; St. Thomas, Supplement, q. 18, a. 4.

When the penitent does not wish to fulfill a grave obligation which he has, when he does not have sincere sorrow for the sins committed, nor has the purpose of not sinning thereafter, then the confessor is bound to deny absolution. Indeed to these, and to these alone, absolution is to be denied absolutely. The reason is clear, because these, and these alone, are unworthy of absolution. Sin cannot be remitted to him who wishes to persevere in sin. Leo XII, encyclical letter *Caritate Christi*; Roman Ritual, on the Sacrament of Penance.

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As to recidivists, there is no other special doctrine distinct from the preceding, which is general and includes all cases. Therefore, if the confessor from all the circumstances of the confession prudently judges the penitent rightly disposed, he can absolve him; nor is it here and now necessary that he judge that he will not relapse further, otherwise very many could not be absolved, concerning whom certainly the confessor, while he absolves them, cannot form this judgment, that for the rest, namely through the whole time of future life, they are not going to sin gravely any more. Future amendment, but present sorrow and purpose, are the necessary dispositions for absolution. If hitherto the penitent has broken faith, this is not a reason why in the present he cannot be absolved, if he is prudently judged rightly disposed; it can only be a sufficient reason why the confessor either doubts about the legitimate disposition of the penitent, or even is persuaded that he actually lacks the aforesaid disposition. And in this case of recidivists, although they appear disposed, delay of absolution can certainly sometimes be very useful, as has already been said; for the rest, frequent access to the sacraments is also of itself especially useful for them, if indeed they are rightly disposed for them. And thus in the Roman Ritual, on the Sacrament of Penance, it is said: "For those easily falling back into sins it will be most useful to counsel that they confess often and, if it is expedient, communicate."

Moreover whenever the penitent, even after relapse, exhibits extraordinary signs of sorrow, he can safely be absolved. The reason is that then, ordinarily at least speaking, it is more expedient that absolution not be deferred. Likewise he can safely be absolved if absolution cannot easily be deferred, lest he remain long in the state of mortal sin. But before the confessor absolves such a one, he will apply care so that he dispose him more certainly and fruitfully for receiving absolution. But if he appears only doubtfully disposed, then it will be not only useful but necessary to defer absolution, unless a grave reason presses, in which case absolution can be given only conditionally. Toledo, bk. 5, c. 13; Suarez, d. 32, s. 2; L. 459-464; St. Thomas, Supplement, q. 25, a. 1, ad 4.

Consequently the same must be said of occasionaries. The common and universal rule is that one who is in only a remote occasion can be absolved, if indeed he is otherwise rightly disposed, but not one who is in a free proximate occasion which he does not wish to leave. The first reason is that otherwise we ought all to depart from the world. The second reason is that he who wishes to remain in that moral danger of falling does not seem to have an efficacious purpose of not sinning, unless he

has extraordinary sorrow and purpose, or proposes to use other remedies by which the occasion may become remote from proximate. Lugo, d. 14, n. 151.

When the occasion is necessary and cannot be left without scandal, grave infamy, or great spiritual or temporal detriment, then he licitly remains in the danger which is necessary, provided that meanwhile he is prepared to use the prescribed means, and can hope for divine help for resisting. The reason is that no one is bound to the impossible, whether physically or morally, and besides an occasion of sin is not of itself a sin, nor does it constitute a person in necessity of sinning; and, in the case, the will to use the prescribed means renders it remote. Thus commonly the doctors, L. 455; and the holy Doctor, n. 456, calls this opinion most probable. Suarez, d. 32, s. 2, n. 4; Lugo, d. 13, n. 160.

If he who was absolved in a voluntary occasion, because he had sincerely promised that he would remove it, or in a necessary occasion, because he had sincerely promised that he would use the remedies prescribed by the confessor, afterward falls again into the same sins, practically speaking, he is not to be absolved again before he actually exercises the effort both of removing the occasion in the former case, and of actually using in the latter the remedies prescribed by the confessor; not because he absolutely cannot even in the present have sincere sorrow and purpose, but because from this the confessor can easily prudently come into suspicion of the sincerity of sorrow and purpose, L. 505, at the end; and because prudence requires that, although the sorrow and sincere purpose are sincere, the weak will of the penitent, especially if the occasion is in being, be aided also by this means of delay of absolution, which in the case can be very useful, and often is so in fact. Exception: unless the penitent gives extraordinary signs of sorrow, or an urgent cause is present, for example, a mark of infamy in omitting Communion, if he cannot return to the same confessor, or only after a long time. And in this case, if the present disposition appears morally certain, absolution is to be given absolutely; but if doubtful, it can be given only conditionally. Suarez, d. 32, s. 2; L. 452-458; Elbel, *De Actibus humanis*, nn. 193ff.; E. M.

810. **What about the office of teacher?** The office of teacher includes two things: the knowledge of the confessor himself, and the obligation of teaching the penitent.

811. **What about the knowledge of the confessor?** The confessor is bound under grave obligation to know all those things which are required for duly performing his office. The reason is that otherwise such a confessor exposes himself to the evident danger of badly performing so grave an office, with injury to the sacrament and great detriment of souls.

Yet the confessor is not bound to have so perfect a knowledge that he can always immediately and by himself solve all doubts occurring; but it suffices that he can do this in cases commonly happening, and that concerning more difficult matters he at least knows how to doubt. For greater knowledge can be had only with more difficulty, since not even the more learned themselves can immediately solve all cases. Nor is the confessor even bound to discern concerning individual sins accused whether they are mortal or not, since this is often impossible; but it suffices that he hear each as it was done, and judge about them, in the obvious and natural sense, both according to common principles and according to the circumstances exposed by the penitent, and know how to apply a suitable remedy. "The Salmanticenses, etc., rightly note that the confessor is not bound to form a certain judgment about individual sins, but only about obvious and clear ones." L. 500; Lugo, d. 21, nn. 70, 71; L. 626, 627.

812. **Resolutions.** 1. Any confessor is bound to know all those things which regard the value, substance, integrity, and effect of the sacrament of penance, and which are required for its licit administration, both on his own part and on the part of the penitent.

813. He must also know the common and proper obligations of states, the various species of sins, the circumstances changing their species, the principles of discerning between mortal and venial sins, and what things are mortal and venial in individual precepts, at least according to general principles and the common opinion of theologians. Likewise what acts are valid and licit. The reason is clear, because he must know that about which he must judge; otherwise he will not be able to render an equitable judgment.

814. He must know reserved cases and current censures, impediments of marriage, conditions of contracts, various causes of restitution, roots and occasions of sins, remedies to be brought to them, and salutary and suitable satisfactions to be imposed.

815. Therefore the confessor sins who knows that the aforesaid knowledge is lacking to him, even if he receives confessions only from charity and obedience. Nor does the approval of the bishop of itself excuse him; for this does not give knowledge due from the nature of the thing, nor supply its defect. Exception: the case of necessity.

816. The superior also sins who gives permission to an ignorant confessor to receive confessions, because he consents to and cooperates with his sin. Again, exception: the case of necessity.

817. The penitent himself also sins who knowingly chooses a confessor ignorant with respect to him, because he does not wish to be directed in the way of salvation as is necessary, and thus undergoes grave spiritual damage. Yet if the penitent is in good faith, the confession will be valid, because on the part of the penitent there intervenes an integral declaration of sins and the due disposition of soul; on the part of the confessor there intervenes at least knowledge of sins under the confused aspect of sin, which suffices for the matter of the sacrament. Likewise exception: unless the penitent is such a person as can by his own doctrine supply the ignorance of the confessor.

818. Experience cannot supply knowledge, but only helps it. Therefore any confessor is bound diligently to apply himself to the study of moral theology; and, as St. Alphonsus asserts, H. A. 100, "He ought never to interrupt that study." Lugo, d. 21, nn. 70ff.; L. 627, 628; H. A. 100.

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813. **What about the obligation of teaching penitents?** The confessor is bound to teach penitents all those things which pertain to the sacrament being received here and now duly. The reason is that since the priest is minister of the sacrament, he ought to procure its valid and licit reception, and therefore hand down the instruction necessary here and now. He must teach penitents when he notices that someone is ignorant of any of those things which are necessary for living Christianly, such as, for example, that person's proper obligations.

Nevertheless, of itself and strictly, he is not bound to instruct them about all things which they themselves ought to know and can learn elsewhere. The reason is that the office of teacher in the

confessor of itself pertains only to the right administration of the sacrament of penance. Accidentally, however, an obligation could be present from charity, when the penitent could only with very great difficulty obtain this knowledge either by himself or through another.

This obligation of charity is not special to confessors, but common to all who know the necessity of the neighbor and can provide for him without grave inconvenience. A special obligation belongs to parents, teachers, and parish priests, who owe this from office. L. 607.

814. **Must the confessor admonish the penitent if the latter is in ignorance?** Response: affirmatively, if the ignorance seems vincible, that is, if the confessor notices that the penitent so doubts that good faith is now lacking. The reason is that in making the admonition no danger threatens; but otherwise the penitent, acting with that doubt, is not immune from sin.

If the ignorance is invincible, one must distinguish. The admonition must be made if it concerns a thing necessary by necessity of means; otherwise the penitent is certainly indisposed. If it concerns other things, affirmatively, if the admonition will be useful. The reason is that this is required from the general precept of charity and from the office of teacher which the confessor has. If the admonition will not be useful, although it concerns repairing harm of a third private person, for example, restitution of a debt, it is either simply to be omitted or deferred to a better occasion. The reason is that it would be useless to the creditor and harmful to the penitent.

If it concerns public harm, speaking of itself, the admonition is to be made. The reason is that the public good is to be preferred to the private good of the penitent, and confirmation and propagation of evil must be impeded, lest others think that what is not corrected is licit, and do the same themselves, "since someone judges those things to be licit for himself which he notices are exercised with impunity by those who frequent the sacraments of the Church." Benedict XIV, encyclical *Apostolica Constitutio*, June 26, 1749, § 20. Besides, there is hope that, with God's grace helping, the admonition made will be useful to the public good, even as far as it is on the part of the penitent himself, if he brings a sincere will to receive the sacrament of penance, if not immediately, perhaps after some time, after he has seriously considered the matter.

Speaking of itself, because if perhaps greater damage were feared from the admonition made, both private and public, because, for example, a penitent not very fervent and pious would therefore be altogether turned away from the Church, and because of his influence would be about to bring greater damage upon the Church, it will belong to prudence to dissemble, permitting the lesser evil that the greater may be avoided. Then indeed that holds which St. Alphonsus, n. 610, calls a most valid reason, "namely that of two evils the lesser is to be permitted, that the greater may be avoided." L. 609, 614, 615, 694; bk. 3, n. 682; Lugo, d. 22, nn. 29, 30.

815. **Resolutions.** Therefore the penitent is to be admonished: whenever he himself asks about the malice of some thing, because since he doubts about the liceity of the thing, he is no longer in invincible ignorance. Whenever the silence of the confessor would harden him in the purpose of performing an evil thing, by thus tacitly approving the error. Whenever his ignorance concerns the primary principles of natural law, or their proximate conclusions, because such ignorance, if it is possible, cannot be invincible for long. Whenever, with the admonition

omitted, the penitent would remain in a proximate occasion of sinning formally. Lugo, d. 22, nn. 29, 37; Sanchez, *De Matrimonio*, bk. 2, d. 38, n. 11; L. 609, 615, 616; Ithur., case 31.

816. **Must an admonition be made in doubt whether it will profit or harm?** What preponderates is to be chosen in the case, as is commonly handed down. Therefore: affirmatively, if it is more probably going to profit; otherwise if it is more probably going to harm. In doubt equal on each side, generally speaking, formal evils are rather to be avoided than material ones. Hence regularly one must be silent when it is dangerous to speak. La-Croix, n. 1759; Lugo, d. 23, n. 31; L. 614, 916.

817. **Must a spouse be admonished about the invalidity of marriage because of an occult impediment which the confessor detects?** Response: negatively, generally speaking, unless dispensation can be obtained immediately and easily from the Pope or bishop. The reason is that generally the greatest inconveniences would follow from this, for example, danger of infamy, scandal, quarrels, incontinence, etc., and therefore material fornication would become formal.

But can the confessor oblige a spouse ignorant of the impediment and denying the debt to render it? Response: affirmatively. The reason is that, with the spouse's persuasion standing that the marriage is valid, he is bound to render the debt so that he may follow the dictate of conscience. Elbel, n. 471; Sanchez, *De Matrimonio*, bk. 2, d. 38, n. 8; L. 611.

818. **Must a penitent about to contract marriage be admonished about an unknown impediment?** Generally speaking, the admonition is to be made. The reason is that after marriage the ignorance can cease without great difficulty, for example, from the fact that it is discovered that there is consanguinity, affinity, etc., between the spouses; and then danger of sinning formally is easily present, and very grave inconveniences can follow from it, namely scandals, quarrels, and perhaps even separation of spouses, etc.

Yet probably except the case in which no fruit at all is hoped from the admonition, nor can the impediment easily be detected; because it is better to permit material sin until dispensation is obtained, than to provide occasion for certain formal sin. La-Croix, bk. 6, part 2, n. 540; L. 612.

819. **What about the office of judge?** Since the sacrament of penance has been instituted by way of judgment, as the penitent in this judgment is accused and at the same time witness, whence it is that he is regularly to be believed for himself and against himself, so the confessor is judge, and this is the principal and proper office of the confessor. Hence it belongs to him to pronounce sentence, and beforehand to instruct the cause.

As to pronouncing sentence, when absolution is to be given, deferred, or denied has already been said. Cf. 809.

As to instructing the cause, the confessor is bound to ask penitents about the species, number, and circumstances changing the species, about causes of sins, about habit and proximate occasions, whenever he reasonably presumes or prudently doubts that these are not sufficiently declared. The reason is that the confessor, as minister of the sacrament, ought to procure its integrity, and as judge

ought to acquire for himself the knowledge necessary for rendering an equitable judgment. This is also established from Lateran Council IV and from the Roman Ritual.

Yet the confessor is not bound to question the penitent except with some ordinary diligence. The reason is that the penitent himself is not bound to examine himself with the greatest, but only with moderate, that is, ordinary diligence. But the obligation of the confessor cannot be graver than that of the penitent, since the confessor is not bound to examine the penitent except secondarily, or in defect of him.

Likewise the confessor is not bound to question penitents who, although rude, seem sufficiently instructed for their condition and diligent in confessing sins with circumstances according to their state and capacity. All the more it is not necessary to examine those who confess often and rarely sin gravely, as are devout persons, religious, ecclesiastics, unless something necessarily to be explained seems to be omitted by them. L. 607, 617, 629; H. A. 103; *Praxis*, nn. 19, 20.

820. **Note.** The confessor, insofar as he is judge, does not have authority of prescribing anything whatever to the penitent; but he has authority of prescribing only as to satisfaction to be enjoined. Therefore obedience is owed to the confessor in other things insofar as he prescribes to the penitent those things which some law, whether natural or positive, otherwise requires. Insofar as judge, the confessor only takes cognizance of the cause, so that according to the merit of the cause he may deny, impart, or defer absolution, and impose a suitable satisfaction. Lugo, *Responsa Moralia*, bk. 1, d. 28, n. 5; *De Poenitentia*, d. 14, n. 171; L. 604, paragraph *Ratio autem*.

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821. **What about the practice of questioning?** Questioning ought to be moderate, as was just said, cf. 819; and therefore the confessor must beware lest he be too anxious in questioning. Otherwise questioning will be grave and burdensome both to himself and especially to the penitent, and therefore also confession itself.

Questioning ought besides to be discreet, that is, the confessor must question with great prudence, carefully taking care not to ask about sins which probably were not committed, the condition and capacity of the penitent, etc., being considered; not to ask about those things from which the penitent may learn to sin or can suffer scandal; and not to ask too curiously or lightly even in those things about which one must ask.

Moreover questioning ought to be opportune, that is, done at the time and in the manner which is fitting. Certain questions, if they ever seem to have to be made, are to be made before confession, namely: from what time has he not confessed? was he absolved? did he fulfill the penance? is he at peace about his past life? Other questions about condition, state, age, etc., will more suitably be made, when an occasion is given, during the course of confession; thus on the one hand every suspicion of curiosity and levity will be avoided, and on the other the penitent will respond more easily, since his confidence in the confessor has been more increased. Roman Ritual; L. 607, 629; *Praxis*, n. 21; Lugo, d. 16, nn. 589ff.

822. **Resolutions.** The confessor ought to be very cautious in questioning about the matter of lust, especially with women, adolescents, and children, who can much more easily suffer scandal. Hence the rule admitted by all must be carefully observed: in the matter of lust it is much better to be deficient in many things than to be excessive in one thing by reason of the integrity of confession. Therefore in doubt whether in such a case you can or ought to ask, the negative side must always be stood by; for it is a lesser evil for the integrity of confession to be lacking than to incur the danger of a soul to be lost.

But confessors err who always wish to make a certain judgment about the quality of sin, whether it is grave or light, and twist penitents in order to know with what mind or with what conscience they did this; for these will very often respond with whatever happens to come into their mouth, so that a little later, asked about the same thing, they would deny what they had previously affirmed. Otherwise, however, if they seem sufficiently instructed, or if there is doubt about full consent given to temptation. Generally, unless circumstances suggest otherwise, it can be presumed that the penitent apprehended the object of sin as it is evil according to itself.

823. **What must the confessor do in doubt about the sincerity of the penitent?** It is a common rule and like a received axiom: the penitent is to be believed, whether speaking for himself or against himself. The reason is that the penitent in the sacred tribunal is at once accused and witness, accuser of himself and advocate, and besides in doubt must always be presumed truthful. Therefore after opportune questions the confessor ought to absolve the penitent denying. L. 630, 631.

824. **What must the confessor do if he knows certainly that some sin is being kept silent or denied by the penitent?** If he knows it outside confession, of itself he ought to absolve the penitent denying, because the penitent speaking for himself and against himself is to be believed; nor of itself can the report of another make greater faith than the declaration of the penitent himself; and therefore the confessor is not bound to believe others more than him. For if the penitent committed that sin, the confessor ought to presume that he has either forgotten his sin, or confessed it to another, or has a just cause for keeping it silent, or that the reporters were rather deceived.

If he knows it from the confession of another, he must, lest the seal of confession be violated, ask only generally, just as he otherwise would have done or ought to have done. But if the penitent, when questioned, has denied it, let him add nothing; but, if he can do this without suspicion, let him only exhort him generally to open his conscience with all confidence. But whether the confessor ought to absolve such a penitent is controverted. St. Alphonsus, after relating the opinions of others, concludes thus: "Better, in my judgment, is the opinion of La-Croix, that in that case he in no way absolve, but only pray something to conceal the denial of absolution." Suarez, *De Poenitentia*, d. 32, s. 3, n. 9, generally teaches: "However much the confessor knows the sin of the penitent from the report of others, he is bound in this judgment to believe the penitent himself more, because of the reason given." And generally St. Thomas also teaches the same; he besides notes the difference between one speaking in confession about himself and about others. *Opusc.* 7, otherwise 12, q. 6: "In confession the sinner confessing is to be believed both for himself and against himself; but against another he is in no way to be believed; otherwise occasion would be given to many for a fictitious

confession and fraudulent defamation." But on the contrary, when the penitent speaks about himself, the holy Doctor says thus, IV, dist. 17, q. 3, a. 3, q. 5, ad 2: "As to this knowledge, namely through the manifestation of confession, the priest cannot receive greater certainty than to believe the subject, because this is for assisting his conscience; whence in the forum of confession a person is believed both for himself and against himself." And indeed altogether the same reason holds in this case as in the preceding; nor consequently can the report of another of itself make greater force than the declaration of the penitent himself.

Of itself; for if the confessor certainly and evidently knows the sin of the penitent, for example because he saw it, "he is not bound so to stand by the words of the penitent that he cannot use his own knowledge to convict and rebuke the penitent himself." Suarez, loc. cit. Presumption indeed must yield to manifest truth.

825. **What about the office of minister after confession?** There is a twofold obligation of the confessor after confession: the first accidentally, as to defects committed to be repaired; the other of itself, as to preserving the seal. L. 618, 634.

826. **What about the obligation of correcting defects committed in confession concerning the value of the sacrament?** An error of this kind committed with grave fault, and with grave damage to the penitent supposed, must be repaired, even with grave inconvenience of the confessor, after license has first been sought from the penitent. The reason is that the confessor from office and from a quasi-contract entered into with the penitent is bound to administer the sacrament duly to him.

But because of the sacramental seal, without the permission of the penitent the confessor cannot admonish the penitent, namely if grave offense of the penitent would follow. Indeed, in the case of absolution imparted either in no way or invalidly, nothing actually would be against the seal if the confessor says that an error intervened, that it is necessary that he absolve again, etc.

But if the error was inculpable, or lightly culpable, the confessor is indeed bound from justice to repair and prevent the damage of the penitent, but with less inconvenience. But in very grave damage of the penitent, for example, if he is in the article of death, or in grave danger of not confessing further, nor receiving the Eucharist or extreme unction, the confessor likewise is bound from justice, even with notable inconvenience to himself, to admonish the penitent and repair the error, by reason of the very grave and extreme necessity in which the penitent is placed. L. 619, 622.

827. **What about correcting errors concerning the accidents of the sacrament?** Such an error is not to be repaired outside confession if in this the confessor behaved only negatively, although culpably. The reason is that if it concerns the integrity of confession, the obligation of integrity of confession directly affects the penitent, not the confessor; hence although the confessor is bound to procure the integrity of the sacrament and the utility of the penitent in confession, as minister of the sacrament and spiritual physician, nevertheless he is no longer bound to this once confession has ended. Nor consequently is the confessor the cause that the penitent perhaps does not confess those sins, since he said nothing and did nothing by which the penitent is moved to omit them; but the cause is only the forgetfulness or inexperience of the penitent. Still less does the obligation of teaching an ignorant person outside confession press,

lest material violation of the law follow. But it is of itself grave for the penitent that speech about that confession be instituted outside confession.

But an error must be repaired, even outside confession, if he positively induced the penitent into error; because by natural right anyone must remove the cause of evil which he positively and voluntarily placed. Nevertheless the permission of the penitent is to be sought; if the penitent denies it, the confessor is bound to nothing.

But whether the error must be repaired, whether in confession or outside confession, after permission has first been sought from the penitent, even with grave inconvenience, or only with light inconvenience, or apart from any inconvenience whatever, depends on the grave or light or no fault of the confessor in that error, on the grave or light or no detriment of the penitent from that error, and on the burden of the penitent himself in renewing speech about confession. All these things must be weighed on both sides. L. 620; Lugo, d. 22, nn. 63, 75, 76.

828. **To what is the confessor bound who unduly frees the penitent from restitution to be made, or on the contrary obliges him to it?** If from malice or vincible ignorance or grave negligence he unduly freed the penitent, he is bound to correct the error; but if he does not correct it, or the penitent who otherwise would have restored has meanwhile become unable to restore, the confessor himself is bound to restore in his place, because he violated the right of the creditor, namely by impeding the restitution owed to him.

Likewise if from malice or ignorance or grave negligence he obliged the penitent to undue restitution, he is bound from justice to retract the error; and if the penitent has already restored, he is bound to make good the damage to him.

If inculpably or from light negligence he unduly obliged the penitent, or freed him from the obligation, he is bound from justice to correct the error, yet not with so grave an inconvenience. The reason is that on the one hand anyone is bound from justice to prevent his action, even inculpable, from causing damage to another, when he can easily prevent it; and besides from light fault, or only material fault, ordinarily there does not arise an obligation with grave inconvenience. But if he neglects to admonish, when he can without grave inconvenience to himself, he is consequently bound to restitution. L. 621.

829. **To what is the confessor bound who omitted to admonish the penitent about restitution to be made?** He is bound to admonish the penitent within confession about the obligation with some inconvenience if no fault or only light fault intervened, at least by reason of charity; but with greater inconvenience if he sinned gravely in the omission. In either case, however, this inconvenience must be weighed with the grave damage of another.

More probably he is not bound to restore, even if by omitting the admonition he sinned gravely. The reason is that the confessor is not bound from justice to impede the damage of him to whom restitution is owed. L. 621; Lugo, d. 22, n. 67.

830. **Can the confessor, without the penitent's license, speak with him outside confession about a defect committed in confession?** Response: negatively, if the penitent has already

departed. The reason is that that admonition outside confession is burdensome to the penitent. Besides, after absolution the judgment is complete; nor does it matter that the admonition is made to repair the defect of the same confession. Nevertheless the confessor, even without asking license, could abruptly open his error, saying, for example, that he had not absolved; in this way indeed neither is the seal broken nor can reasonable offense of the penitent be present. La-Croix, n. 1776; L. 622.

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831. **What about the obligation of the seal of confession?** The seal of confession is a religious obligation of preserving secrecy concerning those things which are known from sacramental confession.

There is given a most strict obligation of inviolably preserving the seal of confession. This is established: 1. From natural law, and indeed by a threefold title, namely from charity, from justice, from religion. 2. From positive divine law, at least implicit; for from the institution of Christ confession ought to be secret; therefore by that very fact an obligation of preserving the seal has been imposed by Christ on confessors. 3. From ecclesiastical law, Lateran Council IV, c. 21, *Omnis utriusque sexus*, etc.

The obligation of the seal of confession always presses in every case, so that in no possible case is it licit to reveal anything heard and received in confession. The reason is manifestly clear; because if some exception could be given, people would always fear lest such a sin would be that cause of licitly breaking the seal, and therefore the sacrament of penance would become odious. Moreover no cause of achieving a good or avoiding an evil can compensate that evil of hatred of the sacrament.

The obligation of the seal arises from every and only sacramental confession, namely one made with the intention of accusing oneself and obtaining absolution. From every, because then the whole reason of the precept is present; and this holds even if absolution were not conferred for any cause whatever, since confession is made in order to absolution to be received sometime. From only, because only sacramental confession induces the obligation of the seal, since any other manifestation has no relation to the sacrament of penance. L. 634, 636; E. M.

832. **Resolutions.** 1. Confession which is knowingly made to a layperson or to a priest lacking jurisdiction does not induce the obligation of the seal, but only of natural secrecy. Otherwise it would have to be said if the priest is believed approved, because the confession on the part of the penitent is truly sacramental.

833. If someone approaches a confessor with the intention of deceiving him, mocking him, drawing him into sin, or extorting something from him, he does not accuse himself in order to the sacrament, and therefore there is no obligation of the sacramental seal.

834. If someone opens his conscience to a confessor without the will of receiving absolution, but in order to obtain counsel, or in order in some way to satisfy the command of a superior, only the obligation of natural secrecy presses, because this is not done in order to absolution. L. 640.

835. **Is there smallness of matter in violation of the seal?** Response: negatively, at least in direct revelation. The reason is that even the slightest matter includes the whole reason of the precept. At least in direct revelation; because if the danger of indirect revelation is very remote or little probable, lightness of matter can be given. For revelation, if any perhaps then followed, would have to be judged to follow by chance and accidentally. L. 635, 640; Lugo, d. 23, n. 71.

836. **Is it licit to use a probable opinion in the matter of the seal?** Response: negatively as to probability of fact and as to probability of law. The reason is that it is not licit to use a probable opinion to the prejudice of a certain right which another possesses. Therefore the confessor is bound to the seal in doubt whether something was said by the penitent in order to confession; and where it is only speculatively probable that the seal is not violated by revealing this or that thing manifested by the penitent in confession.

St. Alphonsus, n. 633, has these words: "Before all things... it must be seen whether in this matter of the sacramental seal it is licit to use probable opinions... Viva says... that no one can use knowledge had from confession unless it is morally certain, or at least certainly most probable, that from such use no revelation of confession and no burden to the penitent comes about. The reason is... because otherwise a probable burden would be brought upon the penitent, because of which confession would be rendered odious to him... And this reason presses strongly... I think it must altogether be said that it is not licit to use opinions from whose use it is not morally certain that no burden is brought upon the penitent." And n. 637: "In doubt whether something was said by the penitent in order to confession, the confessor is bound to the seal... The reason is that otherwise confession would be rendered odious, while moreover many sins truly heard in confession, because of defect of memory and error of the confessor, could be manifested with impunity." Diana, tom. 1, tr. 8, beginning; Ithur., case 37, n. 35; La-Croix, n. 1946.

835. **Can the confessor at least after the death of the penitent use knowledge acquired through confession?** "The obligation of this seal is most strict, so that in no case ever, for the sake of obtaining any good or avoiding any evil, can any sin whatever, even the least, or anything else which falls under the seal of confession, be revealed directly or indirectly, before and after the death of the one confessing, without mortal sacrilege." Laymann, bk. 5, tr. 6, c. 14, n. 2. And Busembaum, n. 634: "This seal is an obligation to be silent even after the death of the penitent."

836. **Can a confessor questioned about the sin of a penitent say that he does not know it, even with an oath?** Response: affirmatively, even if insistence is made that he speak without mental restriction, or as confessor. The reason is that he actually does not know with knowledge permitted to human commerce. Hence he will always be able to say, and even to swear, that he does not know, that he says this without equivocation, or affirms this even as confessor. Yet the better response will always be to rebuke the importunate questioner: What kind of question is this which you ask? For sometimes it could happen that all would understand that the confessor actually is ignorant of the matter, and thus would deduce that the confession was not integral. L. 645, 646; H. A. 148; St. Thomas, IV, dist. 21, q. 3, a. 1, ad 3.

837. **Who are bound to the seal?** Primarily any confessor is bound to the seal, whether true or fictitious, and by error thought legitimate; and therefore also a layperson who pretended to be

a priest and received confession. The reason is that whenever someone confesses in order to the sacrament, whoever hears him contracts by that very fact the obligation of the seal; otherwise hatred of the sacrament would follow from it.

Secondarily, those are bound who become participants in confession, or all those to whom knowledge of confession comes in any way, whether from the confession itself or from means ordered to it. From the confession itself: for the matter accused comes to their knowledge by the same occasion or cause because of which the obligation of the seal is given, namely lest hatred be created toward the sacrament. From the means: for hatred of the means redounds upon the end itself. L. 645, 647.

838. **Resolutions.** The following are bound to the seal: 1. Interpreters used in making confession. 2. Superiors from whom, outside the sacrament, the faculty of absolving or receiving absolution from a reserved case is sought. 3. Those who, while someone is confessing, hear a sin either deliberately or even inculpably, and likewise if any should perhaps hear it from them. 4. Those who write the confession of the rude, or of those ignorant of the language of the confessor, especially if confession cannot be made in another way. 5. Doctors consulted by the confessor with the license of the penitent. 6. All those to whom the confessor or another has sacrilegiously or imprudently manifested sins heard in confession. Hence they cannot even speak among themselves about them. L. 638, 647, 648; St. Thomas, IV, dist. 21, q. 3, a. 1, q. 3, and a. 2, ad 4.

839. **Is the penitent also bound by the seal with respect to the confessor?** He is not bound to the sacramental seal, because the obligation of the seal is only in favor of the penitent. But he is bound to natural secrecy concerning those things which he cannot reveal without unjust damage to the confessor, or against his reasonable will, or without injury and contempt of the sacrament. L. 647.

840. **Can the confessor speak with the penitent about his confession?** He can speak in confession about all past confessions. The reason is that it often pertains to the offices of judge and physician which the confessor has to recall the sins of a prior confession. He can also speak after absolution before the penitent departs, or if he returns afterward. The reason is that although the sacrament is complete, nevertheless the judgment still morally perseveres. Outside the sacred tribunal he cannot make even one word to the penitent about those things which pertain to his confession, without that person's license. Exception: unless the penitent himself first speaks about his conscience. L. 647, 651-653.

841. **Is one who reads a paper in which the penitent wrote his confession bound to the seal?** Response: negatively of itself. The reason is that this is not a means of itself ordered to confession. Therefore until confession is made from it, there is not yet had the act by which someone subjects himself to the power of the keys in order to absolution; and therefore of itself it does not bring in the obligation of the sacramental seal, but only of natural secrecy; nevertheless this of itself presses under grave obligation, unless it concerns very slight faults.

Of itself; for accidentally an obligation of the seal can be present if the paper was or had been a necessary means for confession, for example, if it was written by a mute, or directed to a superior because of some reservation; likewise if the paper had already been handed to the priest; but

especially if someone read it while it is in the hand of the confessor, or in the act of confession, or if it had been lost and left in the confessional, because in these cases it pertains to confession, since confession seems to be remaining. L. 650.

842. **Is a doctor consulted by the penitent himself bound to the seal of confession?** Response: at least more probably negatively, if he is consulted about confession to be made to another; but he is bound only to natural secrecy. The reason is that the obligation of the seal arises only from sacramental confession, in which the penitent manifests sins in order to absolution. If he is consulted about confession to be made to another, because if the penitent consults him about confession to be made to him himself, he is bound by the seal, since this consultation must be held as confession begun. Suarez, d. 38, s. 4; Billuart, diss. 8, a. 3; L. 549; St. Thomas, IV, dist. 21, q. 3, a. 1, q. 2, paragraph *Sed contra*.

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843. **Note.** The license of the penitent required so that the confessor can speak about things which demand the seal of confession must be formal and express, free and spontaneous, and not revoked. Moreover it can be given by word, or in writing, or by the act itself, if, for example, the penitent himself outside confession begins to speak with the confessor about things said in confession. L. 651.

About this question of speaking with the faculty of the penitent, two things, says the distinguished Doctor, must be distinguished: "For one thing is that the penitent says again outside confession things once said in confession; but another is that, with the same seal and the same knowledge preserved, he gives faculty of speaking from that knowledge... The difference between this mode and the former... first is that faculty is always revocable; for it depends on the will of the one giving, because he neither conferred new knowledge nor transferred some irrevocable right to another. But if once outside confession he said those things which he had previously said in confession, now that knowledge is irrevocable, nor can the penitent make it so that afterward the confessor knows only in confession. Second, when the confessor speaks in this latter mode from faculty, he can and must say that he knows in confession and speaks from license of the penitent, so that the other may receive it in the due manner; but in the former mode he cannot say that he heard it in confession, because he does not speak from that knowledge nor from faculty with respect to it, but from new knowledge. Third, because then he who hears is bound by the seal if the confessor speaks only from his own faculty... but not if he speaks from new knowledge according to the former mode. Fourth, because that former mode can be done from mere will, without a cause which pertains to the sacrament or piety, because it is a thing merely extrinsic to the sacrament; but the other faculty is not to be given, nor is it to be used, except from a grave cause or reasonable utility." *De Poenitentia*, d. 33, s. 5; Laymann, bk. 5, tr. 6, c. 14, n. 16; La-Croix, bk. 6, part 2, n. 1960.

844. **What is the object of the seal?** The object of the seal is all sins confessed, and all things which pertain to the individual explanation of sins. The reason is that the reason of the seal presses not only for sins but also for all those things which help to explain them, and besides these constitute one thing with the sins.

The object of the seal is also whatever has been manifested in confession by reason of the confession itself, whose revelation would yield to the burden of the penitent and to hatred of the sacrament, because the seal was introduced lest, from fear of revelation, the faithful be drawn back from the sacrament of penance. L. 640.

845. **Resolutions.** The following fall under the seal of confession:

846. All circumstances of sins, even those declared after absolution; for they are morally one with the sins already accused; even those declared through mere ignorance, otherwise confession would be rendered very difficult especially for those who do not know how to discern what things are altogether necessary and what things can and ought to be omitted in the confession of one's own sin. Indeed the same must be said even if it were doubtful whether the circumstances were declared in order to confession or not. And thus "if someone confesses that he sought the debt from his wife although he had a vow of chastity, it cannot be said without violation of the seal that he has a vow of chastity." Lugo, d. 23, n. 52. All circumstances: understand those from whose manifestation one of the three aforesaid inconveniences could arise, namely revelation of confession, burden of the penitent, hatred of the sacrament. For many things are said even for explaining sins which of themselves do not seem to fall under the seal, for example, that someone is married, a father of a family, a craftsman, a merchant, initiated into sacred orders, a parish priest, a governor, etc. Lugo, loc. cit., n. 57.

847. Sins of an accomplice, even if they were revealed without necessity together with the sin, because they were said from the intrinsic occasion of confession. Likewise the object of sin, if, for example, a brother confesses that he did not correct his brother because of a theft committed. Exception: if there is present no danger of revelation, no burden of the penitent, no hatred toward the sacrament, for example, if the penitent confesses that he rejoiced over a homicide committed in a public street.

848. Penances imposed, unless perhaps they are very light, or of those which are usually imposed for very slight faults.

849. Defects manifested through confession for explaining the nature of the sin, for example, if the penitent says that he received sacred orders with an irregularity because he is illegitimate, etc. Lugo, d. 23, nn. 59, 68; L. 640, 641; Suarez, d. 3, s. 3, nn. 5, 10.

850. **Do merely civil defects, for example of poverty; natural defects, for example deafness, blindness; moral defects, for example ignorance, scrupulosity, fall under the seal?** St. Alphonsus thinks that all these defects fall under the seal if the penitent manifests those defects for explaining sins; indeed even if they contribute nothing to explaining sins, but to explaining his conscience more fully; indeed even if they become known to the confessor from the actions of the penitent himself, or from the manner of confessing; indeed even if they are related by the penitent in such a way that from the circumstances it is gathered that they are commonly known. The reason of all these is that in the first case that explanation enters into explaining the nature itself of the sin; but in the other cases, because since such defects, speaking of themselves, are odious, their manifestation would always in some way render confession odious, and a burden would always in some way result for penitents, who for that reason would be delayed from confession.

Hence they do not fall under the seal: 1. If such defects are voluntarily revealed incidentally or as altogether impertinent to confession, namely without any order to explaining sins, to disclosing conscience better, nor are they known from the very manner of confessing. The reason is that then they pertain in no way at all to confession. 2. If they are defects altogether known and public, and such whose manifestation cannot of itself bring burden and shame to the penitent, as it is to be a beggar, blind, etc., nor bring hatred toward the sacrament by turning or delaying the faithful from it.

"But Roncaglia says that if some penitent is commonly known to be very lengthy, restless, etc., in explaining something, then, because it would clearly appear that the confessor flees lest he be affected with weariness by that person's natural prolixity, restlessness, etc., to flee in such circumstances would not be a breaking of the seal. This can probably be admitted if it is commonly evident to others that that penitent is of a fearful conscience, so that they morally certainly reckon him immune from graver faults." L. 644, 641-643. On the contrary, if the confessor knows from preceding confessions that someone is accustomed to bring many sins or a slight disposition, he cannot hide himself or excuse himself from hearing him, even from some apparently just pretext. The reason is that although then "that flight from an apparently just pretext would not render confession odious to such a penitent, nevertheless it would render it odious generally to the Christian commonwealth." L. 659.

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847. **Do virtues and revelations fall under the seal?** "I think one must distinguish. For sometimes the aforesaid things are said in order to have instruction from the confessor, or to manifest integrally the state of conscience; and then they do not pertain to the matter of confession, nor do they pertain to the seal, but to natural secrecy. But sometimes they can be said in order to declare some sin better, for example, ingratitude toward God after these and those gifts and benefits of God, or inconstancy in good after such a firm purpose of procuring perfection, and the like; and then I think that they pertain to the seal, since now they are, at least obliquely, matter of confession, and besides it appears that the penitent does not wish to manifest those things outside confession, but to retain them under the most strict seal of confession." Lugo, d. 23, n. 58; L. 641.

848. **Does a confessor violate the seal of confession by saying of some determined person that he confessed his sins to him; or that he confessed only venials; or that he absolved him; or simply that he confessed?** If he says in such a general way that such a person confessed his sins to him, or venials, speaking of itself, he does not violate the seal of confession. For nothing is said which the penitent himself did not publicly manifest both to others and to the confessor himself by the very act of approaching sacramental confession; for through confession sins are manifested, at least venials, of which even the just and holy are not daily lacking. Therefore neither from that manifestation is confession made odious, nor does any burden come to the penitent. But the seal of confession is not broken unless either: 1. insofar as the sin of the penitent is actually manifested, whether directly or indirectly; or 2. insofar as the sacrament of penance is made odious; or 3. insofar as some burden comes to the penitent.

But it is said of venials, speaking of itself; for certainly it would not be licit to say that someone confessed venials to you if you say it in such circumstances from which it can be gathered that others are guilty or confessed mortals, or that otherwise, or this same time, the penitent himself also confessed mortals, or it would be understood what venial sin in species he declared. Here it must be noted that by saying of someone that he brings only light things exclusively, confession can also be revealed, if, for example, afterward it is known that he secretly committed several sins, which consequently now is known that he kept silent in confession. L. 638, 640; Lugo, d. 23, n. 50; La-Croix, n. 1972.

If he says that such a penitent confessed several venials, or opens some venial in particular, now he violates the seal of confession. And this is established from the common doctrine of theologians, because in direct violation of the seal smallness of matter is not admitted. L. 640.

Laymann, n. 6, openly says that the seal is not violated if the confessor says that he absolved someone well confessed, provided that he does not speak in such a way that it can be conjectured that he is a great sinner; add, or even that otherwise he had not been absolved, or that others did not receive absolution, or there is danger that later his confession may appear to have been sacrilegious.

"The seal is not broken... if you say that N. confessed to you, although in certain circumstances this too is dangerous. Indeed, if the penitent by word or deed, for example by approaching secretly, signified that he did not wish it to be known that he confessed, Reginald, Navarrus, etc., wish that the confessor reveals the seal, and Sporer, etc., rightly agree, because by confessing to an extraordinary confessor the penitent would come into suspicion of a graver crime." L. 638.

849. **Do sins committed in confession itself, for example of impatience or insult against the confessor, fall under the seal?** Response: negatively, rigorously of themselves, because the penitent does not confess those faults, as is clear. Nevertheless affirmatively for the most part, although only accidentally; because although those sins are not of themselves matter of the seal, nevertheless often accidentally they involve in some way danger of revelation: for they furnish a probable indication that the confessor either did not wish to absolve the penitent, or rebuked him more severely because of a graver fault.

But a theft committed by the penitent to the damage of the confessor himself at the time of confession would not fall under the seal. Indeed, if it were established that the thief came to confess in order that he might have occasion of stealing, the sins accused by him would not be matter of confession, since such a confession would not be true, but only simulated. Lugo, d. 23, n. 60; L. 643.

850. **How is the seal violated?** It can be violated in two ways: 1. directly, by expressly revealing something known from confession alone, for example, if it is said: Titius did this, etc.; 2. indirectly, by saying or doing something, or by not saying or not doing, by force of sacramental confession, from which someone by reasoning can know or suspect a sin or defect of the penitent known by force of confession alone, or from which there can arise for the penitent or for others, for example accomplices, shame, annoyance, disgrace, damage, or any burden whatever; or hatred toward the sacrament, whence generally the faithful could be turned away from or delayed from confession.

851. **Resolutions.** The following violate the secret of confession, whether indirectly or directly:

852. One who, praising one person above others whom he has heard, says that he committed only venials, because others are easily led from this into suspicion of mortal fault. Likewise one who narrates sins known from confession in such a way that hearers can by some reasoning conjecture or suspect who committed them.

853. One who speaks with another confessor about the sins of some penitent, even if he confessed the same sins to each. One who speaks about a sin of the penitent, known through confession alone, with others who know it from elsewhere, even if the hearers do not advert that it was received from confession; namely if he speaks about it as a thing of which he himself has knowledge, but by no means if he speaks about it as people commonly are accustomed to speak about a matter which is first narrated to them and which they first learn. Indeed, even the studied silence of the confessor could sometimes introduce suspicion against the penitent. One who, while narrating sins of some person which he knew outside confession, adds some circumstance known from confession alone, or who uses knowledge of confession for determining or confirming the matter more.

854. One who says that he did not absolve such a person, that he remitted him to such a time, or has not yet absolved him, or that the confession has not yet been completed; because a long confession ordinarily denotes many sins or indisposition of the penitent. Likewise one who says of Titius, known as a thief, that he confessed his thefts to him with great contrition. One who with a loud voice, or in another way intelligible to bystanders, rebukes the penitent; for this is both grave for the penitent and introduces suspicion to others that he confessed grave sins; and all the more if by raising his voice too much he repeated the sins of the penitent, or asked about their circumstances.

855. One who, after hearing the confessions of a few, says that he heard such a sin, although he conceals the person; for individual persons suffer something of suspicion against themselves from that revelation. One who would say that in such a monastery he heard a grave sin, even if he did not name the person, because individual religious of that convent suffer detriment. All the more would he violate the seal who would say that in that convent such sins are committed. Otherwise, however, if he said that he heard the grave sin of someone of a religious order in general, without naming the person's order, because it is neither revelation of the seal, nor does it redound to the burden of the penitent or of any order, since among various orders some less good religious are not lacking.

856. One who after confession looks at the penitent with a grim eye, does not address him as he was previously accustomed to do, and shows by harsher words, gestures, or his whole manner of acting that he remembers his sins, is actually thinking about them, and holds him in less esteem than before. L. 654, 655, 657.

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852. **Does a confessor violate the seal who denies a certificate of confession to an indisposed penitent?** Response: affirmatively, whenever he denies the certificate to a penitent seeking it outside confession. The reason is that he uses knowledge of confession for acting externally, and indeed with great burden of the penitent.

If an indisposed penitent asks for the certificate within confession, when it is customarily given, or is demanded by the superiors of the penitent, Lugo with others denies, because the confessor says nothing, but only does not approve that confession by positive testimony, to which he is not bound, d. 23, n. 87. But more probably and more commonly the doctors affirm, because from the denial of the certificate it becomes known to others that the penitent was not rightly confessed nor absolved, and therefore there will be an indirect violation of the seal. Elbel, n. 492; Sporer, n. 839; L. 639.

But negatively, if the penitent asks for the certificate in confession outside the aforesaid circumstances, or when it is not customarily given to all or is not demanded by superiors. The reason is that then the confessor, saying nothing, behaves merely negatively and does not approve that confession by positive testimony, to which he is not bound. Besides, the penitent is not compelled by necessity to declare to others that he was not absolved; hence if he says this, he himself discloses his own indisposition, not the confessor. Lugo, d. 23, n. 87.

Yet sometimes the confessor can give a certificate of confession even to an indisposed penitent because of various inconveniences which would follow from its denial; nor then will he cooperate in the sacrilege of the penitent, who perhaps will use this testimony of confession for receiving a sacrament of the living, for example, Eucharist or marriage, in the state of sin. The reason is that the penitent will have to attribute this to his own malice. Elbel, n. 492.

Negatively also whenever the penitent has made a simulated confession, for example, to flee a penalty, avoid infamy. For the seal is not broken whether the certificate is denied inside or outside confession. The reason is that the seal arises only from sacramental confession, which is in no way had here. Nor generally can the confessor grant such persons a certificate, because without sufficient reason he would cooperate in their future sacrilege. Besides, he would assert something false, namely that they had confessed, which is not true. Lugo, d. 23, n. 87; Elbel, n. 494.

853. **What must the confessor do when he detects that the penitent is deaf?** If he adverts to the deafness at the beginning of confession, he must impose on the penitent that he return at an opportune time and place. If during the course of confession he detects this, generally he cannot in a loud voice impose on the penitent that he return, lest he introduce to others the suspicion that the penitent confessed about grave matter; but let him hear the sins in the best way he can, and, with questions omitted, impart absolution to the penitent in an absolute manner if he judges him disposed, or conditional if he doubts about the disposition; and let him impose a light penance on him, lest others think that he sinned gravely. L. 644.

854. **Can the confessor admonish the accomplice with the license of the penitent, or another person for correcting the accomplice?** Response: affirmatively. The reason is that the accomplice acquires no right to the sacramental seal from the confession of the other accomplice; for this seal was instituted in favor of penitents only, and therefore the right of secrecy is acquired by him alone who commits it.

Yet ordinarily it is not expedient that the confessor ask such license; but it will be more satisfactory to induce the penitent to open the matter to him outside confession; indeed it will be better still that the penitent himself refer the matter to another who can bring a remedy to the evil. L. 640, 641; St. Thomas, *Opusc.* 12, q. 6.

855. **Can the confessor deny Communion to a penitent to whom he previously denied absolution, if this penitent approaches the sacred table?** Response: negatively, even if he asks secretly, because the confessor cannot use knowledge of confession for acting externally against the penitent. "This opinion today must altogether be held from the Decree of Innocent XI." L. 658.

856. **Does he break the seal who says that such a vice reigns in a city or village, or that grave crimes are committed there?** Response: affirmatively, if the place is rather narrow, for example, if it does not consist of about three thousand people. "The reason is that although then the person is not revealed, nevertheless since the revelation issues in infamy of the whole community, it also redounds to the burden of the penitent, who is a member of that community, and therefore from such revelation confession would be rendered odious to him." L. 654. Otherwise if the town is large and public crimes are rather often committed there. L. 654.

857. **Can preachers use knowledge of confession for speaking about those things about which they would not have thought unless they had heard confessions?** Response: affirmatively, with danger of revelation and burden of penitents set aside. The reason is that no violation of the seal is then had. But, as is clear, they can do this only generally and indeterminately, and not by adding that they heard it in confessions. Therefore one must altogether take care not to speak publicly about altogether particular sins of one or another penitent, especially if they have the sermon before some small community, for example, in a monastery of nuns, because then revelation could easily arise and burden be induced. Elbel, n. 525; L. 654.

858. **Can a priest who knows from confession that ambushes are being prepared for him flee, or prevent the damage in another way?** Response: affirmatively, if from such caution the sin accused is in no way manifested to others, nor is any burden brought upon the penitent.

If he cannot flee without in some way manifesting that some sin was accused by the penitent, then several still affirm, because to reveal the confession of a sin is not to reveal the sin; and indeed in this case it is clear that knowledge of the sin does not arise from confession, but on the contrary knowledge of the confession of the sin proceeds from certain knowledge of the sin. Castro Palao, tr. 23, p. 19, § 3, n. 18. But others, whose opinion I follow, says St. Alphonsus, deny, and it seems altogether to be denied. The reason is that, with such circumstances posited, namely knowledge of the crime by others and confession of the penitent, that flight would be a true revelation, although indirect, not only of the confession made, but also of the sin confessed; and although the confessor simulated flight from some pretext, he nevertheless would always provide reasonable suspicion of the sin declared.

Therefore for fleeing those dangers, provision must be made either from the license of the penitent or in other ways without that indirect breaking of the seal. Lugo, d. 23, nn. 108ff.; L. 659.

859. **Can superiors use knowledge of confession for external governance if it in no way appears that they direct themselves from that knowledge?** Response: negatively. The reason is that evidently this would yield to the burden of penitents. Moreover if the faithful knew that such doctrine was everywhere taught, they would be drawn back from confession.

This is established also from various Decrees of the Supreme Pontiffs, especially of Clement VIII, May 26, 1594, for regulars. Although this Decree was made for regulars, it must be extended to all superiors, since the same reason which presses for regulars holds also for seculars. This is established also from the Decree of the Sacred Congregation of the Inquisition, issued by the authority of Innocent XI, in the year 1682. L. 656, 657, 670; Lugo, d. 23, n. 98; La-Croix, n. 1977; E. M.

860. **Can the confessor at least sometimes, or when, use knowledge of confession?** According to all theologians, he can do this in the following cases: 1. to pray for the penitent, or to act more benignly toward him; 2. to consult books, or wise persons, yet prudently, with danger of revelation set aside; 3. to direct himself through experience acquired from confessions, for example, to temper rigor, and to direct himself from the confession of one person for prudently questioning or instructing others, while giving no suspicion of the former confession; 4. to reform his own morals, to correct his own defects, or to fulfill his office better, for example, to put off laziness, to watch generally more vigilantly over subjects, with suspicion of revelation nevertheless set aside in the particular case, and with any burden of the penitent and hatred toward confession set aside, because anyone is bound to correct his own defects as soon as he adverts to them; nor can any penitent be reasonably offended that the confessor, because of things heard in confession, changes his life for the better, with no inconvenience or burden to the penitent at all. 5. The same indeed is licit in other similar cases, always with the same restrictions, that there be no revelation of confession, no burden of the penitent, no hatred toward confession. L. 657.

On Extreme Unction

On the Nature, Matter, Form, Minister, and Subject of Extreme Unction

861. **What is extreme unction?** Extreme Unction is so called because it is to be administered last of all the sacred unctions which our Lord and Savior commended to his Church. Roman Catechism, n. 3.

Extreme unction is a sacrament of the New Law, instituted by Christ the Lord and promulgated by Blessed James the Apostle, by which, through the anointing with oil and the prayer of the priest, there is conferred on sick adults in danger of life the salvation of the soul, and sometimes also the health of the body. James 5:14, 15; Trent, sess. 7, can. 1; sess. 14, on Extreme Unction, c. 1, can. 1, 2; Florence, Decree for the Armenians; L. 706; St. Thomas, Supplement, q. 29, aa. 1, 3; IV, dist. 23, q. 1, a. 1; E. M.

862. **What are the effects of extreme unction?** To confer grace.

To remit venial sins, and also mortal sins, if they are present, and at least attrition for them is had, if one can neither be contrite nor confess. This sacrament is the complement of penance; for it is chiefly instituted for wiping away the remains of sins. "But because, when sin is found in the soul, the

remains cannot be removed unless the sin is first removed, therefore by consequence this sacrament takes away sin." L. 731. Hence it is a sacrament primarily of the living, secondarily of the dead. Therefore confession or contrition ought of itself to precede, if the sick person is in mortal sin.

To wipe away the remains of sin and to relieve and strengthen the soul of the sick person. The remains of sin are not only the punishments due to sins, but also anxiety and fear of soul, languor and torpor toward good.

Sometimes to restore health of body, where it will have been expedient for the salvation of the soul. Therefore they err who do not receive this sacrament except when the disease has so prevailed that they cannot be healed apart from a miracle. James, loc. cit.; Trent, sess. 14, on Extreme Unction, c. 2, can. 2; Florence, Decree for the Armenians; Roman Catechism, nn. 5-7, 9, 12, 14-16; L. 716, 731; Billuart, a. 7; St. Thomas, Supplement, q. 29, a. 1, ad 2, ad 3, a. 2; q. 30; q. 32.

863. **Does extreme unction confer grace in the individual anointings, or only when all have been completed?** It is controverted, and each opinion is probable to St. Alphonsus. The reason is that each anointing is completed by its own matter and form; but from all of them one anointing finally coalesces. L. 707; H. A., tr. 17, n. 3. But St. Thomas, Supplement, q. 30, a. 1, ad 3, says: "in the last anointing grace is conferred."

But "it is certain that this sacrament is one; for although there are several anointings, nevertheless all pertain to one signification of interior healing." L. 706; St. Thomas, Supplement, q. 29, a. 2; Roman Catechism, n. 4.

864. **What is the matter of extreme unction?** The remote matter of this sacrament is necessarily olive oil, which must have been blessed by a bishop not only for liceity but also for validity, even when extreme necessity presses. Trent, sess. 14, c. 1; Florence, Decree for the Armenians; Sacred Congregation of the Inquisition, Jan. 13, 1665; Sept. 14, 1842; Jan. 10, 1850; May 15, 1878.

By a bishop, namely by the diocesan, or, the See being vacant, by another neighboring bishop. On the Lord's Supper, the oil of the sick, like the oil of catechumens and chrism, must be renewed each year, not however for the validity of the sacrament, from the precept of Clement VIII and from the Roman Ritual on Extreme Unction. And this more probably is grave. Nevertheless, if new oil cannot be had, it is licit to use the old. L. 708. But if perhaps within the year the blessed oil seems to be running out, and no other blessed oil can be had, it can be repaired by pouring in a small amount of non-blessed oil in a smaller quantity. Roman Ritual. And this can be done several times, although in the end the added quantity has been greater than that which had been blessed by the bishop and was there at the beginning.

Blessed: whether it ought to be blessed in order to extreme unction is controverted. Some probably deny, because the Church requires nothing else except that it be blessed by a bishop. Others probably affirm, because it must be deputed to the sacrament of extreme unction by a special blessing. In practice, however, the safer opinion must be held, except in a case of necessity, in which, after another oil of catechumens or chrism has been used, which is used in the sacrament of confirmation

and in the ceremonies of baptism, if afterward oil of the sick can be had, the sacrament is to be repeated.

The proximate matter is anointing of chiefly five parts of the body, namely the eyes, ears, nostrils, mouth, hands; or, if someone lacks any of these, the part nearest to it, although he lacks it from birth. But whether all these anointings are necessary by necessity of the sacrament, or whether one alone suffices, is controverted, and each opinion is probable; but in practice one must stand by the opinion affirming the necessity of all. Nevertheless neither the order among the various anointings of parts, nor, in paired senses, the anointing of each, is necessary for the sacrament, but must be observed only by precept outside the case of necessity. Besides, unless the usage of the place brings otherwise, the feet and loins are to be anointed; but the loins only of men, provided that they can conveniently be moved. In some places the anointing of the loins is omitted in religious men. Yet where it is not in use, let it be introduced if this can be done. Sacred Congregation of Rites, Aug. 14, 1858. The Greeks anoint the forehead, chin, both cheeks, breast, hands, and feet. Trent, sess. 14, c. 1, can. 3; Florence, Decree for the Armenians; Roman Ritual, on the Sacrament of Extreme Unction; Roman Catechism, nn. 5, 10; Benedict XIV, *De Synodo*, bk. 8, c. 3; L. 707-710, 732; St. Thomas, Supplement, q. 29, aa. 4-6; q. 32, aa. 5-7; E. M.

On the Nature, Matter, Form, Minister, and Subject of Extreme Unction

865. **What is the form of extreme unction?** The form is: "Through this holy anointing, and his most loving mercy, may the Lord pardon you whatever you have sinned through sight, or hearing," etc. "Amen." Roman Ritual, on the Sacrament of Extreme Unction; Florence, Decree for the Armenians.

The essentials are certainly: "Through this anointing," by which the sacramental action is signified; "May the Lord pardon you," by which the sacramental effect is generally expressed; more truly also, "Whatever you have sinned through sight," etc., by which the special effect of this sacrament is contained. On the contrary, the essentials more truly are not: "Through his mercy"; for they are tacitly comprehended in the word "May God pardon you"; nor certainly these: "Holy," "Most loving," "Amen," which signify neither the sacramental action nor the sacramental effect. To omit essentials is grave; accidentals, light or grave according as the omission is light or notable. The form of Extreme Unction is essentially deprecatory. Roman Ritual, loc. cit. Therefore, if it is pronounced in the indicative or imperative mode, according to the more common opinion it is invalid. Florence, Decree for the Armenians; Trent, sess. 14, on Extreme Unction, c. 1; Benedict XIV, *De Synodo*, bk. 7, c. 17; L. 710, 711; St. Thomas, Supplement, q. 29, aa. 7, 8, 9; Roman Catechism, n. 6.

866. **Who is the minister of extreme unction?** The minister of Extreme Unction is a priest. Any priest validly confers it; licitly, only the parish priest of the place in which someone is sick. He confers it also on clerics, yet not on regulars and those who enjoy the privileges of regulars. For to regulars the proper prelate confers it. St. Pius V, const. *Immarcescibilem*, year 1567. The bishop himself chooses by whom he prefers to be anointed, whether the Sacristan, that is, the greater Dignity of his Chapter, or the Curate. *Caeremoniale Episcoporum*, c. 38, § 4; Sacred Congregation of the Council, June 7, 1760; March 24, 1873; A. S. S., vol. 8, pp. 202ff.

But any priest more probably can licitly administer this sacrament also from the reasonably presumed consent of the parish priest. For it does not seem that one must proceed with so much rigor where there is question of mere delegation for liceity, and in no way for the validity of the sacrament.

One priest or several priests validly confer it; and these, whether they complete the various anointings simultaneously, one anointing one part, another another, and pronouncing the form corresponding to that anointing, or successively, namely if one begins the anointings and another pursues them. But this is grave outside a case of necessity, namely either of a sick person soon to die, or because, with the anointings begun and not yet completed, the minister is lacking. But if this happens, another minister must complete the anointings not yet performed, but not repeat those performed, even under condition, unless a notable delay intervenes, namely a quarter of an hour; therefore after a quarter they must be repeated under condition.

Moreover in the Greek Church seven or at least three priests anoint the sick person. Benedict XIV, *De Synodo*, bk. 8, c. 4, n. 8; James 5:14; Trent, sess. 14, c. 1, 3, can. 4; Florence, Decree for the Armenians; L. 722, 723, 724; St. Thomas, Supplement, q. 29, a. 2, ad 3; q. 31; Roman Catechism, n. 13; E. M.

867. **How are the anointings to be performed?** As to validity, the part must be truly anointed; but to anoint is to smear with oil. Therefore if oil is only dripped, there is no anointing. But whether one drop of oil suffices is controverted. For the rest, it suffices in each anointing to dip the tip of the finger in the oil and anoint. L. 709.

All the senses are to be anointed, and indeed continuously. The reason is that it is probable that from all there coalesces one anointing, and that grace is conferred when all have been completed; but with a longer delay interposed between one anointing and another, moral union is no longer preserved and the sacrament becomes doubtful.

As to liceity, the anointing ought to be done with the thumb, and it is light not to do it with another finger; nor with a small rod or brush, even if usage has this, unless from a just cause, for example if the sick person labors under a contagious disease. Sacred Congregation of Rites, May 9, 1857; Benedict XIV, *De Synodo*, bk. 13, c. 19; L. 710. The anointings ought to be made in the figure of a cross, and again this is light, L. 728; in due order, which they think grave, L. 710; and in paired senses, one must begin from the right, nor is the form to be completed before paired members of this kind have been anointed, which seems light. Roman Ritual, on the Sacrament of Extreme Unction; L. 711; St. Thomas, Supplement, q. 29, a. 2; q. 32, a. 5; E. M.

868. **Note.** 1. The anointing begins from the eyes. That they may be anointed conveniently, they must be closed, and the anointing made over both eyelids. If they cannot be closed, let the anointing be made on the eyebrows, near the corners of the eyes, as the very ancient Catalan Ritual has.

869. The ears come next, which are anointed on the lobe or lowest part of the ear, not on the helix or hollow of the same, and this so that they can more easily be wiped.

870. The nostrils; let the nostrils be anointed outside, which are the lateral wings of the nose, to avoid sneezing, which would easily arise by doing otherwise.

871. The mouth, with the lips pressed together. Here there ought to be one anointing, and therefore the lips are to be joined so that it can be done more easily; but if this cannot be obtained, it will be enough that the lower or upper lip be anointed. Yet there are those who still anoint both.

872. The hands; the anointing is made in the middle palm of each hand, or on another nearer part, if it cannot be done otherwise, yet on the inner side; for only priests and bishops ought to be anointed on the exterior part of the hand.

873. The feet; the anointing is made at the metatarsus, commonly *collo del piede*; according to St. Charles it is made on the soles, because namely we use them for walking. For the rest, it will be enough if that part of the feet is anointed which conveniently can be; nor does it matter if both cannot be anointed because of disease or difficulty, or because one has been cut off; for this anointing is only an integral part. And indeed the feet fall under the sense of touch.

874. Although the anointing of the loins is omitted, the essence of the sacrament nevertheless remains intact. For the loins fall under all the other five senses, which according to St. Thomas, Supplement, q. 32, a. 6, are, as principles of acting, so principles of sinning.

875. Any piece of cotton or similar thing prepared for wiping the anointed parts serves for each anointed member. The priest rubs well with the soft part of bread the thumb with which he anointed, and washes it with water in some vessel prepared for this, then wipes it with a towel; but the ablution of water with crumbs and pieces of cotton used for wiping he carries to the sacrarium. Yet some are accustomed to hand over all these things to be burned in the very house of the sick person, and to carry only the anointed cotton or tow to the sacrarium. Trent, sess. 14, can. 3; L. 711, 730; E. M.

On the Nature, Matter, Form, Minister, and Subject of Extreme Unction

869. **Is it ever licit to administer extreme unction with a single form and a single anointing?** If danger of imminent death is present, it is licit to perform all the anointings under a single formula: "Through this holy anointing and his most loving mercy may God pardon you whatever you have sinned through sight," while anointing the eyes, "hearing," while anointing the ears, etc., putting the word "sinned" before, lest if the sick person dies meanwhile, after it had been placed later, the anointings performed would be altogether invalid. Indeed, when death is immediately imminent, one anointing on the forehead, or breast, or shoulders, will be enough with these words: "whatever you have sinned through the senses"; or better by expressing the senses thus: "Through this holy anointing," etc., "may God pardon you whatever you have sinned through the senses: sight, hearing, taste, smell, and touch." But when the danger has ceased, in this case all the anointings must be repeated under condition in the usual way. L. 710.

870. **What about the various ceremonies and prescribed prayers?** It is grave, without urgent necessity, to omit the prayers prescribed by the Roman Ritual; and if they were omitted because of danger of instant death, afterward, if time is available, they must be said. The

prayers which precede the anointings, psalms, and litanies are to be said not by the minister, but by the bystanders.

Likewise it is grave, apart from necessity, to administer this sacrament without surplice and stole. But it is light to administer it without light, without a minister, or with a woman ministering. Yet according to several, it is not even light to administer without light, or to use no minister. If a cleric or layman cannot easily be found, the priest alone performs all the ceremonies, and himself responds to the prayers. Roman Ritual, this title; L. 724-728; E. M.

871. **Who is the subject of extreme unction?** The subject of Extreme Unction is a baptized human being who has arrived at the use of reason and is sick in probable danger of death, from disease, difficult childbirth, a received wound, poison, or old age, although he has not yet communicated; although he is mute, deaf, blind from birth; although he is insane, if he has lucid intervals; although he is delirious or deprived of the senses, if beforehand he sought the sacrament or would have sought it if he had thought about this, and all irreverence toward the sacrament is absent.

Therefore it is invalidly given to the healthy about to enter battle, to those condemned to capital punishment, to infants not yet having obtained the use of reason, or to quasi-infants, namely idiots and the insane from birth, and to sick persons outside the aforesaid danger.

Moreover it is to be given only once in the same infirmity and danger; if the infirmity is long-lasting and the danger has at least probably passed away, when a new danger is imminent, it can be given again; and it must be given, if the new danger is certain. Trent, sess. 14, doctrine on the Sacrament of Extreme Unction, c. 3; Decree for the Armenians; Roman Ritual, on the Sacrament of Extreme Unction; Benedict XIV, const. *Ex quo primum*, *De Synodo*, bk. 7, cc. 20, 21, 23; bk. 8, cc. 5-8; Suarez, d. 4, s. 2; L. 713-721, 732; St. Thomas, IV, dist. 23, q. 2, a. 4, q. 2; Supplement, q. 32, q. 33; Roman Catechism, nn. 9, 11; E. M.

872. **Is there a grave obligation of receiving extreme unction?** No precept about this matter is present. Therefore, contempt, scandal, and danger of struggle with the devil being removed, one who does not receive it does not sin gravely. L. 733; St. Thomas, III, q. 65, a. 4.

But one's own parish priest nevertheless is bound from office to administer it, and consequently sins gravely, unless some grave cause excuses him, if he does not confer it on those seeking it, or defers it until the sick person, with health despaired of, is deprived of the senses. For thus the sick person lacks the richer fruit which he would have perceived, is deprived of spiritual strength for resisting the devil and for enduring the inconveniences of disease; if he were in mortal sin, by conceiving attrition he would have obtained grace; and if it had been given at a fitting time, he could also have obtained bodily health.

It is given by custom after Viaticum, but to give it before Viaticum is either no sin or scarcely light. Roman Ritual, on the Sacrament of Extreme Unction; Roman Catechism, n. 9; La-Croix, n. 2120; L. 714-716, 728, 729.

On Order

I. On the Nature, Matter, and Form of Order

873. **What is Order?** Order can be taken in two ways: for ordination, or that action by which sacred power is bestowed; and for the order itself, or the sacred power, the effect of ordination. "The name of order," says St. Thomas, Supplement, q. 34, a. 2, ad 4, "is taken in two ways. For sometimes it signifies the relation itself; and thus it is both in the inferior and in the superior... and it is not taken here in this sense. But sometimes it is taken for the grade itself, which makes order taken in the first way. And because the notion of order is found where first something higher than another occurs, therefore this eminent grade by spiritual power is named order."

Order, or ordination, is a sacrament of the New Law by which spiritual power is handed over with relation to the Eucharist, and grace is conferred for duly performing ecclesiastical functions. But order, the effect of the sacrament, is the aforesaid spiritual power which is bestowed on the ordained person. The orders indeed are various, but through all of them one tends toward the priesthood, and therefore toward the ministry of the altar. Therefore there is one power of all, a part of which is bestowed on each, and from all there is consequently one sacrament. "For the whole fullness of this sacrament is in one order, namely the priesthood, but in the others there is a certain participation of order... And therefore all the orders are one sacrament." St. Thomas, Supplement, q. 37, a. 1, ad 2. Trent, sess. 23, cc. 2, 3, canons 2, 3; L. 744, 745; St. Thomas, Supplement, q. 34, aa. 1-3; q. 35, a. 2; q. 36, a. 3; q. 37, a. 1; E. M.

I. On the Nature, Matter, and Form of Order

874. **What is the effect of this sacrament?** Sanctifying grace; sacramental grace for duly performing the ministry; the impression of character. Trent, sess. 23, cc. 3, 4, canon 4; St. Thomas, Supplement, q. 35, aa. 1, 2.

Moreover, character is impressed not only in the priesthood, St. Thomas, Supplement, q. 37, a. 5; q. 38, a. 1, ad 1; but also in the diaconate, St. Thomas, ibid., ad 5; in the subdiaconate, St. Thomas, q. 38, a. 1, ad 2; in the acolytate, St. Thomas, Supplement, q. 37, a. 5, ad 5; q. 38, a. 1, ad 2; and in the other minor orders, but not at all in first tonsure, St. Thomas, q. 40, a. 2, ad 2. But cf. 880. According to the Holy Doctor, Supplement, q. 40, a. 5, ad 2, a new character is not impressed in the episcopate; but more commonly it is asserted that a distinct character is impressed even in the episcopate. Cf. 878. Roman Pontifical, on conferring Orders; Roman Catechism, n. 34; L. 378.

875. **How many orders are there; what is their division; what is their institution?** In the Latin Church there are seven: the Ostiariate, Lectorate, Exorcistate, Acolytate, Subdiaconate, Diaconate, Priesthood, which is distinguished into the Presbyterate and Episcopate. "The multitude of orders," says St. Thomas, Supplement, q. 37, a. 1, "was introduced in the Church for three reasons... to commend the wisdom of God..., to supply for human weakness..., that a broader way of advancing might be given to men." Moreover the sacrament of Order is ordered

to the sacrament of the Eucharist, which is the sacrament of sacraments. "And therefore the distinction of orders is to be taken according to relation to the Eucharist." St. Thomas, Supplement, q. 37, a. 2. Hence only seven orders are fittingly enumerated. For indeed "the power of order is either for the consecration of the Eucharist itself, or for some ministry ordered to this sacrament of the Eucharist. If in the first way, thus it is the order of priests... But the cooperation of ministers is either in relation to the sacrament itself, or in relation to the recipients. If in the first way, thus it is threefold. First, there is the ministry by which the minister cooperates with the priest in the sacrament itself as to distribution, but not as to consecration... and this belongs to the deacon... Second, there is the ministry ordered to arranging the matter of the sacrament in the sacred vessels of the sacrament itself, and this belongs to subdeacons... Third, there is the ministry ordered to presenting the matter of the sacrament; and this is fitting to the acolyte... The ministry ordered to the preparation of recipients can only be over the unclean, because those who are clean are already suited to receive the sacraments. Now there is a threefold kind of unclean persons... For some are wholly unbelievers who are unwilling to believe, and these are to be kept wholly from the sight of divine things and from the assembly of the faithful; and this belongs to doorkeepers. But some are willing to believe, but are not yet instructed, namely catechumens; and the order of readers is ordered to their instruction: and therefore the first rudiments of the doctrine of faith, namely the Old Testament, are committed to them to be read to them. But some are instructed faithful persons, yet having an impediment from the power of the demon, namely energumens; and for this ministry there is the order of exorcists." St. Thomas, loc. cit.

"In the primitive Church, because of the small number of ministers, all the lower ministries were committed to deacons... Nevertheless all the aforesaid powers were present, but implicitly in the one power of the deacon. But afterward divine worship was enlarged, and what the Church had implicitly in one order, she handed over explicitly in different orders." St. Thomas, loc. cit., ad 2; Trent, sess. 23, c. 2; ibid., c. 17, *De Reformatione*.

In the Greek Church for many centuries there have been only four orders, namely the Presbyterate, Diaconate, Subdiaconate, and Lectorate. The offices of doorkeeper and acolyte are attributed partly to the reader, partly to the subdeacon. But the order which the Greeks do not have as a true order is the exorcistate. Benedict XIV, const. *Etsi pastoralis*, May 26, 1742, § 7, n. 7. Whether formerly it had more, the learned dispute. Cf. Würzburg Theology, n. 54.

The seven orders are so divided in the Latin Church that the first four are called minor and non-sacred orders, and the latter three major and sacred, because the former approach the Eucharist, the end of all the orders, more remotely, and the latter more closely. Trent, sess. 23, c. 2, canon 2. Now an order can be called sacred in a certain common sense, and in this way all orders are sacred, as denoting not a profane or secular power but a sacred or ecclesiastical power. It can also be called sacred properly, according as it signifies a certain special prerogative not fitting to all orders.

If sacred order is taken in this way, it has a threefold acceptance. First, by reason of the power itself conferred through ordination; and thus an order is called sacred insofar as it bestows a spiritual power of serving more closely in the sacrifice of the altar. In this sense the priesthood, diaconate, and subdiaconate seem always to have been sacred orders. For Trent, sess. 23, c. 2, says that the names and proper ministries of each of the seven orders were in use from the very beginning of the Church.

Second, by reason of the solemn vow of chastity annexed to the order; and in this sense the subdiaconate was not always a sacred order. Third, by reason of hierarchical prelation or principality; and in this way only priests and deacons are placed by the Fathers in sacred order, since the clerics of the other orders do not preside over the people, but only minister to priests and deacons. Trent, sess. 23, c. 4, canon 6; St. Thomas, Supplement, q. 37, a. 3.

As the subdiaconate was not always regarded as a sacred order, so also it was not always regarded as a major order, in a special sense, as is clear from c. *A multis* 9, *De Aetatibus et Qualitatibus Praeficiendorum*, where Innocent III, from the fact that the subdiaconate was already counted among sacred orders by reason of chastity to be observed, decreed "that a subdeacon may freely be elected as bishop, just as a deacon or priest." Hence the subdiaconate, which previously was numbered among the minor orders, began to be numbered among the major orders. Freely; since previously, except for cause of utility, and even then only by permission of the Metropolitan or Roman Pontiff, an election could not be held. Moreover, this also must be noted here: as is clear from c. *Non oportet* 26, dist. 23, and c. *Nullus* 4, dist. 60, subdeacons previously did not even have permission to enter the Sacrarium and touch the Vessels of the Lord, which afterward was granted to them.

As regards the institution of the aforesaid orders inferior to the priesthood, it is certain by faith that the institution of ministers as such, insofar as under this name come those who serve the priesthood, abstracting from the different grades which can be found in them, is of divine law; for this is expressly defined in Trent, sess. 23, c. 2, canon 6. But that the institution of the individual orders which we have enumerated is, disjunctively, either simply or immediately of divine law, or at least mediately of divine law, namely from the power divinely granted to the Church, is evident from canon 2. But that each individual order was immediately instituted by Christ the Lord is not agreed among authors with respect to the subdiaconate and minor orders. Yet an affirmative response can be given with great probability from canon 6 of Trent compared with canon 2, and with *De Reformatione*, c. 17. E. M.

I. On the Nature, Matter, and Form of Order

876. **What are the individual orders; what are the offices of each?** The ostiariate is an order by which a special power is conferred on someone of opening and closing the door of the church, and of admitting the worthy and excluding the unworthy. "And therefore it must be said that he receives the power so that he can do this from office; although it can also be done by others, but not from office. And so it is in all acts of the minor orders, that they can licitly be done by others, although those others do not have any office for this, just as Mass can also be said in a non-consecrated house, although the consecration of a church is ordered to this, that Mass be said in it." St. Thomas, Supplement, q. 37, a. 4, ad 9. Besides this, it belongs to the doorkeeper to strike the cymbal and bell to call the people to the Church; to open the book for the one who preaches; to assist at the sacrifice of Mass, taking care that no one approaches nearer than is proper to the sacred altar and interrupts the priest doing the divine service; and to guard the keys of the temple, the door, and the things which are within the Church. Roman Pontifical, on the ordination of doorkeepers; Roman Catechism, n. 15.

The lectorate is an order by which a special power is conferred on someone of reading from the pulpit in church the books of the New and Old Testament, especially those which are customarily read during nocturnal psalmody. It also belongs to him to hand on to the faithful the first rudiments of the Christian Religion, but not to preach. Moreover, it belongs to the reader to bless bread and all new fruits. Roman Pontifical, on the ordination of readers; Roman Catechism, n. 16; St. Thomas, Supplement, q. 36, a. 2, ad 3; q. 37, a. 4, ad 8.

The exorcistate is an order by which a special power is conferred on someone of casting out demons from energumens, whether baptized or catechumens. St. Thomas, Supplement, q. 37, a. 4, ad 8. Nevertheless, the faculty of exorcizing is reserved only to presbyters, who can use it only by permission of the Ordinary. It also belongs to the exorcist to say to the people that anyone who does not communicate should make room, and to pour water in the ministry. Roman Pontifical, on the ordination of exorcists; Roman Catechism, n. 17.

The acolytate is an order by which a special power is conferred on someone of lighting the lights of the Church, and of preparing and presenting for the Eucharist the cruets of wine and water. St. Thomas, Supplement, q. 37, a. 4, ad 6, ad 7, ad 8; a. 5, ad 6; q. 38, a. 1, ad 2. Therefore his function is to minister to the priest himself at private Mass, and at solemn Mass to accompany the greater ministers, subdeacons and deacons, in the ministry of the altar and give them assistance. Besides this, he carries and keeps the lights when the sacrifice of Mass is celebrated, but especially when the Gospel is read; for this reason he has been called by another name, Ceroferarius. Roman Pontifical, on the ordination of acolytes; Roman Catechism, n. 18.

The subdiaconate is an order by which a special power is conferred on someone of serving the deacon in solemn Mass and of solemnly chanting the Epistle. St. Thomas, Supplement, q. 37, a. 4, ad 3, ad 4, ad 6; a. 5, ad 5; q. 38, a. 1, ad 2. For he must prepare the sacred linens, vessels, bread, and wine necessary for the use of the sacrifice; offer the chalice and paten to the deacon for the use of the sacrifice; provide water to the bishop and priest when they wash their hands in the sacrifice of Mass. He assists at the sacred action as a witness; and he prevents the priest performing sacred things from being disturbed by anyone. It is also his office to wash the palls, corporals, and purificators. Roman Pontifical, on the ordination of subdeacons; Roman Catechism, n. 19.

The diaconate is an order by which a special power is conferred on someone of immediately assisting the presbyter in solemn Mass and of solemnly chanting the Gospel. St. Thomas, Supplement, q. 37, a. 4, ad 3, ad 4, ad 6; a. 5, ad 5; q. 38, a. 1, ad 2. It also belongs to the deacon by commission to preach, to baptize, and to distribute communion. But whether a deacon, in order sometimes to preach, needs the special permission of the bishop, or whether the permission of the parish priest or rector of the church suffices, seems to be determined from particular statutes or custom. "It belongs to him to follow the bishop continually, to guard him while preaching, and to be present to him and to the priest when performing sacred things or administering other sacraments, and to read the Gospel in the sacrifice of Mass. Formerly he would very often stir up the minds of the faithful so that they might attend to sacred things; he also ministered the Blood of the Lord in those Churches in which there was the custom that the faithful receive the Eucharist under both species. Besides this, the distribution of ecclesiastical goods was committed to the deacon, so that he might supply to each person the things necessary for living.

"It also belongs to the deacon, as the eye of the bishop, to investigate who in the city lead life piously and religiously, and who otherwise; who come together for the sacrifice and sermon at the stated times, and who again do not come... He must also recite the names of the catechumens, and place before the bishop those who are to be initiated by the sacrament of Order. Moreover, if the bishop and priest are absent, he is permitted to explain the Gospel, yet not from a higher place, so that it may be understood that this is not his proper function." Roman Catechism, n. 20; Roman Pontifical, on the ordination of deacons.

The presbyterate or priesthood is an order by which a special power is conferred on someone of consecrating the Body and Blood of Christ, and also of forgiving and retaining sins. "And because one is brought into proximate disposition for the Eucharist by being cleansed from sins, therefore the proper minister of all the sacraments which are instituted principally for the cleansing of sins is the priest, namely of baptism, penance, and extreme unction." St. Thomas, Supplement, q. 37, a. 4, ad 1. It also belongs to the priest to effect various blessings, and to feed the people of the Christian faithful by word and example. Trent, sess. 23, c. 1, canon 1; Roman Pontifical, on the ordination of presbyters; Roman Catechism, n. 25.

The episcopate is an order by which a special power is conferred on someone of confirming the faithful and ordaining the ministers of the sacraments, and also of consecrating things belonging to divine worship. Ministers of the sacraments, in the broader sense, namely not only those who confect the sacraments, but also those who from office minister to those confecting them. To bishops it also belongs to rule the Church of God. Trent, sess. 23, c. 4, canons 6, 7; Roman Pontifical, on the consecration of a bishop; L. 736, 747, 805; St. Thomas, Supplement, q. 37, a. 2.

877. **Note.** "Since the consecration which takes place in the sacrament of Order is ordered to the sacrament of the Eucharist, that is the principal act of each order according to which it is ordered more proximately to the sacrament of the Eucharist. And according to this, one order is also more eminent than another, according as one act is ordered more immediately to the aforesaid sacrament. But because many things are ordered to the sacrament of the Eucharist as the most worthy, it is therefore not unfitting that, besides the principal act, one order also have many acts, and so many more as it is more eminent; because the higher a power is, the more things it extends to." St. Thomas, Supplement, q. 37, a. 4.

I. On the Nature, Matter, and Form of Order

878. **Is the episcopate an order distinct from the presbyterate?** "St. Thomas, St. Bonaventure, and others deny it, saying that it is an extension of the order of the presbyterate. But more commonly Bellarmine, Tournely, etc., affirm it, both because in it a distinct character is handed over, and a special power in relation to the Eucharist, namely of constituting the ministers of this sacrament; and because the order of the episcopate is conferred by the imposition of hands, and by the form, 'Receive the Holy Spirit,' etc. Nor is it valid to say that, if the episcopate were a distinct order, a bishop could at least validly be ordained even if he were not a priest; for the response is that this is required by divine ordination, just as it is required that one be baptized who wishes to be confirmed or ordained." L. 378.

According to the first opinion of St. Thomas, just as in the ordination of a priest, in the final imposition of hands and by the words, "Receive the Holy Spirit," etc., there would not be a new distinct order, a new distinct sacrament, a new distinct character; so the episcopate and the priesthood are not two orders in number, but one order in number, nor two sacraments in number, but one sacrament in number. Hence by the ordination of a bishop the priestly power, which is principal, is extended, and thus the priestly character, which is principal, is also extended; and therefore a new character is not so much conferred as a certain perfection and extension of the priestly character, since one power is completive and perfective of the other. Benedict XIV, const. *In postremo*, §§ 10, 17; St. Thomas, Supplement, q. 40, a. 5; q. 35, a. 1, compared with q. 38, a. 1, and lecture 3 on 2 Tim.; Sylvester Maurus, *Opus Theologicum*, t. 3, q. 265, n. 29.

879. **What is first tonsure, and how is it conferred?** First tonsure is not an order except broadly, but only a disposition to orders, by which someone becomes a cleric, is transferred from the lay state into the lot of the Lord, and is deputed to divine worship; and he becomes capable of an ecclesiastical benefice and clerical privileges. Trent, sess. 23, c. 2.

It is conferred by cutting the hair, or artificial hair, Sacred Congregation of Bishops and Regulars, Sept. 25, 1846, and by the words, "The Lord is my portion," etc., through a suitable minister, from the institution of the Church. L. 734, 735; St. Thomas, Supplement, q. 40, a. 2; Roman Pontifical, on making clerics; Roman Catechism, nn. 13, 14.

880. **Are the individual orders sacraments?** That the presbyterate is a sacrament is plainly clear from Trent, canons 1, 2, 3, and 6 taken together.

As to the diaconate and episcopate, this is drawn from the same Trent; since from canon 6 there is had the divine institution of bishops and ministers, and therefore at least of deacons; but from canon 4 there is had that grace is annexed to the conferral of the episcopate and diaconate. For those words, "Receive the Holy Spirit," which according to Trent are truly significative and collative of grace, the bishop pronounces not only in the ordination of a presbyter, but also in the ordination of a deacon and in the consecration of a bishop.

Finally, that the subdiaconate is very probably, and that the minor orders also are each more probably sacraments, is deduced from Florence, Decree for the Armenians, where under the sacrament of Order all the orders are equally enumerated; the matter and form of the sacrament are assigned for all; and the ordinary and extraordinary minister of the same sacrament of Order is indicated, which extraordinary minister can be affirmed only of the minor orders and subdiaconate. A similar argument can be made from Trent; for c. 3 and canon 3 speak indefinitely, saying that order or sacred ordination is a sacrament. Besides, in the obvious and natural sense, in the aforesaid c. 3 and canon 3 the matter treated is order or sacred ordination, of which there had been speech in cc. 1 and 2, and canons 1 and 2. But there order is treated insofar as it includes not only the presbyterate, but also the other orders. Cf. also canon 6 and chapters 2 and 4 taken together. It is confirmed also from the character which is impressed both in the subdiaconate and in the minor orders, according as this is deduced from the Roman Pontifical, on conferring Orders, and Roman Catechism, n. 34. Benedict XIV, *De Synodo*, bk. 8, c. 9.

St. Alphonsus, nn. 736, 737, 755, holds that it is probable that all orders are sacraments, but more probable that only the presbyterate and diaconate are sacraments, and very probable that the episcopate also is a true sacrament distinct from the presbyterate. St. Thomas, however, clearly teaches, Supplement, q. 37, a. 2, ad 1, and a. 3, that they are sacraments. "Hence, since character is a sign distinguishing from others, it is necessary that in all (orders) character be impressed; a sign of this also is that they remain perpetually and are never repeated. And this is the third opinion, which is the more common one"; Supplement, q. 35, a. 2.

I. On the Nature, Matter, and Form of Order

881. **What is the matter of ordination?** It is various for the various orders.

In the minor orders the matter is only the handing over of instruments; namely the instruments are the remote matter, and the handing over of the same instruments is the proximate matter. Therefore it is necessary that the one ordaining present them to the one to be ordained, and that the one to be ordained receive them or touch them by hand, as the practice of the Church and the words of the form suggest. St. Thomas, III, q. 34, a. 5, ad 3. Moreover, the instruments of the ostiariate consist in the keys of the Church, though it suffices to use any key whatever; those of the lectorate consist in the codex of Sacred Readings, that is, the Missal, Breviary, or volume of Sacred Scripture, or a book of the Scriptures; those of the exorcistate consist in the book of Exorcisms, in place of which the Pontifical or Missal can be handed over; those of the acolytate consist in empty cruets, or at least one empty cruet, and, more probably, a candlestick with an extinguished candle.

The matter of the major orders is, in the subdiaconate, only the handing over of instruments, namely of an empty chalice with an empty paten placed upon it, both by precept and, probably, by necessity of the sacrament, and, more probably, of the book of Epistles; in the diaconate, the imposition of the right hand, and, more probably, also the book of the Gospels; in the presbyterate, the imposition of hands and the chalice with wine, and the paten placed upon it with the host, and therefore these are to be handed over together because of the unity of the sacrifice. But which matter is essential is disputed: whether the handing over of instruments alone, from Florence, Decree for the Armenians; or the imposition of hands alone, which alone the Greek Church uses; or both, which the Latin Church uses. Hence St. Alphonsus, n. 741, says that more probably a Latin is validly ordained by the matter assigned to the Greeks, namely by the imposition of hands alone, and conversely; but probably invalidly. Therefore in practice the altogether safer opinion must be chosen. Finally, the matter of the episcopate is the imposition of hands, and, probably, the imposition of the book of the Gospels. 1 Tim. 4:14; 2 Tim. 1:6; Council of Carthage, canon 2; Roman Pontifical, on the consecration of a bishop. But the handing over of the book of the Gospels does not seem essential; for when the book is handed to the elect, he is already called consecrated in the Pontifical. Trent, sess. 23, c. 3, canon 4; Florence, Decree for the Armenians; Roman Pontifical; L. 739, 745-749; St. Thomas, Supplement, q. 34, a. 5; q. 37, aa. 2, 4, 5; q. 38, a. 1, ad 1, ad 2; Würzburg Theology, n. 108; Benedict XIV, *De Synodo*, bk. 8, c. 10; E. M.

882. **What is the form of Order?** As with the matter, so also concerning the form of the sacrament the doctors do not agree among themselves. According to the various matter which is assigned, some consequently will the form to consist in the words which are recited by the bishop in the

imposition of hands, others in the words which the bishop pronounces in the handing over of instruments, others in both sets of words. But those words are the ones which accompany the handing over of instruments and the imposition of hands according to the Roman Pontifical. St. Thomas, Supplement, q. 34, a. 4; E. M.

I. On the Nature, Matter, and Form of Order

883. **Note.** "1. In conferring sacred Orders it is required that the matter be handed over by the same bishop who pronounces the form, because, since such is the usage of the Church, Christ is judged to have instituted it in this way: thus St. Thomas, Supplement, q. 38, a. 1, ad 2. But he teaches that it is otherwise in the conferral of minor orders.

"If orders are conferred by a bishop, while another nevertheless celebrates Mass for him, the ordination will be valid but illicit, as the Sacred Congregation declared in the year 1715 before Clement XI, and as Innocent XIII confirmed in the Congregation held Feb. 5, 1722." L. 744; Benedict XIV, *De Synodo*, bk. 8, c. 12, n. 7.

2. In the ordination of subdeacons, over two or three touching the chalice with the paten by the right hand, the form can be pronounced by the bishop: "See," etc. But in the ordination of presbyters the chalice with wine and water and the paten with the host must be handed over to each one, and the form must be repeated for each in the singular. Sacred Congregation of Rites, Nov. 12, 1831.

3. In the ordination of the presbyterate the bishop imposes hands three times: first, when he imposes hands saying nothing; second, when together with the presbyters he extends the hand over those to be initiated and pours forth prayers; third, when after communion he says: "Receive the Holy Spirit," etc. Moreover, the necessary imposition of hands is not the first, as is certain among all, says St. Alphonsus, n. 748, but either the second, when the bishop extends his hands with the presbyters, or the third, or both.

Those who contend that the imposition of hands alone is the matter of the presbyterate take their argument from the Greeks, who are ordained by the imposition of hands alone; and they stand for the second imposition of hands, for after it and before the third imposition of hands, those ordained already consecrate the Eucharist together with the bishop. They say that by it the power over the real and mystical Body of Christ is handed over at the same time, namely for confecting the Eucharist and for absolving sins. Those who stand for the handing over of instruments and the imposition of hands argue from Florence, Decree for the Armenians, and from Trent, sess. 23, canon 4, and from the ancient and constant practice of the Church as regards the imposition of hands. According to this opinion, by the handing over of instruments there is handed over power over the real Body of Christ, and by the third imposition of hands there is handed over power over the mystical Body of Christ.

Hence there is another opinion, and one which at least practically must consequently be held, that both the second and the third imposition of hands, together with the handing over of instruments, are the necessary matter of this sacrament. But the variety of the Latin and Greek Church is explained from the fact that Christ instituted the matter and form of this sacrament in general, and left to the Church the power of determining it in species, and of changing it for just causes, provided

she use things and words expressing that handing over of power, the effect of this sacrament. By the second imposition of hands together with the handing over of instruments, power over the real Body of Christ is handed over; but by the third, power over the mystical Body of Christ is handed over; and both can be considered after the manner of one moral thing, as namely, morally speaking, one imposition of hands distributed into two parts.

Indeed, even the first imposition of hands seems necessary, and to constitute yet one imposition of hands together with the second. The reason is that if the form is lacking in the first imposition of hands, bodily touch is lacking in the second imposition of hands. But if the first imposition of hands is said to constitute, together with the second imposition of hands, which is the continuation of the first, one imposition of hands, now every difficulty vanishes, and both are had: bodily touch and form.

But whether "in the ordination of a presbyter the extension of the hand, both of the bishop and of the priests, prescribed by the Pontifical must be made not only within these words: 'Let us pray, dearly beloved brethren,' up to 'Let us bend the knees,' but also after the genuflection within the Prayer which begins: 'Hear us,' up to the Preface, so that the genuflection only interrupts that extension, but does not make it cease? Response: In the ordination of presbyters the practice of the Roman Church must be observed, which imposes hands on those to be ordained only in the first prayer: 'Let us pray, dearly beloved brethren.'" Sacred Congregation of Rites, Feb. 18, 1843.

4. A bishop cannot validly be ordained except by another bishop. Several things concur for such an ordination in this order: namely the imposition of the book of the Gospels over the neck and shoulders of the one ordained; the imposition of hands by three bishops with the form which, according to Würzburg Theology, n. 108, corresponds to both: "Receive the Holy Spirit." There follows the anointing of the head or crown of the one ordained, the anointing of the hands of the one ordained, after which the elect is called consecrated in the Pontifical. Then there is the handing over of the staff, ring, and book of the Gospels.

"But whether the assistance of three bishops is required for validity outside the case of necessity? It is certain, first, that this is required by necessity of precept from Nicaea I, c. 4, and from Carthage II, c. 7. It seems certain, second, that by commission of the Pontiff in a case of necessity ordination is validly done by one bishop... But to the question asked, some say that three are altogether required... For thus Pope Damasus wrote in Epistle 4 against the Chorepiscopi: 'For it is plain to all that those are not bishops who have been ordained by fewer than three bishops.' Yet others deny it... The reason is that in the Roman Pontifical only one of the bishops is called consecrator, but the others assistants; for in the other sacraments only one minister is required... Both opinions are probable; hence in practice the first must altogether be followed." L. 755; Brief of Pius IV, Aug. 11, 1562; Brief of Leo XIII, *Trans oceanum*, Apr. 18, 1897; Holy Office, Mar. 13, 1669; A. S. S., vol. 25, p. 580; vol. 29, p. 661; *Collectanea S. C. de Propaganda Fide*, nn. 1207, 1208; Authentic Decrees of the Sacred Congregation of Rites, n. 186; Benedict XIV, const. *Qua sollicitudine*, Feb. 21, 1725; *De Synodo*, bk. 13, c. 13; E. M.

I. On the Nature, Matter, and Form of Order

884. **Is physical contact with the instruments required for the validity of ordination?** Response: Affirmatively, according to the more common and more probable opinion, which must altogether be held in practice. "Escobar, n. 184, rightly says that it suffices for validity that the matter be touched with one hand. And likewise the same Escobar, loc. cit., and Palaus, part 4, n. 20, etc., rightly judge with the common opinion that mediated touch suffices, namely if the chalice, paten, or book is touched through some veil or glove; for one who touches in this way is truly said, in the sense of all, to touch." L. 743; La-Croix, n. 2155. "The very words of the form," says St. Thomas, Supplement, q. 34, a. 5, ad 3, "seem to show that the touch of the matter is of the essence of the sacrament, because it is said: Receive this or that."

For moral contact a response of the Sacred Congregation of Rites, Dec. 3, 1661, is adduced "to the scruple of Brother Ephrem Chasteau..., namely that he had not touched the chalice with physical touch in his ordination to the presbyterate." For the Sacred Congregation responded that "he could continue the celebration of the Most Holy Sacrifice without any scruple, and with an altogether safe conscience." But in this decision no mention is made of the paten, and besides, there is question of a scruple. E. M.

885. **Is the ordination of a presbyter valid if he received the paten with the host, but the chalice without wine and water?** There are not lacking theologians who think that the validity of such an ordination is at least speculatively probable. But the opposite seems more probable; for the power of offering the sacrifice, which includes the oblation of both species, is one and indivisible. Therefore the power to consecrate one species cannot be handed over without the power to consecrate the other. But in the case the power to consecrate the species of wine cannot be handed over, since this is lacking. Therefore. Hence such an ordination is altogether to be repeated under condition, as De Lugo, *Responsa Moralia*, bk. 1, dub. 30, affirms that it was in fact repeated when a case of this kind occurred. L. 750.

886. **Is he validly ordained who immediately touches only the chalice, but not the paten?** The first opinion affirms this, because the chalice and paten then morally make one thing. The second opinion denies it, because in the Roman Pontifical the touch both of the chalice and of the paten is prescribed; and likewise because then the touch of the paten would be moral rather than physical. St. Alphonsus, n. 753, says that the first opinion is more probable, but that the second opinion is not improbable, "and therefore is to be held in practice; for which reason such a cleric is to be reordained under condition." Nevertheless, the Holy Office, Mar. 17, 1897, declared valid the ordination of a presbyter who touched the paten with the host, but did not touch the chalice, although he tried to touch it with his finger; and on Mar. 8, 1895, that of a presbyter who doubted whether he had touched the chalice. E. M.

887. **Is he validly ordained who touches the host but not the paten; and he who touches the chalice and paten but not the host?** Response to the first: Affirmatively, with the common opinion, which seems most probable from St. Alphonsus, n. 751. The reason is that the host and wine are the substantial matter of Order, by which principally the power over the Body of Christ is signified, and the chalice and paten are used by precept of the Church for decorum alone. Besides this, by touching the host he already at least mediately touches the paten, and

mediated physical touch certainly suffices. Therefore in practice one can safely acquiesce, Holy Office, July 2, 1892.

To the second: also affirmatively, with the common and truer opinion. The reason is, first, because then the host is touched by means of the paten; but immediate touch of the host is not prescribed by the Church, but only of the paten, as is clear from the Pontifical. Second, because the wine in the chalice is never touched immediately; therefore neither is it required that the host be touched immediately. This opinion, from the same Holy Doctor, n. 752, can well be called morally certain. La-Croix, nn. 2152, 2153; *Collectanea S. C. de Propaganda Fide*, n. 2178.

888. **Is the ordination of a priest valid if he did not touch the chalice and paten while the form was being pronounced, but immediately afterward?** Response: Affirmatively. The reason is that, although physical union is not had, nevertheless moral union is had; and while moral union stands, the whole notion of the sacramental sign subsists. This is confirmed from the common authority of theologians; for although the opposite opinion has some authors on its side, nevertheless it has now been so commonly abandoned that it seems to lack all probability. Cf. 322; Holy Office, Mar. 17, 1897; D'Annibale, 3rd ed., part 3, n. 253; Busembaum, n. 757; De Lugo, *Responsa Moralia*, bk. 1, dub. 33.

I. On the Nature, Matter, and Form of Order

889. **Is someone validly ordained if in the subdiaconate he was not given an empty chalice, but one filled with wine and water?** That ordination is probably valid. For although the chalice was full of wine and water, nevertheless from the intention of the bishop ordaining him as subdeacon it was sufficiently limited so that only the chalice according to itself was given, as contradistinguished from any content whatever. Therefore the chalice, although full, as underlying that intention, and as handed over in this way, still signified the diminution of power which the subdeacon receives in his ordination, which an empty chalice signifies better. Therefore from the defect of emptiness one cannot certainly argue a defect of valid ordination, but only of licit ordination, if that defect happened culpably. Lugo, *Responsa Moralia*, bk. 1, dub. 30, n. 5; E. M.

890. **Whether and how are defects committed in ordination to be supplied?** If the defect concerns accidentals, for example, if the anointing of the hands of the presbyter to be initiated was lacking, then it must be supplied as soon as possible by the same bishop, if this can be done; otherwise by another, and secretly if the defect was secret, to avoid scandal and disturbance of others. If one so ordained did not take care that a defect of this kind be supplied, or if before the supplying he ministered in the order received, he would sin, gravely or lightly, according as the defect is grave or light.

If the defect concerns essentials, namely concerning matter and form, the defect must altogether be supplied under grave obligation. If the sacrament consists of a double matter and form, as in the ordination of the priesthood, at least according to the probable opinion of many, then if the defect is in the antecedent part, namely in the handing over of the chalice and paten, or in the second imposition of hands, certainly the whole sacrament must be repeated, because power over the

mystical Body of Christ is founded on power over the real Body of Christ. But it is otherwise if the defect is in the later part, namely in the final imposition of hands, because power over the true Body of Christ has already been handed over independently of the subsequent part. And so also in the ordination of a deacon, if the presentation of the book of the Gospels was omitted, it is to be supplied.

The Salamancans, c. 2, n. 32, say that this indeed must be held in the ordination of the presbyterate and episcopate, but not of the other orders; because in those, if there is probability for the validity of the order received, it is not required to supply the defect, since in the priesthood afterward to be received all their power is received. But this is not to be admitted, at least for the order of the diaconate; for in c. *Presbyter*, *De Sacramento non iterando*, the Pontiff, speaking of the ordination of deacons, says that if the imposition of hands has been omitted it is altogether to be repeated, even if it is probable that the handing over of the book alone is of the essence.

These are the words of St. Thomas, Supplement, q. 35, a. 5: "It must be said that it is not of the necessity of the higher orders that someone first have the minor orders, because the powers are distinct, and one, as far as its own nature is concerned, does not require another in the same subject. And therefore even in the primitive Church some were ordained presbyters who had not previously received the lower orders; and yet they could do all that the lower orders can do, because the lower power is comprehended in the higher power, as sense in intellect and leadership in kingship. But afterward it was determined by the constitution of the Church that he should not thrust himself into the major orders who had not first humbled himself in the lesser offices. And from this it is that those who are ordained by leap according to the canons (c. *Tuae litterae*, *De Clerico per saltum promoto*) are not reordained, but that which had been omitted from the preceding orders is conferred on them."

From the aforesaid c. *Tuae litterae*, a presbyter who by leap was made presbyter from subdeacon is commanded to be ordained deacon. And, with a doubt standing concerning the ordination of a certain priest as deacon, the Holy Office defined, Jan. 28, 1875, and Jan. 26, 1898, that this ordination was to be repeated under condition in that priest. Likewise, with a doubt standing concerning the ordination of subdiaconate, diaconate, and presbyterate, the same Holy Office decreed, Aug. 1, 1697, that all these were to be repeated under condition.

A defect concerning the validity of the sacrament must be supplied at the time established by the Church from the cited c. *Presbyter*. But otherwise it must be said if the defect were accidental. Tamburini, bk. 7, c. 5, § 2, n. 13, La-Croix, n. 2200, and others probably say that if an order or some ceremony is repeated under condition because of doubt alone, it can be repeated on any day and by any bishop. And when doubts of this kind occur, it is in fact customary to grant that the repetition of ordination under condition can be done secretly, by any Catholic bishop, at any time of the year, and in a private chapel. L. 757-759; La-Croix, nn. 2220ff.; Lugo, *Responsa Moralia*, bk. 1, dub. 30, n. 2; E. M.

891. **Does one lacking an order licitly and validly exercise the acts of the order?** "One lacking the order of priesthood or episcopate would invalidly exercise their functions. But those lacking the other orders exercise them licitly if the orders are minor; illicitly if they are major. Hence a cleric who solemnly exercises the office of deacon or subdeacon without the order sins

gravely, and incurs by the very fact irregularity and excommunication, but the latter ferendae sententiae, from cc. 1 and 2, *De Clericis non ordinatis ministrantibus*." L. 754; E. M.

II. On the Minister and Subject of Order

892. **Who is the minister of Order?** It has been defined by Trent, sess. 23, canon 7, that bishops alone are the ordinary ministers of the sacrament of Order. A bishop only elected and confirmed, although he can give permission to subjects that they be ordained by another bishop, nevertheless cannot ordain unless he has also been consecrated. But a consecrated bishop, even if he has been degraded and has renounced the episcopate, can validly ordain. L. 761; St. Thomas, Supplement, q. 38, a. 1.

The Supreme Pontiff can give a simple priest the faculty of conferring tonsure and minor orders. And this faculty has in fact been granted to cardinal priests with respect to clerics of their title, and to abbots, who nevertheless cannot licitly use it except with regulars subject to them, and more probably also with novices. Trent, sess. 23, c. 10, *De Reformatione*; Sacred Congregation of the Council, June 26, 1655; Benedict XIV, *De Synodo*, bk. 2, c. 11; Suarez, *De Religione*, t. 4, bk. 2, c. 29; Bizzarri, *Collectanea*, ed. 1885, p. 128.

Nevertheless, this is commonly denied concerning the presbyterate, as concerning a most excellent ministry which ought to be bestowed by the Prince of the Church alone, having supreme faculty, as a bishop is. St. Thomas, Supplement, q. 38, a. 1.

The question, therefore, concerns the diaconate and subdiaconate. Some affirm; others deny; but others probably deny it concerning the diaconate, whose ministry is immediately ordered to touching the Body of Christ by distributing it to the faithful, while they affirm it concerning the subdiaconate, because its function does not have such an immediate relation to the Body of Christ. Nor does St. Thomas, Supplement, q. 38, a. 1, ad 3, seem to stand in the way of this doctrine. There the Holy Doctor excludes the major orders which have always been regarded as sacred in the Church, as is inferred from his words; since he speaks of orders which have an immediate relation to the Body of Christ. But it is known that the order of the subdiaconate was not counted among sacred orders until the eleventh century by Urban II, as is had in c. *A multis*, *De aetate et qualitate praeficiendorum*; nor indeed does the subdiaconate have an immediate relation to the Body of Christ, as St. Thomas speaks; for priests alone can confect the Eucharist, and deacons alone can carry or minister it. L. 760-766; Giraldi, part 1, s. 105; E. M.

893. **Can any bishop licitly confer orders?** For orders to be licitly conferred and received, it is required that the one to be initiated, even with first tonsure, be ordained by his own bishop, or by another, but with his permission. Therefore a bishop cannot licitly ordain except subjects, either by reason of origin, or by reason of domicile, or by reason of benefice, or by reason of familiarity. C. *Cum nullus* 3, *De temporibus ordinationum*, in VI; c. *Eos qui* 2, eod. tit.; Trent, sess. 23, cc. 3, 8, 9, *De Reformatione*; L. 760, 769, 771.

By reason of origin, if namely they were born in his diocese. But one who is born somewhere by chance ought to be ordained by the bishop of the father's domicile, unless afterward the father contracted domicile in the same place where the one to be initiated was born; or by the bishop of the

place where the father was born, if the father at the time of the son's birth had domicile nowhere. But if the son is illegitimate and not legitimated, the domicile of the mother is attended to. Honorante, *Praxis Secretariatus Urbani Vicariatus*, c. 1, note 9; Schmalzgrueber, bk. 1, part 3, tit. 11, nn. 37, 38; Giraldi, part 2, s. 96; L. 760, 770, 772, 773.

By reason of domicile, only he is to be judged a subject as regards orders who comes somewhere with the intention of remaining there perpetually, and proves this intention either by ten years' residence, or by building a house with the transport of the greater part of his goods, while at the same time remaining there for some notable time; and he must swear that he then has this intention. Innocent XII, const. *Speculatores*, Nov. 4, 1694; L. 760, 770, 773, 778; Lucidi, *Visitatio sacrorum liminum*, c. 2, nn. 88, 91.

By reason of benefice, it does not suffice that someone is immediately about to receive a benefice from some bishop, so that he can be ordained by him or receive first tonsure from him; but it is required that the benefice be actually possessed, and of itself suffice for fitting support without supplement from patrimony. One who has a benefice in two dioceses can be ordained in either. C. *Cum nullus*, *De temporibus ordinationum*, in VI; L. 760, 770, 774, 776, 777.

By reason of familiarity, in order that a bishop, but not a merely titular one, can ordain someone, it is required that for three years he have supported him with himself in his actual service, and that within a month he confer on him a benefice sufficient for fitting support, so that namely the one to be ordained, when the familiarity ceases, may have means from which he can live. Therefore it matters little in what diocese the benefice is situated; and if the one to be ordained has a benefice or patrimony, this obligation of conferring a benefice on him ceases, even if he does not live in the bishop's residence, provided that he stays in the place where the bishop is, or nearby. Trent, sess. 14, c. 2, *De Reformatione*; sess. 23, c. 9, *De Reformatione*; Innocent XII, const. *Speculatores*; L. 760, 770, 778, 780; Giraldi, part 1, s. 97.

The one to be ordained can choose whichever he wishes among these various bishops, and afterward vary in each order. But the one who is chosen cannot ordain him without testimonial letters from the bishop of origin, domicile, and of that place in which perhaps someone at that age and for such a time, namely about six months, has stayed so that he could have contracted a canonical impediment. L. 789. But if there is question of those to be promoted who were previously assigned to military service, testimonial letters are necessary whenever they have remained in some diocese at least for three months. Sacred Congregation of the Council, Sept. 9, 1893; Jan. 26, 1895; Sacred Congregation of Regular Discipline, Nov. 27, 1892. Testimonial letters, namely, not given generally, but for receiving orders; and therefore they must bear witness concerning the requisites for receiving orders, concerning birth, age, morals, and the absence of any canonical impediment. Those to be ordained by the bishop of benefice, if they are to return to their own diocese, must be examined by the bishop of domicile before the concession of testimonial letters. Trent, sess. 23, c. 8, *De Reformatione*; Innocent XIII, const. *Apostolici ministerii*, § 5; Benedict XIII, const. *In supremo*; Sacred Congregation of the Council, Aug. 8, 1733.

It is grave to confer orders or tonsure on the subject of another, without express consent or without dimissorial letters of his bishop, Trent, sess. 7, cc. 10, 11, *De Reformatione*; sess. 14, c. 2, *De Reformatione*; sess. 23, c. 10, *De Reformatione*; or of his vicar general, when the bishop has long been acting in distant places, c. 3, *De temporibus ordinationum*, in VI; or of the capitular vicar after a year of

vacancy, or within the year, but only to those pressed by necessity. Cf. Trent, sess. 21, c. 2, *De Reformatione*; Lucidi, c. 2, n. 72. The bishop is bound to confer orders on his subjects by himself; nevertheless, when a just cause intervenes, of sickness or something similar, for example absence, he is permitted to dismiss them to another bishop. Moreover, the cause why the proper bishop does not ordain must be expressed in the dimissorial letters. Trent, sess. 7, c. 11, *De Reformatione*; sess. 23, c. 3. They can be given to any Catholic bishop, Sacred Congregation of the Council, Mar. 16, 1624, except to one who has renounced the episcopate, if he has yielded both the place and the dignity, c. 1, *De ordinatione ab episcopo qui renuntiavit*. And if they have been given by name to one bishop in favor of the one to be ordained, it is open to him, passing that one by, to approach another. L. 788. They are regarded as a grace made; therefore they do not expire when the right of the one giving them is dissolved, L. 787, nor are they suspended when he is suspended, unless they were given for a definite time or have been revoked. E. M.

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894. **What about regulars?** The things which precede also have place in pious Congregations in which only simple vows are pronounced. Sacred Congregation of Bishops and Regulars, May 6, 1864; A. S. S., vol. 1, p. 366.

Regulars of solemn vows, from c. *Cum nullus* 3, § final, *De temporibus ordinationum*, in VI, must receive orders from the bishop in whose diocese the monastery is where they are then staying. The Sacred Congregation, by mandate of Clement VIII, decreed that if that bishop has no ordination, then the superior can give dimissorials to his subjects for any other bishop whatever; nevertheless regulars are commanded there not intentionally to delay the ordinations of their subjects to that time when the diocesan bishop will not be holding an ordination, or will be absent. Benedict XIV decreed that if the diocesan bishop is absent or does not have an ordination, a religious cannot be ordained by another unless he shows the attestation of the vicar general, chancellor, or secretary of the same bishop; otherwise both the one ordaining and the one thus ordained incur the censures and penalties which they incur who are ordained by some bishop without dimissorials. Likewise he decreed that such a regular must be examined by the ordaining bishop; and that the privileges of any Order, that its religious may be ordained by any bishop whatever, must be by name and not by communication. When the See is vacant, "to regulars within the year, bringing dimissorials of their superiors, the Chapter can well grant permission that they be ordained by some bishop." L. 788. Nevertheless, a bishop can ordain religious without a formal examination, acquiescing in the testimony of their prelates; but he can also well examine them if he wishes, unless they have a special privilege.

But whether novices ought to be ordained by the bishop of the place of the novitiate, or instead of origin or domicile? Suarez and Henriquez hold that they are to be ordained by the bishop of origin or domicile. Sanchez and Delbene judge that they can well be ordained by the bishop of the place where the novitiate is. "Both opinions are probable, provided the novice has already remained in the novitiate for a notable time, and takes an oath there of remaining perpetually, insofar as it lies in him." L. 765. Therefore regulars of religious orders in which solemn vows are emitted, during the three-year period of simple vows, can be ordained by the Ordinary of the place; nevertheless, during this three-year period after the novitiate and before solemn profession, it is not licit to grant them

dimissorials except for first tonsure and minor orders. Sacred Congregation of Bishops and Regulars, Jan. 20, 1860; A. S. S., vol. 1, pp. 358ff.; Benedict XIII, const. *In suprema*, Sept. 23, 1724; Benedict XIV, const. *Impositi nobis*, year 1747; Benedict XIV, instruction 23, n. 8; L. 768, 788, 792; A. S. S., vol. 23, pp. 629ff.; E. M.

895. **Can a bishop confer orders, or at least first tonsure, on his subjects outside the diocese?** Response: Negatively as to orders, unless by permission of the Ordinary of the place. As to tonsure, the first opinion denies it, because from Trent it is forbidden to bishops to exercise pontificals in another diocese without the permission of its Ordinary. The second opinion affirms it, because since the more common and more probable opinion among theologians is that tonsure is not an order, therefore it can well be, and is customarily, conferred privately without pontificals, for which the permission of the bishop of the place is not required. L. 756.

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896. **What is required for validly receiving orders?** For receiving valid ordination it is required and suffices that someone be a baptized male. Therefore a woman is incapable of orders, and a hermaphrodite in whom the female sex prevails, and likewise one not baptized. On the contrary, infants, those perpetually insane, the blind, the mute, those deprived of hands, etc., are validly ordained, even if they are irregular by natural law. Nevertheless St. Thomas says that boys before the use of reason cannot validly receive the episcopate. C. *Tuae litterae* un., *De Clerico per saltum promoto*; Benedict XIV, const. *Eo quamvis*, § 20; L. 781, 782; St. Thomas, Supplement, q. 35, a. 3; q. 39, aa. 1, 2; Lugo, *Responsa Moralia*, bk. 1, dub. 31; E. M.

897. **What is required for the licit reception of orders?** First, divine vocation and probity of life are required. Cf. 166, 168. "Since in any order," says St. Thomas, Supplement, q. 36, a. 1, "someone is constituted leader of others in divine things, as if presumptuous he sins mortally who approaches orders with consciousness of mortal sin. And therefore holiness of life is required for order by necessity of precept, but not by necessity of the sacrament. Hence if an evil man is ordained, he nevertheless has the order, yet with sin... They must shine with a good conscience before God, and with a good reputation before men." For through the sacred ministry they are made mediators between God and the people. Hence consequently one who promotes an unworthy person sins gravely, "especially since this turns to the detriment of the Church and of divine honor." St. Thomas, Supplement, q. 36, a. 4.

Therefore Spiritual Exercises are altogether fittingly placed before receiving orders. Innocent XI, Oct. 9, 1682; Benedict XIV, notification 104. And, so that this probity of life may be established, besides testimonial letters, cf. n. 893, the names of those to be ordained are to be publicly proposed in the Church. Trent, sess. 23, c. 5, *De Reformatione*; E. M.

898. **Second,** it is required that the one to be ordained not be a neophyte, a slave or bondman, one mutilated in some member, of notable infamy, or having something which impedes the execution of the order; not a hermaphrodite, illegitimately born, a homicide, infamous, or irregular in any way, suspended, or excommunicated. 1 Tim. 3:6; L. 782, 784; St. Thomas, Supplement, q. 39, aa. 3-6.

899. **When can a married man be initiated into sacred orders?** It is certain that without the permission of the wife it is not licit for a married man to receive sacred orders, nor even first tonsure. C. *Nullus* ult., *De temporibus ordinationum*, in VI; Extravagant *Antiquae*, *De Voto*. But a married man can licitly be promoted to sacred orders if for a just cause he has made a perpetual separation from his wife, by sentence of a judge, c. *Agathosa*, cause 27, q. 2; or by permission of the wife, provided that she vows chastity, c. *Coniugatus*, *De conversione coniugatorum*, and provided the permission is express and altogether spontaneous. C. *Consuluit*, eod. tit. More truly, however, the wife is not bound to profess Religion, c. *Coniugatus* cited, unless the husband is assumed to the episcopate; for then the wife must altogether enter Religion, c. *Sane* 6, *De conversione coniugatorum*; and likewise unless the husband were to become a religious, and the wife were young or suspected of incontinence, c. *Cum sis*, eod. tit.

But does the wife of this man promoted to sacred orders, if she has emitted a simple vow of chastity, validly contract marriage after the husband's death? The first opinion denies it, from c. *Quia sunt* 10, dist. 28, where it is said of such a marriage: "Those who have been badly joined are to be separated." The second opinion affirms it; for although the separation of the aforesaid spouses is commanded as a penalty for the crime committed, nevertheless the marriage is not declared null. L. 812, 827, 969; St. Thomas, Supplement, q. 53, a. 4; Schmalzgrueber, bk. 3, tit. 32, nn. 19ff.

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900. **Third,** an intention of becoming a cleric is required. Trent, sess. 23, c. 4, *De Reformatione*. It is certain and common that one who receives major orders and does not intend to receive the priesthood does not sin gravely, Trent, sess. 23, c. 4, *De Reformatione*; and it is probable that there is no sin, because by no law is it prescribed to ascend to the higher orders. C. *Is qui*, *De filiis presbyterorum*, in VI. But he would sin who received first tonsure or minor orders with the intention of escaping the lay forum, and afterward, when fear of lay judgment had ceased, of returning to the world. L. 783, 785; Sanchez, tract 9, c. 2, n. 88.

901. **Fourth,** it is required that he be confirmed. Trent, sess. 23, c. 4, *De Reformatione*. But is it required under grave precept? Some affirm; others judge that this is not of precept, but of counsel; others commonly and more probably say that it is required under light obligation because of light disorder. L. 786. "By fittingness," says St. Thomas, Supplement, q. 35, a. 4, "the character of order presupposes the character of confirmation, and not by necessity." Nevertheless, the Sacred Congregation of the Council, Sept. 27, 1601, declared that one initiated into first tonsure and minor orders before receiving confirmation had been "badly promoted..., had acquired benefices less legitimately and needed a new provision..., nor could ascend to sacred orders unless by previous dispensation of the Apostolic See." Benedict XIV, const. *Eo quamvis tempore*, § 19; E. M.

902. **Fifth,** it is required that, besides testimonial letters, cf. 893, he have dimissorial letters from his own bishop, if, while a just cause stands, someone is ordained not by his own bishop but by another. Trent, sess. 14, cc. 1, 2, *De Reformatione*; L. 787, 789. Exempt regulars must have dimissorials from their prelates, namely Generals or Provincials. L. 788; E. M.

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903. **Sixth,** an examination of suitable knowledge is required according to the order which is received. The bishop is bound, either by himself or by others, to examine those to be ordained, even if he dismisses them to be ordained by another bishop, unless he is otherwise certain of their suitability. Rule 31 of Law, in VI; Trent, sess. 7, c. 11, *De Reformatione*; sess. 14, c. 3, *De Reformatione*; sess. 23, cc. 3, 7, 12, 14, *De Reformatione*; L. 790, 792. If those to be ordained have been sent to another bishop, then if they were sent by another bishop, the one ordaining can examine them again; if by a regular prelate, he must examine them again. Sacred Congregation of the Council, Jan. 16, 1595; L. 787; Lucidi, n. 75 seq.; Benedict XIV, notification 23, n. 8.

From Trent, sess. 23, cc. 4, 5, 11, 13, 14, 15, *De Reformatione*, for first tonsure it is required that they know the rudiments of faith, and likewise how to read and write; for minor orders, that they at least understand the Latin language; for the subdiaconate and diaconate, that they be "instructed in letters and in those things which pertain to exercising the order"; for the priesthood, that "after a diligent examination has preceded, they be approved as suitable for teaching the people those things which it is necessary for all to know for salvation, and for administering the sacraments." Therefore those to be ordained presbyters must know those things which pertain to the sacrifice, to the communion of the faithful and Viaticum, to baptism, and to extreme unction, of which they are ministers. But concerning the sacrament of penance, so much knowledge is not required as in a confessor, but they must at least have some knowledge concerning the more obvious matters for cases of necessity in which they are bound to hear confessions. L. 791; St. Thomas, IV, dist. 24, q. 1, a. 3, q. 2. But a bishop is not prohibited from requiring from his subjects greater knowledge than is assigned by Trent. L. 792. One must deal more benignly with those who have professed a Religion of merely contemplative life. L. 791; St. Thomas, loc. cit., ad 1. On the contrary, greater knowledge is required in presbyters who are to have care of souls, since "such knowledge is required in him who must be promoted to orders... more or less, according as his office extends to more or fewer things." St. Thomas, Supplement, q. 36, a. 2. Far greater knowledge is required in bishops. For "it belongs to the higher priests, namely bishops, that they know even those things which can cause difficulty, and so much the more as they are placed in a higher grade." St. Thomas, Supplement, q. 36, a. 2.

"Professed religious, both of solemn vows and of simple vows, are not to be admitted by the Ordinaries of places to sacred orders unless, besides the other things established by law, they show testimonial letters that they have devoted themselves to sacred theology for at least one year if there is question of the subdiaconate; at least two years if of the diaconate; and as to the presbyterate, at least three years, with the regular course of other studies nevertheless having first been completed." Sacred Congregation of Bishops and Regulars, Nov. 4, 1892.

904. **Seventh,** it is required that someone be ordained through the due intervals of times.

It is more probably licit to confer first tonsure with some minor order, since first tonsure is not an order, except at Rome. Lucidi, c. 2, n. 119. Between one minor order and another, some time is required, which was not determined by Trent, sess. 23, c. 11, *De Reformatione*; and in this the bishop can well dispense if for some cause something else seems expedient to him. From minor orders to the subdiaconate there is required under grave obligation the space of one year, unless necessity or

utility of the Church, in the judgment of the bishop, demands something else. Trent, ibid.; namely, the Church to which the cleric is ascribed. From the subdiaconate to the diaconate the space of a year is also required, yet to dispense from this any reasonable cause suffices in the judgment of the bishop. Trent, sess. 23, c. 13. From the diaconate to the priesthood there is required at least the space of a year, unless on account of the utility and necessity of the Church something else should seem right to the bishop. Trent, sess. 23, c. 14. These words the Sacred Congregation of the Council declared are to be understood disjunctively, so that even utility alone is sufficient in the judgment of the bishop. But it is much more grave to receive two sacred orders on one and the same day, Trent, sess. 23, c. 13, or minor orders together with the subdiaconate. C. *Cum* 2; c. *Innotuit* 3, *De eo qui furtive*. L. 775, 780, 789; *De Privilegiis*, n. 59; A. S. S., vol. 25, p. 587; E. M.

905. **Eighth,** under grave obligation it is required that first tonsure be received before minor orders, and that the lower order be received before the higher. C. *Tuae* un., *De Clerico per saltum ordinato*. But if someone were to receive the episcopate before the priesthood, he would receive even it invalidly. L. 793; Trent, sess. 23, *De Reformatione*, c. 11; Pius VI, bull *Auctorem fidei*, n. 51; E. M.

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906. **Ninth,** it is required that someone be ordained at the due time. Major orders can be conferred only on the Saturdays of the Ember days, on the Saturday before Passion Sunday, and on Holy Saturday; and they must be conferred within Mass under grave obligation. For a just cause the one ordaining is permitted to defer part of the ordination to the following Sunday, with the Saturday fast continued by himself and by those to be ordained. C. *Litteras* 13, 15, *De temporibus ordinationum*.

Minor orders can be given on any feast of precept, if they are conferred on one or two, or even on several, provided it does not seem to be a general ordination. Roman Pontifical; c. *Re eo* 3, eod. tit.; Sacred Congregation of Rites, May 23, 1836. Minor orders can also be conferred publicly on Friday before the Saturday of general ordination, and also on Wednesday of the general ordination of the Ember days, provided there is a custom, which Palaus, the Salamancans, Barbosa, with others, testify has already been received. It is fitting to confer them in Mass; and they ought to be conferred before midday, Roman Pontifical, unless there is a contrary immemorial custom. Sacred Congregation of the Council, Apr. 13, 1720.

The consecration of a bishop can take place on any Sunday, c. *Ordinationes* 1, 5; c. *Quod die*, dist. 75; and on the birthdays of the Apostles or other feasts of precept, Roman Pontifical; and at the third hour of the day. First tonsure can be conferred on any day and hour, even evening, and in any place.

Regulars, by permission of their prelates, can be ordained outside the times by force of the privilege granted to them by Gregory XIII, Clement VIII, Urban VIII, and Benedict XIII, Roman Council, t. 5, c. 2; Benedict XIV, notification 23, n. 5. Outside the times, namely on a Sunday or feast day of precept; of precept before reduction. Sacred Congregation of the Council, Jan. 15, 1689; Sacred Congregation of Rites, Mar. 16, 1833. Cf. Benedict XIV, const. *Impositi nobis*, § 12.

The Society of Jesus especially has a privilege in this matter which Benedict XIV, loc. cit., affirms does not avail for others to whom it has not been directly granted: namely, that its students, although they

are held to receive orders from the diocesan bishop, can be sent to any Catholic bishop whatever; and likewise that they can receive sacred orders outside the times and without observing the intervals, even on three continuous Sundays or feast days. L. 794, 797; Lugo, *Responsa Moralia*, bk. 1, dub. 34; Benedict XIV, *De Synodo*, bk. 8, c. 11, nn. 3-7; notification 23; Honorante, *Praxis Secretariatus*, c. 12. Cf. vol. 1, n. 275; E. M.

907. **But when regulars are ordained outside the times, can they be ordained on any double feast, even if it is not of precept?** There are two opinions. The first affirms it, because Alexander VI, speaking of those to be initiated by this privilege, said that they could be ordained on three Sundays, or doubles. The second opinion denies it, because Gregory XIII, speaking of this same privilege, said on Sundays and feast days. St. Alphonsus, n. 797, says: "This second opinion is safer, and seems more probable; but I do not dare to reprove the first, and I say that one must stand by custom, which is the best interpreter of laws." Moreover, custom stands for the second opinion.

908. **Tenth,** the due place is required. From Trent, sess. 23, c. 8, orders are to be conferred in the Cathedral Church; or, if they are conferred in another place, in the more worthy church of the place, insofar as possible. But from the Sacred Congregation of the Council, Nov. 20, 1592, if the ordination is not general, the bishop can have it anywhere, even in his own private chapel. Orders, however, cannot be conferred outside the diocese without permission of the Ordinary of the place; and then the bishop can ordain both the subjects of another and his own subjects. Trent, sess. 6, c. 5; L. 798.

909. **Eleventh,** the due age is required. For first tonsure, it is required that the one to be initiated have the use of reason, and therefore that he be at least seven years old. Benedict XIV, const. *Inter sollicitas*, year 1745, § 19. For minor orders no age is assigned in law; nevertheless they are customarily conferred from the seventh to the fourteenth year. Benedict XIV, ibid. For the subdiaconate the twenty-second year is established; for the diaconate, the twenty-third year; for the priesthood, the twenty-fifth year. Trent, sess. 23, c. 13, *De Reformatione*. But it suffices that the prescribed year has begun. Trent, sess. 24, c. 12, *De Reformatione*. For the episcopate the thirtieth year is required, and the same is said for the cardinalate, although by concession of Sixtus V, const. *Postquam*, 1586, cardinal deacons can be in the twenty-second year of their age. For those holding benefices, the fourteenth year is required from Trent, sess. 23, c. 6, *De Reformatione*. But if the benefice has care of souls, the twenty-fifth year is required, at least begun. Trent, sess. 24, c. 12. For a canonry in Cathedrals, the twenty-second year begun is required. Trent, sess. 22, c. 4. But in Collegiate churches the fourteenth year suffices, since nothing has been established for this in law. "Moreover it is certain that bishops can in no way dispense in age." L. 800. L. 783, 799, 800; St. Thomas, Supplement, q. 39, a. 2.

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910. **Twelfth,** it is required that the one to be initiated have exercised the order previously received in the Church where he is ascribed, from Trent, sess. 23, cc. 11, 13. But the Salamancans, c. 4, n. 74, think that this is not of grave precept, since the words of the Council are more consultative than preceptive. L. 801.

911. **Thirteenth,** as the Pontifical prescribes, it is required that those to be ordained receive the Eucharist; but this is not under mortal sin, as La-Croix, n. 2225, says. Indeed, those to be initiated into minor orders are not bound to communicate even under light obligation. But presbyters are more truly bound to communicate under mortal sin, since they truly celebrate with the bishop. St. Thomas, III, q. 82, a. 2; L. 801.

912. **Fourteenth,** as regards receiving sacred orders, a title of honorable support is required, Trent, sess. 21, c. 2; otherwise the ordaining bishop or the bishop granting dimissorials is himself bound to support the one ordained in sacred orders until the latter has a title. C. *Cum secundum, De Praebendis*; c. *Recepimus, De aetate et qualitate ordinandorum*.

The ordinary ecclesiastical title of support can be either of poverty or of a benefice sufficient for support, according to the synodal tax of his diocese. By title of poverty, only professed regulars are ordained, but not novices. St. Pius V, const. *Romanus Pontifex*. The religious of the Society of Jesus are excepted, who can be ordained after simple vows; and if they are afterward dismissed from religion, the Society is not at all bound to support them. As to the title of benefice, it is required that the benefice already be peacefully possessed.

Under the name of benefice, someone can also be ordained to the title of perpetual coadjutorship, or daily distributions, or chaplaincy, or pension, or perpetual praestimonium; but Mass stipends by no means suffice for a title, since they are uncertain.

Besides the ecclesiastical title of benefice and of poverty, there is also the patrimonial title, which is extraordinary. As to the title of patrimony, not all can be ordained under this title, but only those whom the bishop has judged should be assumed for the necessity or convenience of his Churches. Trent, sess. 21, c. 2. Moreover the patrimony must be constituted in legal form, upon a certain and immovable thing, and by its nature fruitful, or quasi-immovable as in public annuities, Sacred Congregation of the Council, June 29, 1704, peacefully possessed, and not burdened by debt or mortgage. Nevertheless a perpetual rent-charge suffices, even one redeemable, provided that, if it is redeemed, it is applied to the purchase of other rents or estates. It also suffices if someone by instrument donates from his own revenues so many annual gold coins as are sufficient for support. It suffices that some Count or Community obligate its goods for supporting a cleric. The title of one's own industry does not suffice. But patrimony cannot be renounced without the bishop's permission, even after obtaining a benefice sufficient for support. L. 813-824; Benedict XIV, notification 26.

There are other extraordinary titles, for which a special indult of the Apostolic See is needed. As to regulars, there is the title of the common table, namely for those regulars who pronounce either no vows or only simple vows. For secular clerics, there is also the title of service of the Church, and the title of Mission.

A title can indeed be lost, but then another must altogether be substituted for the lost title. And regulars of solemn or simple vows constituted in sacred orders, expelled or dismissed, remain perpetually suspended "until provision is made for them in another way by the Holy See; and besides, they have found a benevolent bishop to receive them, and have provided for themselves from ecclesiastical patrimony." But those who have voluntarily obtained dismissal, or have been dispensed from simple vows, or are free from them because the time of temporary vows has elapsed, "are not to leave the cloister until they have found a benevolent bishop to receive them, and have provided for

themselves from ecclesiastical patrimony; otherwise they remain suspended from the exercise of the orders received." Sacred Congregation of Bishops and Regulars, Nov. 4, 1892; E. M.

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913. **Fifteenth,** from the decree of the Holy Office, Sept. 9, 1875, it is required that clerics to be initiated into sacred orders first have satisfied the active military service to which they are liable. Likewise, from the decree of the Sacred Congregation of Bishops and Regulars, Nov. 27, 1892, regulars cannot emit solemn profession, nor receive sacred orders, unless they have first satisfied the active military service to which they are subject. E. M.

914. **Sixteenth,** as regards regulars of Religious Orders to be initiated into sacred orders, it is required that they have emitted profession of solemn vows. But regulars of Institutes of simple vows cannot receive sacred orders unless "they have indeed already emitted simple, but perpetual, vows, and have been stably aggregated to their own Institute; or at least have remained for three years in temporary simple vows as regards those Institutes which defer perpetual profession beyond three years," all indults and privileges previously granted having been revoked. But when a legitimate cause occurs, dispensation can be sought from the Apostolic See, "that a cleric may pronounce solemn vows although he has not completed the three-year period" of simple vows, as regards Regular Orders; "but as regards Institutes of simple vows, that he may emit perpetual simple vows, although the time prescribed by the Constitutions of the respective Institute for profession of perpetual simple vows has not been completed." Sacred Congregation of Bishops and Regulars, Nov. 4, 1892; E. M.

915. **Whether or how does the ordained man sin who omits the recitation of the prayers which after ordination are imposed by the bishop by way of penance; and what are those prayers?** As to the omission, the doctors do not agree. For some say that he sins gravely, because the matter of the precept is grave. Others hold that he does not sin at all, because the bishop does not impose a precept. Finally, others judge that an omission of this kind is not indeed free from fault, but does not exceed venial fault. This opinion seems more probable. Cf. St. Alphonsus, n. 289.

As to the prayers, the Declaration of the Sacred Congregation of Rites in the case of Granada, Aug. 11, 1860, has this: "The words of the Roman Pontifical, 'the Nocturn of such a day,' understand of the single Nocturn on a feria, or of the first of Sunday, as in the Psalter, that is, of twelve psalms with their antiphons of the season, which the ordaining bishop can designate, either of the day itself on which he has the ordination, or of another according to his own judgment. But when the bishop expresses nothing else than what the words of the Pontifical report, it must be said to be the Nocturn of the feria which corresponds to that day on which the ordination was done."

916. **Whether or how are newly ordained priests bound to read the three Masses prescribed by the bishop?** They are not bound to apply them to the bishop's intention, and therefore they can accept a stipend for them. Nor does there appear to be a grave obligation of celebrating those Masses; nor must they be said before non-impeded days arrive, since they ought to be votive Masses. L. ibid.; E. M.

917. **To what are priests bound by force of the obedience which they promised to the bishop in ordination?** Benedict XIV explains it thus in the epistle *Ex quo dilectus*: "We recognize that by force of a promise of this kind a presbyter is held bound, among other things, by this law: that he cannot depart from the service of the Church to which he has been assigned without the permission of the bishop." L. 828; *Monitore Ecclesiastico Conversano*, vol. 7, part 2, pp. 49, 50, 217, 218.

918. **Does a cleric initiated in minor orders sin if he marries?** Speaking in itself, it is certain that he does not sin gravely, indeed not even lightly, if he does this for a just cause, for example to quiet enmities or temptations of the flesh, to assist a poor woman, etc.; otherwise he will not be excused from venial sin. Roman Pontifical, on the ordination of subdeacons; c. *Clerici*, *De clericis coniugatis*, in VI; Trent, sess. 23, c. 6, *De Reformatione*; L. 785, 783.

On Matrimony

I. On Betrothals and Banns

919. **What are betrothals?** Betrothals are the voluntary, deliberate, and mutual promise, expressed by a sensible sign, of future marriage between persons legally capable.

Promise: true, not fictitious; not a purpose, for this induces no obligation.

Voluntary and deliberate: namely with will and deliberation sufficient for grave sin, since betrothals bind under grave obligation.

Mutual: for betrothals are an onerous contract, involving the condition: if you promise in return. Nevertheless, if the one promising spontaneously wills to obligate himself independently of the promise of the other, and this is certain, there would not be betrothals, nor consequently the impediment of public honesty, but a mere gratuitous promise obligating only one party by force of mere fidelity. It is said, and this is certain, because regularly betrothed persons never intend to obligate themselves gratuitously without the condition that the other also obligate himself. But acceptance of the promise does not of itself include a return promise, because each person can accept the obligation of another without obligating himself.

Expressed by a sensible sign: for for any contract, internal consent does not suffice, but consent externally expressed either by words or by signs is required. Hence silence does not suffice for betrothals. Nevertheless betrothals would be valid if parents contracted them in the presence of a son who is silent, provided the son internally and positively consents. For since parents, on account of great love toward their children, are presumed to consult well for them, the children are rightly judged to consent to their promise, and therefore to express their own consent through their promise. But if the son internally dissents, "certainly he is not bound to those betrothals contracted by the parents. And I think exactly the same must be said if the son has behaved negatively, neither dissenting nor consenting." The same must be said if parents contract betrothals for absent children, and these, having been informed of the betrothals by the parents, do not contradict them, namely if they truly ratify the betrothals tacitly. Parents, not others; betrothals, not also marriage. Since in this

matter the law is special, it is not to be extended. C. *Si infantes* un., *De desponsatione impuberum*, in VI; Rule of Law 28 in VI; Schmalzgrueber, nn. 61ff.; St. Thomas, IV, dist. 27, q. 2, a. 2, ad 1; Supplement, q. 43, a. 2, ad 1; L. 831, 836-839.

Between capable persons, that is, those who are prohibited from marriage by no impediment. Therefore betrothals will be null if some impediment stands in the way of marriage. For if a diriment impediment stands, the thing promised either does not subsist, or is not in one's own power, and therefore no promise of it can exist. But if an impedient impediment stands, the thing promised is illicit, and there can be no promise of an evil thing. Except, unless the promise is not absolute but conditional, namely if a dispensation is obtained, or is referred to a future time when the impediment ceases, as in the betrothals of those under puberty, or betrothals made with parents unwilling, where their dissent may cease.

But no solemnity of law is required for their validity, and neither civil power nor the Ordinaries of places can attach such a solemnity. Sacred Congregation of the Council, July 8, 1865; March 23, 1878. Of future marriage: therefore where the decree of Trent is in force concerning marriage to be contracted before the parish priest and witnesses, a contract in the present tense is neither marriage, because the Tridentine form is lacking, nor does it constitute betrothals, because then there is not even virtually a promise of future marriage. But as marriage contracted by proxy and by letters is valid, so betrothals are also valid. L. *In sponsalibus* 18, ff., *De sponsalibus*. St. Thomas, Supplement, q. 43, aa. 1, 2; q. 55, a. 4; Schmalzgrueber, bk. 4, tit. 1, nn. 73-77, 247; cf. 923; E. M.

I. On Betrothals and Banns

920. **Is one bound to contract marriage who fictitiously promised betrothal to another truly promising in return?** Response: Negatively. For, first, since there was a fictitious promise, he cannot be bound by force of the promise, even if it was confirmed by oath. St. Thomas, III, dist. 39, q. 1, a. 3, q. 3.

Second, "grant that one fictitiously promising sinned against justice by deceiving the other party; nevertheless he was not bound from justice to put forth true consent, since there was no obligation on him to enter the contract, and, on the other hand, the other acquired no right in him from his own consent. Therefore afterward he is indeed bound by reason of the deception to repair damages, but he is not bound by reason of the promise to put forth true consent and contract marriage. But it must be said otherwise if deflowering has intervened, because then the one deflowering is altogether bound to marriage, since he cannot then by another way repair the damage sufficiently equivalently." L. 833, 847; bk. 3, n. 642.

Hence, if a man induces a woman to sin under this condition, that he will lead her into marriage if she yields to his wishes, once the crime has been committed, if not by force of contract, at least by force of unjust damage, according to the most common opinion he is bound to marry her if he can; otherwise it will suffice if he provides for her marriage. The reason is "because otherwise, if the deflowerer does not marry the deceived virgin, he will never render her an equal thing, nor will he repair the damage to be made equal." L., bk. 3, n. 642. And this holds even if the man had vowed religion, orders, or chastity, and afterward knew the woman under a true or fictitious promise of marriage. For the vow does not bind, since a wholly notable change has occurred and a most grave

obligation of justice has supervened. L., bk. 6, nn. 833, 874. Nevertheless the Holy Doctor and others commonly except: first, if a very bad outcome is feared from the marriage, such as discord, quarrels, scandals, etc.; second, if the man knew the woman, thinking her to be a virgin, but found her corrupted, or if afterward she had relations with another; for if this suffices in marriage for separation to occur, much more when marriage has not been contracted; Sporer, nn. 538ff.; third, if there will be disgrace to the family, L. 849, 851; fourth, if the man notably surpasses the woman's condition, for the same reason of family disgrace. L., bk. 3, nn. 642-650; bk. 6, n. 851; St. Thomas, Supplement, q. 46, a. 2, ad 4; Civil Code of Brazil, n. 1300. Cf. 928.

921. **Are betrothals contracted through deceit giving cause to the contract invalid, even if concerning a quality, for example, riches or qualities of body or soul?** This is controverted. The first opinion, sufficiently probable, affirms it. For this is proper to betrothals, because marriages must be entered spontaneously by mutual benevolence. The second opinion, more probable, denies it. For this is common to any contract, that it is not invalid except by defect of consent or of object. "But then the one deceived has an action for invalidating the contract because of injury and defect of consent; and this runs even if the deception came from some third party, with the party ignorant." L. 835. "Lessius, etc., probably say that if the matter is intact, as happens in simple betrothals, and the error is invincible, the one deceived is not bound in conscience to stand by the contract, not even after the sentence of a judge." L., *Homo Apostolicus*, tract 18, n. 2.

922. **Are betrothals entered through fear invalid by the law itself?** If the fear is grave, this is controverted. The first opinion affirms it, if the fear is from outside and unjust; for they would be valid if the fear were from within, for example, if someone promised fearing that he would be compelled to pay a debt; or if it were just, for then the contracting party would be unwilling irrationally. The reason is that fear invalidates marriage, and betrothals are the way to marriage. The second opinion denies it; nevertheless it adds that they can be rescinded by the one who suffered the fear; but if an oath was present, it must be observed until it is relaxed. The reason is that they are invalid neither by positive law, which has nothing about betrothals, nor by natural law, for fear of itself does not remove consent.

"Both opinions are probable, but the first seems more probable to me..., because no one can be obligated to execute an act null in itself and which the law resists, such as marriage to be contracted during such fear would be... From these things it is inferred that from betrothals of this kind the impediment of public honesty by no means arises." L. 844.

If the fear is light and gave cause to the contract, the first opinion affirms it, which Ballerini calls much more probable; but the second, more common and more probable to St. Alphonsus, denies it. The reason is that the other is not judged to have inflicted a true injury, since light fear can easily be repelled.

But in such a case can the one who suffered fear rescind the betrothals in conscience? The first opinion, sufficiently probable, denies it because of the reason just brought forward; but the second opinion, more common and more probable, affirms it. "The reason is that since the fear gave cause to the contract, so that otherwise it would not have been entered, the one instilling the fear is bound to rescind the contract; hence just as he is bound to relax the pledged faith unjustly extorted through

such fear, so the one who suffered the fear can revoke the faith given." L. 844. Sanchez, bk. 1, disp. 14; bk. 4, disp. 16.

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923. **Do words in the present tense between those under puberty, apt for marriage, since this marriage is null by positive law, have the force of betrothals?** Response: Affirmatively, from c. *Si infantes* un., *De desponsatione impuberum*, in VI, and c. *Tuae nobis* fin., eod. tit. The reason is that, when acts do not avail in the way in which they are done, from the virtual will of the contracting parties they avail in the better way in which they can, unless someone expressly dissents. But betrothals are virtually contained in marriage, unless in reality it is only expressly intended to bind oneself by the bond of marriage. For betrothals are not had except by a mere presumption of law. Sanchez, bk. 1, disp. 21, nn. 3, 5; Schmalzgrueber, bk. 4, tit. 2, n. 63; Pignatelli, *Consultationes*, t. 9, c. 133, n. 46.

Hence many said the same if those past puberty contract marriage clandestinely, that is, without the parish priest and witnesses, in a place where Trent has been promulgated. But this must altogether be denied. Sacred Congregation of the Council, June 8, 1595; Ferraris, v. *Matrimonium*, art. 2, n. 2; Benedict XIV, *Quaestiones canonicae*, 291, par. *Ultimum*. "The reason is that when the act is null, not now on the part of the contracting parties, but on the part of itself, because it is against good morals and the law resists it, Trent, sess. 24, c. 1, then such an act produces no obligation." L. 841. Except, on the contrary, unless those contracting clandestine marriage expressly intend to obligate themselves in the way in which they can. Sanchez, loc. cit., n. 6.

But if there is question of civil marriage, from the Declaration of Leo XIII, Mar. 17, 1879, where the decree of Trent, sess. 24, c. 1, *De Reformatione*, has been promulgated, whether marriage is intended in the present or in the future, "the impediment of public honesty is not produced"; and therefore it is neither. E. M.

924. **Are betrothals valid which are entered before the seventh year by malice, that is, with advertence of reason supplying for age?** Response: Affirmatively, "because namely laws prescribing the seventh year are strictly founded on the presumption that the light of reason does not shine except when the seventh year has been completed... c. *Si infantes* un., *De sponsalibus impuberum*, in VI." Ithurriaga, case 39, n. 25. Therefore all who can licitly enter marriage with one another can licitly enter betrothals, and besides these, those under puberty. C. *A nobis* 8, *De sponsalibus impuberum*. St. Thomas, Supplement, q. 43, a. 2; Ferraris, v. *Sponsalia*, n. 15; c. *Litteras*, *De sponsalibus impuberum*; c. *Ad dissolvendum* 13, eod. tit.; c. *Accessit* 5, eod. tit.; L. 14, ff., *De sponsalibus*.

925. **Are betrothals contracted between persons having a diriment impediment, under the express condition "if the Pope shall dispense," valid without new consent when the condition has been fulfilled?** Response: Affirmatively. For consent perseveres of itself up to the fulfillment of the condition. Besides, such consent is honest and licit in itself. Therefore there is no reason why consent must be renewed. L. 843, 859; bk. 3, n. 650. But before the condition is fulfilled, they are not betrothals, nor do they induce the impediment of public

honesty. Nevertheless they obligate one to seek a dispensation, if the Pope is accustomed to dispense in such an impediment. Therefore the betrothed man would sin if he contracted marriage with the sister of his betrothed, not awaiting the outcome of the condition. But betrothals contracted with the same woman would be null, since it would be an illicit promise concerning an unjust thing, which does not oblige. If the Roman Pontiff is not accustomed to dispense, the betrothals would be altogether illicit, and therefore of no moment, and they would induce no obligation. L., bk. 11, cc.; cf. A. S. S., vol. 1, pp. 79ff.

These are the words of St. Thomas generally concerning betrothals under condition: "But if the said promise is made under condition, it must be distinguished; because either the condition is honorable, as when it is said: I will take you, if it pleases the parents, and then, with the condition standing, the promise stands, and with it not standing, it does not stand; or it is dishonorable, and this in two ways: because either it is contrary to the goods of marriage, as if I say: I will take you, if you procure poisons of sterility, and then betrothals are not contracted; or it is not contrary to the goods of marriage, as if I say: I will take you, if you consent to my thefts, and then the promise stands, but the condition must be removed." Supplement, q. 43, a. 1.

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926. **What and how great is the obligation of betrothals?** Betrothals oblige one to enter marriage under mortal sin. For they are an onerous contract in a grave matter. If a term has not been fixed, it will suffice if the one promising fulfills according to the custom of the region, or when he is required by the promisee. Here it must be noted that "if the other party, from forgetfulness, fear, shame, or a similar cause, did not ask, as especially happens in women, then the betrothed man is bound of himself, without request, to contract marriage when he conveniently can... But if the other party, when she can conveniently ask, is silent, then she seems to consent to the delay." L. 845. Therefore one withdrawing can be compelled to marriage, even by a judge through censures; nevertheless this is rarely expedient because of the danger of an unhappy outcome. C. *Requisivit* 17, *De sponsalibus*; L. 846; St. Thomas, Supplement, q. 43, a. 1, ad 2.

Nothing concerning betrothals is had in the French Civil Code. But in the Italian Civil Code, nn. 53, 54; Spanish Civil Code, nn. 43, 44; Austrian Civil Code, nn. 45, 46; and Brazilian Civil Code, n. 1297, legal obligation of contracting marriage is denied to betrothals. Nevertheless, if the promise is duly established, one withdrawing without just cause is bound to compensate the other for damage according to the Austrian Civil Code and the Brazilian Civil Code, n. 1298; according to the Italian and Spanish Civil Codes, for expenses which he made because of the promised marriage. But according to the Italian and Spanish Civil Codes, compensation must be sought within a year from the day on which the promise was to be fulfilled.

By Roman law, one who is bound by betrothals is permitted to renounce the condition or pact and afterward to contract with another. L. *Alii* 1, Code, h. t. But if, without previous renunciation, either the betrothed man or the betrothed woman marries another, he or she is marked with infamy. L. *Quid ergo*, § 3, *De his qui notantur infamia*. By canon law there is an obligation not only from fidelity, but also

from justice, of contracting marriage; and there is an impediment impeding marriage with another, and diriment of marriage with blood relatives in the first degree. E. M.

927. **Are later betrothals, entered against a prior pledged faith, valid, and are they to be fulfilled before the first?** "It is certain that if the second betrothed woman was aware of the prior betrothals, marriage must be contracted with the first."

If she was ignorant, "the first opinion says that the betrothed man is bound to contract with the second if he had intercourse with her... but the second opinion, more common and more probable, says that the betrothed man is bound to contract with the first, even if intercourse with the second was present... The reason is that the promise made to the second betrothed woman is always null, as being about an illicit thing, since it had been promised to the prior betrothed woman; nor does injury inflicted on another take away this one's right. And this holds even if the second promise was confirmed by oath." L. 848.

Nor indeed is the prior betrothed woman bound to yield her right, even if the other suffers grave damage from deflowering, because the latter must impute to her own crime the fact that she suffers such damage. It is indeed a grave sin, after betrothals have been entered, to attempt other betrothals, which, as illicit, are also invalid; for there can be no force of an illicit promise, even if both oath and intercourse intervene. For the oath cannot be a bond of iniquity. The intercourse cannot take away a right acquired by another. But one entering betrothals with another woman or man falls from his or her right as regards the prior betrothals. The same judgment must be borne if he or she even makes a mere promise of future marriage to another. L. ibid.; Sporer, n. 237; Benedict XIV, notification 46.

I. On Betrothals and Banns

928. **Do children under paternal power sin when contracting betrothals and marriage without the consent of parents; and are these valid in that case?** As regards validity, it is certain that marriage is altogether valid, even without the consent of parents, and even if they altogether dissent. Trent, sess. 24, c. 1, *De Reformatione Matrimonii*.

But as regards betrothals made without the parents knowing, and even when they are unwilling, they are never invalid for that cause alone; since from this it is not generally and necessarily had that they are illicit. For the consent of parents is not necessary per se or from the nature of the thing, nor from positive law. The first reason is that every human being, in choosing a state and an individual society of life, is of his own right and liberty. The second reason is that from Trent, loc. cit., marriage is valid without the consent of parents. But the same reason holds for betrothals, which are the way to marriage; because namely a human being is of his own right in this matter. St. Thomas, II-II, q. 104, a. 5; St. Bonaventure, IV, dist. 29, a. 1, q. 3. For that cause alone; for from another cause, even by reason of the parents, betrothals can be illicit and consequently invalid, as will soon be clear from what is to be said.

They contract illicitly if the parents are reasonably unwilling, for example if such a marriage would redound to the disgrace of the family, or if grave scandals or dissensions would arise from it. "But in the case in which the son could not enter such a marriage without sin, the doctors say that he is not bound to it, even if he had contracted the betrothals with an oath; because since this promise would

be about an illicit thing, the oath cannot be a bond of iniquity... The authors commonly think the same must be said, namely that the betrothed man is not bound to fulfill betrothals of this kind with grave injury to the parents, even if he deflowered a virgin, but that it suffices that he provide her with a dowry... The reason is that the virtue of justice cannot oblige to an act which cannot be fulfilled without sin... But the doctors agree that children are excused at least from mortal sin if they contract marriages without the consent of parents for just causes... If the father prevents the son from some marriage without just cause, then the son is not bound to obey, and the father sins gravely by preventing it." L. 849.

The principal difficulty, because of which parents are often unwilling, and it is doubted both whether the parents dissent justly and whether the betrothed persons themselves are bound after the promise has been made, is practically from disparity of condition of the two contracting parties. "It is certain that if at the time of betrothals the contracting parties were not aware of the disparity, the betrothals are null, provided the ignorance was antecedent; nevertheless they are valid if it was concomitant... If they were already aware, the doctors commonly say that they are bound to marriage." L. 851. Except, first, if by reason of disparity in nobility disgrace to the family would come from that marriage. "The reason is that the promise is null, since it is about a gravely illicit thing, as something which cannot be fulfilled except with great detriment to the family." L. 851. Justice surely obliges that this detriment not be brought upon the family. But "any disparity whatever" does not suffice; rather a notable one is required, for example if a noble man has betrothed the daughter of a mechanic or farmer. L. 851.

Except, second, if by reason of disparity in riches scandal is probably feared, for example, hatreds of relatives, etc., "because in that case the betrothed man would sin gravely against charity, and therefore, since to contract that marriage would then be an illicit thing, the promise made cannot oblige to it. And for the same reason Sanchez, etc., says that this must be said even if the betrothed woman suffered deflowering. And even if, as Sanchez adds, there is no disparity between the contracting parties. I acknowledge indeed that this is the common opinion, and true speaking in itself, when the son could conveniently avoid scandals of this kind; but if he could not do so without grave inconvenience to himself, what seems to stand in the way of the reason brought forward is that charity does not oblige with grave inconvenience... Perhaps does the betrothed man not seem likely to undergo grave inconvenience if he is compelled to omit marriage with a girl with whom he believes he will lead a quiet life, on account of the vehement passion of love by which he feels himself affected toward her? All those doctors, etc., indeed judge this a grave inconvenience... So much the more because scandals of this kind, once marriage has been entered, easily vanish and minds are reconciled." L. 851.

But if no scandals are feared by reason of notable disparity in riches, because nevertheless a promise of this kind is prodigal, St. Alphonsus, loc. cit., still thinks that the betrothed man is not bound to marriage. But, from the common sense of human beings, it is certainly not illicit for a rich person to contract marriage with a poor person. Salamancans, c. 1, n. 82; Sanchez, bk. 1, disp. 14, n. 2. "Nevertheless," the same Holy Doctor adds, "since the fault of prodigality is not more than venial, any moderate just cause can remove the vice of prodigality." Hence, St. Alphonsus adds, "a case can scarcely occur in which the betrothed man is not bound to marry her, because very rarely will some one of these causes be lacking."

From the Italian Civil Code, n. 63, and the French Civil Code, n. 148, children cannot contract marriage without the consent of parents, before the completion of the twenty-fifth year if they are males, and the twenty-first year if they are females. From the Spanish Civil Code, nn. 45-47, 320, marriage is prohibited to a minor, namely before the twenty-third year of age, without the consent of the father, or, in his absence, of the mother; but to an adult without the counsel of the father, or, in his absence, of the mother. From the Austrian Civil Code, n. 49, minors, and also adults who cannot validly obligate themselves by themselves, also cannot validly contract marriage without the consent of the father, or, if he is lacking, of the tutor or curator and judge. From the Brazilian Civil Code, nn. 1304, 1305, 1331, one who has restricted capacity for contracting needs the consent of his legal representative; a son before the twenty-first year needs the consent of the father. In place of the father the mother succeeds, but a son declared legitimate does not need her consent. From defect of consent of this kind, invalidation of the marriage can be sought. But where there is truly question of the validity of marriage itself, dispositions of civil law of this kind have no force. Trent, sess. 24, c. 1, *De Reformatione Matrimonii*. L. 849, 850, 851, 877; bk. 3, n. 335; St. Thomas, Supplement, q. 47, a. 6; Ithurriaga, case 14, nn. 7ff.

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929. **How are betrothals dissolved?** Betrothals are dissolved by mutual consent, like any contract whose obligation, as regards its stability, does not depend on another law, namely divine or human, as, for example, in marriage and religious profession. L. 854; St. Thomas, Supplement, q. 43, a. 3, ad 5.

"Among those past puberty, betrothals are dissolved by mutual consent, even if confirmed by oath, not only validly, but also licitly, if a reasonable cause is present; for otherwise it would be at least venial..., because an oath in favor of a third party, although principally made in honor of God, always includes the condition, if the other accepts, or if he does not remit." L. 855.

"But among those under puberty, betrothals are not dissolved unless they themselves become pubescent, from c. *De illis* 7, *De desponsatione impuberum*... Sanchez, etc., say that if one of the betrothed persons dissented before puberty, and persevered in such dissent, the betrothals are dissolved when that one reaches puberty. But if he dissented only internally, Sanchez, etc., judge that he can also withdraw in conscience; but Coninck, etc., more probably deny this, both because this benefit of withdrawing is not granted by law except to those protesting, which is certainly understood externally, and because just as internal consent alone does not suffice for entering a contract, so internal dissent alone does not suffice for dissolving a contract." L. 856; Schmalzgrueber, bk. 4, tit. 2, nn. 32, 40-43.

Betrothals are likewise dissolved if a notable change occurs or is discovered, which, if it had been foreseen, would have prevented the betrothals from being contracted, or which, if it supervened, would already be sufficient for rescinding them. The reason is that the betrothed are judged to be obligated under this implied condition. A change of this kind would be had if there supervened or were discovered grave enmity or hatred between the betrothed persons themselves, or their parents or blood relatives; grave illness, for example leprosy, consumption, the French disease, etc.; great

debts or grave danger to fortune, reputation, etc. L. 863, 865; St. Thomas, Supplement, q. 43, a. 3, ad 3.

Betrothals are likewise dissolved if one party preferred to enter a more perfect state of life. St. Thomas, loc. cit. For they are judged to have been contracted also under this tacit condition. But if religious profession dissolves ratified marriage itself, much more betrothals.

Finally, betrothals are dissolved by the authority of the Supreme Pontiff, when a just cause intervenes, as is clear from the practice itself of the Church. A. S. S., vol. 15, p. 587; E. M.

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930. **Is a party laboring under a hidden defect sufficient for dissolving betrothals bound to manifest it before betrothals, or, after they have been contracted, before marriage?** If the defect would render the marriage harmful, such as infamy, leprosy, the French disease, etc., he or she is bound to manifest it or desist from the marriage. The same must be said if the betrothed woman is pregnant from intercourse had with another, because then there is danger of damage to the betrothed man, namely that he would have to support another's offspring, and that it would be numbered among his own heirs.

But if the defect would only render the marriage less desirable, as, for example, that the betrothed woman is not a virgin but has been corrupted, then, granted that she cannot deceive the man by pretending that she is immune from such a defect, if the man shows that otherwise he is unwilling to marry her, nevertheless otherwise she can dissemble even when questioned, by answering equivocally. The first reason is that it is against justice. The second reason is that no one is bound to make public his or her own defect with personal infamy, if he or she does not injure the right of another. L. 863-865; La-Croix, bk. 6, part 3, n. 183.

931. **Are betrothals dissolved by the crime of the other?** Betrothals are dissolved on the part of the innocent person by an atrocious crime of the other betrothed person. Heresy, grave theft, homicide, or something similar which produces grave damage or infamy, is judged an atrocious crime. The reason is that there is an entirely notable change of things. On the part of the innocent person; for no one ought to gain advantage from his own offense. L. 860; Brazilian Civil Code, n. 1299.

932. **Is fornication a sufficient cause for dissolving betrothals?** "If the fornication was before the betrothals, it is certain among all that the man can leave the betrothed woman, once the fornication of the betrothed woman is known after the betrothals. Conversely, a woman cannot rescind the betrothals because of fornication previously had by the betrothed man with another..., unless the man also had offspring from another, or also unless he is known to have been given to this vice by commingling with several women." L. 861. The reason for the assertion is that the betrothed woman is rendered notably less esteemed by this, but not likewise the betrothed man. But the reason for the exception is that then it can rightly be feared that the betrothed man is not going to keep faith with the betrothed woman.

Nevertheless St. Thomas says absolutely "that although those contracting betrothals have not yet given one another power over the body, nevertheless from this they become mutually suspect concerning not keeping faith in the future: and therefore one can guard himself against the other by dissolving the betrothals." Supplement, q. 43, a. 3, ad 6. Add that the betrothed woman can also withdraw if, at the time of the betrothals, she would not have furnished consent if she had known the betrothed man to be a fornicator; for then there would be error giving cause to the contract, and therefore consent would be lacking. And if the betrothed woman is a truly honorable virgin, she does not intend equally to marry an impure man as a chaste one.

"But if the fornication was after the betrothals, it is certain that the betrothed man can leave the woman if she voluntarily fornicated... If the betrothed woman suffered fornication violently..., they more commonly and more truly affirm it." L. loc. cit. But if the betrothed man had fornicated after the betrothals, they more commonly and probably say that the betrothed woman cannot withdraw, and much less if the man was compelled by fear. The reason is the same. But as regards preserving the pledged faith, either man or woman is judged by equal right. Therefore, when one party voluntarily fornicates, it seems more true that the other can withdraw. Besides, although the fall of the betrothed woman is held more shameful than that of the betrothed man, nevertheless the fall of the betrothed man produces a notable change of state. What fidelity hereafter can the betrothed woman hope for from such a betrothed man?

When both betrothed persons fornicate, the first opinion holds that either is permitted to withdraw, because each is judged by the same right in preserving faith; the second opinion holds that this is permitted to neither, because equal offenses are removed by mutual compensation; "the third opinion, more probable and common..., teaches that the betrothed man can indeed withdraw, but not the betrothed woman. The reason is that in this matter there would not be equal compensation, since the fornication of the betrothed woman is far more shameful than that of the betrothed man." L. 861, 862; *Homo Apostolicus*, tract 18, n. 18; Diana, t. 2, tract 6, resolution 14.

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933. **Are betrothals dissolved by a supervening impediment?** "If the impediment is impedient, they most commonly and more probably deny that betrothals are dissolved, unless the impediment arises from a vow of religion, and very probably also of chastity... The reason is that other impediments are not in force today."

"But if the impediment is diriment, it is certain among all that they are dissolved on the part of the innocent person... The mere report of an impediment of this kind suffices..., when there is an opinion of the impediment among the greater part of the neighborhood... Whether then they are dissolved also on the part of the guilty person, Dicastillo affirms, and the Salamancans think probable, because, supposing such an impediment, marriage has now become impossible. But others more commonly and more probably deny it, etc., who say that the obligation of the betrothals is then suspended until the impediment is removed, because it is not equitable that the delinquent should gain advantage from his own crime." L. 857; St. Thomas, Supplement, q. 43, a. 3, ad 4.

934. **Is one who placed the impediment bound to obtain a dispensation, or to accept one offered?** "Some, such as Filiucci, etc., say that he is not bound, even if the betrothals were sworn, unless he is bound to this by reason of damage inflicted, namely deflowering or damaged reputation, because the promise is understood to have been made with things remaining in the same state... Others, such as Roncaglia, etc., say that he is bound, even apart from damage inflicted, to procure a dispensation together with the expenses..., even if they were great. The reason is that each person is bound, in the way he can, to repair the right of another which he unjustly injured... Finally, others more probably, such as Sanchez, etc., say that he is indeed bound, even with damage inflicted set aside, if the dispensation can easily be obtained; otherwise, if great expenses and long delay would be required for it, because the obligation arising from betrothals urges the betrothed man to apply only ordinary and easy means, not difficult and extraordinary ones. Nevertheless Sporer, etc., excepts, unless damage from deflowering or reputation had to be repaired; because then he would be bound even to pay a great expense, but not so great that he would be compelled to fall from his state." L. 858.

935. **By subsequent marriage, does not only the obligation of betrothals cease during the marriage, as is certain, but are they also altogether dissolved, so that, when the spouse has died, the obligation of the prior betrothals no longer urges?** The first opinion affirms this, because an obligation once extinguished never revives. Moreover, when a thing previously subject to servitude or obligation passes into another state, which brings excuse from that obligation not from accidental inability, but by its nature is opposed to that obligation or servitude, then this is not only suspended but altogether extinguished. But marriage by its nature is indissoluble, and through it a spouse hands himself or herself over forever into the power of the other. Therefore.

The second opinion, which St. Alphonsus, n. 875, calls absolutely more probable for himself, denies it; because it is established neither by positive nor by natural law that betrothals are altogether invalidated by subsequent marriage, "as is clear in him who after a vow of religion were to consummate marriage; for when the spouse died, he would indeed be bound to fulfill the vow."

936. **Are betrothals dissolved by the reception of orders?** "By the reception of sacred orders it is certain that betrothals are also dissolved, but not ratified marriage. Thus all say..., and it is clear from the Extravagant *Antiquae*, *De Voto*." L. 871.

But does one sin who receives sacred orders without the knowledge or against the will of the betrothed woman? "The first opinion affirms that he sins gravely, and Sanchez, Palaus, etc., hold this. The reason is that by no law has it been granted to sacred order to dissolve betrothals, as has been given to the religious state... But the second opinion, not less probable, denies it, and Pontius, Navarrus, etc., hold it. The reason is that in the promise of betrothals there is always imbibed the condition: unless a better state is chosen." L. 871.

Whether betrothals are also dissolved by the reception of minor orders? "The first opinion affirms it..., because there is such a change of the betrothed man... that the betrothed woman is rightly judged not to have wished to obligate herself to contracting marriage with him... The second opinion, more common and truer, denies it... The reason is that in reality the state of minor orders is not of itself incompatible with marriage..., as is clear from cc. 1 and 2, *De clericis coniugatis*." L. 872. But this

proves that betrothals are not dissolved on the part of the one initiated in minor orders, by no means that they are not dissolved on the part of the betrothed woman, to whom it could rightly be grave to contract marriage with such a man.

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937. **Are betrothals contracted before profession dissolved by the entrance of one betrothed person into religion?** There are three opinions. The first asserts that they are dissolved on the part of neither. About this St. Alphonsus says: "it does not seem sufficiently probable." The second, which Busembaum, Sanchez, and others hold, says that they are dissolved on the part of both. The Holy Doctor shows that this is not sufficiently persuasive. The third, which "seems absolutely more probable" to St. Alphonsus, says that they are dissolved only on the part of the one remaining in the world, because on his or her part a notable change then occurs, since it is judged disgraceful to marry one who has left religion. But the other does not become incapable of contracting marriage through entrance; and therefore, if he leaves, he must stand by his promises.

"The betrothed man would be bound to celebrate the marriage before entrance, if this were necessary for legitimating offspring, repairing scandal, or providing for the honor of the betrothed woman, if this could not be met in another way. And in this case, after the celebration of marriage, the betrothed man is not even permitted to enter religion and leave the marriage unconsummated; for he cannot then desert the wife, who because of infamy could not find another marriage." L. 870.

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938. **What as regards a vow of entering religion, or of receiving sacred orders, or of preserving chastity?** "It is certain, first, that one vowing to enter religion licitly vows and ought to enter, nor is he bound to stand by the betrothals if he truly wishes to become a religious... It is certain, second,... that by these three vows betrothals are dissolved on the part of the one not vowing, since the one vowing is rightly judged by them to renounce the betrothals. It is certain, third, that if someone after betrothals emits a vow not only of entering, but also of professing religion, then betrothals are dissolved on the part of both, because the one vowing then becomes altogether incapable of contracting marriage." L. 873.

939. **Are betrothals dissolved even on the part of the one vowing by a vow of preserving chastity, or of receiving sacred orders?** "If the vow precedes the betrothals, it is certain that they are invalid, because their promise, since it is about an illicit thing, does not oblige."

If it follows, the first opinion denies it, and many and grave theologians hold it. "The reason is that God does not accept the promise of a thing already promised to another and accepted by him, nor is it had by any law that betrothals are dissolved by these vows." But the second opinion affirms it, and very many and grave doctors hold it according to St. Alphonsus and Sanchez, "who calls it most probable, and the Salamancans, etc., commonly call it probable and safe; and St. Thomas teaches it absolutely, Supplement, q. 52, a. 1, ad 1. The reason which they more commonly hand down is that the promise of betrothals is always judged to have been made under the condition: unless a better

state is chosen. And they say this holds even if the betrothals were sworn, because an oath follows the nature of the act." L. 873. This is confirmed by a decision of the Sacred Congregation of the Council, Mar. 15, 1705, where it was said that a vow of chastity or of receiving sacred orders invalidates betrothals, even those confirmed by oath, through the choice of a better state.

But except "if the betrothed man were to emit the vow in order to mock the betrothed woman... Likewise more probably..., even if without the intention of mocking her the betrothed man vowed chastity, if afterward he obtains dispensation from the vow, he will not be able to marry another... But Bonacina and Sanchez deny this not altogether improbably." L. ibid.; De Angelis, *Praelectiones Iuris Canonici*, bk. 4, tit. 6, n. 6.

940. **Is the dissent of parents a cause for dissolving betrothals?** "I judge that it must be said," says St. Alphonsus, n. 877, "that if the father unjustly dissents from such a marriage, the son cannot withdraw from the betrothals, and both he and the father would sin if they wished to dissolve them. But it is otherwise if the father justly contradicts, namely if the marriage would turn to the disgrace of the family; for then those betrothals do not oblige, since no one can be obligated to execute an unjust thing." Laymann and Sanchez say the same "with others commonly, if great scandals would arise among relatives from such a marriage." And hence it is clear that the dissent of parents is not a true impedient impediment of marriage. L. ibid.

941. **Can a betrothed man rescind betrothals if a rich inheritance comes to him?** The doctors most commonly deny it, because the betrothed man "has not been deceived in the condition of the betrothed woman, in whom no change has occurred." A change indeed has occurred in the betrothed man, but in a thing extrinsic to a contract of this kind. But many probably affirm it, "because in such a case a notable change of things is now present." The same consequently would seem to have to be said if someone contracted betrothals with one woman, and afterward marriage with another of exceedingly better condition is offered to him. "I would not dare," says St. Alphonsus, n. 876, "altogether to condemn" this; nevertheless he adds: "I would never dare to depart from the contrary opinion, nor to counsel it."

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942. **Can a betrothed woman withdraw from betrothals if the betrothed man departs elsewhere?** "It is certain that if the betrothed man transfers his domicile elsewhere, or if he goes away to a distant region, even with the intention of returning, the betrothed woman can immediately pass to other marriage; this is expressed in c. *De illis*, b., *De sponsalibus*. But if the betrothed man has departed to a nearby place..., it must be waited until he returns; or the betrothed man must be required to come within a certain time to contract marriage. If, after being required, he delays return for a just cause, either he must be awaited according to the judgment of a prudent person..., or, what is safer, the case is to be remitted to the judgment of a judge... But these things proceed if in the betrothals no time was fixed for entering marriage.

"When a term is attached to betrothals, one must consider whether it is attached for urging, or for not delaying, the obligation of contracting marriage, or whether it is attached for ending the obligation. It is attached for urging when the parties therefore fix the term so that neither can compel

the other before it to fulfill the contract. But it is attached for ending when the term is attached so that, when it has elapsed, no obligation remains...

"Whether, when the term has elapsed from the defect, for example, of the betrothed man, the betrothed woman can withdraw, if he inculpably omitted entering marriage, being detained by a just impediment? The first opinion denies it... The reason is that it is not equitable that one who is hindered by a just cause from fulfilling promises should be deprived of his right... The second opinion, more common and more probable, affirms it. The reason is that the term is attached for this, lest the party ready remain for a long time without marriage; otherwise the time would be fixed in vain. But this opinion is clearly proved from c. *Sicut* 22, *De sponsalibus*.

"Whether, when the term has elapsed, the party also remains free who culpably brought about the delay? The first opinion, more common, denies it... The reason is that no one ought to gain advantage from his own crime... The second opinion affirms it... and St. Thomas also expressly holds this in IV, dist. 27, q. 2, a. 3, ad 2... The reason seems to be that, since the term is attached for ending the obligation, when it has elapsed, the obligation ceases... The first opinion is indeed far more common, and to me far more probable; but the second does not lack its probability." L. 866-868; St. Thomas, Supplement, q. 43, a. 3, ad 2; L. 17, ff., *De sponsalibus*; L. 2, eod. tit., Code.

943. **Is one withdrawing from betrothals bound to restore earnest-money?** That betrothals can be contracted with earnest-money given admits no doubt. For earnest-money is a pledge given for fulfilling the thing promised. If the thing promised, as here, is licit, a pledge is licitly given for fulfilling it.

One culpably withdrawing from betrothals loses his earnest-money, and is bound to return that of the other party, and to restitution of the amount by which it mattered to the other party that such a contract be fulfilled. Cf. 926. L. 852; Sanchez, bk. 1, disp. 30, 35; Schmalzgrueber, bk. 4, tit. 1, nn. 126ff.; L. 5, Code, *De sponsalibus*; Brazilian Civil Code, n. 1301.

944. **Is one justly withdrawing from betrothals bound to pay the promised penalty?** "If a penalty is attached generally against one who justly withdraws, it is certain among all that the promise of the penalty does not oblige." L. 853. For it is against the liberty of marriage.

If it is added against one withdrawing unjustly, "the first opinion, sufficiently probable, denies it..., because liberty would still be injured... but the second opinion, more probable, affirms it... The reason is that such an addition of a penalty is against neither natural nor positive law." L. 853; bk. 3, n. 949. From the Brazilian Civil Code, n. 1297, the promise of a penalty, if marriage is not contracted, is null. St. Thomas, Supplement, q. 43, a. 1, ad 4; Sanchez, bk. 1, disp. 30ff.; L. *Titia* 134, Code, *De verborum obligationibus*; c. *Gemma*, *De sponsalibus*.

945. **Is the authority of a judge required for dissolving betrothals?** "In the above-said causes, when they are manifest, the authority of a judge is not required for dissolving betrothals; otherwise it is required. But if the betrothed man, after knowing his right of withdrawing, nevertheless carnally knew the betrothed woman, he is judged tacitly to have renounced his right and to have ratified the betrothals... Laymann and Palaus say that, when probable fear of an unhappy outcome stands, a man can licitly withdraw from betrothals." L. 878.

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946. **What about kisses and embraces between betrothed persons?** Kisses, embraces, and other similar shameful or less honorable acts are illicit to betrothed persons in entirely the same way as to others. The reason is that betrothals bestow on the betrothed no special right to intercourse and venereal pleasure, and therefore neither to those acts which contain a more or less proximate danger of venereal pleasure.

Kisses, embraces, and other acts honorable from their object and from the manner of performing them are permitted to betrothed persons. The reason is that these acts are licit in themselves, and therefore, as they are permitted to other unmarried persons, so also they are permitted to the betrothed. But the question is moved specially about betrothed persons rather than about others, both because on the one hand these acts can more easily be permitted to them because of a special reason which holds for them, namely for mutually fostering benevolence, which is altogether necessary for them for future marriage; and because on the other hand there is also a special danger of sin. Hence counsel must generally be given to them that they abstain from even these acts as much as possible. Billuart, diss. 6, art. 16; L. 854.

947. **What must be judged about these acts of betrothed persons, otherwise honorable and licit in themselves, if they contribute to stirring venereal acts?** Here the general rule holds: these acts are culpable only when either the cause is bad, or proximate danger of consent underlies them.

What if it is established to the betrothed man or woman that the other sins in these acts because of a depraved affection? If those acts are done before others, the other can licitly permit those acts, lest he or she be defamed, cast suspicion of himself or herself, and lest others be scandalized. If those acts are done secretly, and it is certain that they are done maliciously, where there is question of others and not of betrothed persons, the doctors commonly teach that one is bound to repel those acts. But if there is question of betrothed persons, for whom a notable inconvenience could often be present in this matter, because the other would certainly withdraw from marriage, the general rule concerning accepted scandal seems to have to be applied, namely that it can be permitted if it cannot be prevented without grave inconvenience; but it must be prevented if this can be done without notable inconvenience.

What must be judged about these same acts when, from the frequency of falls, danger of consenting to the venereal pleasure following must be held as a proximate occasion of sin? This question, like the preceding ones, can also be made about looks and conversations themselves, which have a most just cause, as is clear in itself; hence parents can altogether licitly permit such looks and conversations, although great caution and prudence must always be used in these matters. But here the general rule concerning a necessary proximate occasion holds; for it is morally impossible that a betrothed man seriously thinking of entering marriage should not visit, look at, speak with his betrothed, and show her according to custom other signs of benevolence which manifest his mutual love. Therefore the confessor will suggest means, not only general but also special: that due moderation be observed, and necessity not be exceeded in showing these signs; and also that he never deal alone with her alone. Care must likewise be taken that the marriage not be delayed for

long. But if those and other remedies do not obtain fruit, this alone remains: that they be dealt with no otherwise than with other occasionary and recidivist persons. Reuter, *Neo-confessarius*, n. 112.

948. **Is intercourse had with one betrothed by words about the future adultery?** "More probably it is denied with Sanchez, *De Matrimonio*, bk. 1, disp. 2, n. 2, the Salamancans, and Roncaglia. But Roncaglia and the Salamancans judge that if one of the betrothed persons fornicates with another person, he or she must disclose in confession the circumstance of the betrothals, as changing the species by reason of the injury inflicted on the other. But it is sufficiently probable with Trullench, Pontius, Hianus, Covarruvias, Lugo, Sanchez, and Laymann that it is only an aggravating circumstance, since a betrothed person acquires through betrothals no right over the body of the other." L., bk. 3, n. 447; bk. 6, n. 647; Billuart, diss. 6, appendix 1, question 3; Ithurriaga, case 6, n. 16; Lugo, *De Poenitentia*, disp. 16, nn. 177, 178.

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949. **Must banns be put before marriage?** Marriage cannot licitly be contracted, although validly, without previous proclamations of the same, and this is grave. Trent, sess. 24, cc. 1, 5, *De Reformatione Matrimonii*; c. *Cum inhibitio* 3, § 1, *De clandestina desponsatione*.

All those about to contract are subject to the law of proclamation. Nevertheless by usage princes are excepted, because their lineage is sufficiently known, and their marriages are ordinarily sufficiently public. A case of urgent necessity is also excepted, for example, if someone near death wished to marry his concubine in order to legitimate offspring, and there would be danger in delay.

A parish priest omitting the denunciations, even if he knows that no impediment is present, sins gravely. For the law obliges even if in the particular case the reason of the law ceases; and there is always a very grave danger if this matter is left to the judgment of parish priests. But does a parish priest sin gravely if he omits only one proclamation without dispensation? This is controverted. Some affirm it, because one proclamation out of three must be held a grave part of the whole precept. Others probably deny it, for the opposite reason. But to omit two denunciations is more probably grave. L. 991.

For a just cause, the bishop and his vicar general can dispense from the law of banns, more easily from one or another denunciation than from all. Trent, sess. 24, c. 1, *De Reformatione Matrimonii*. But dispensation must be obtained from both bishops if the betrothed persons belong to different dioceses. For if on one side and in one place impediments are not detected, it does not follow that they cannot be detected on the other side and in the other place. Nevertheless there are not lacking authors who say that the Ordinary of either can dispense with both, and St. Alphonsus, n. 1006, seems to approve this.

The doctors commonly teach that the bishop not only can, but also sometimes is bound to dispense, namely to avoid grave common or private damage, spiritual or temporal; indeed even because of a notable spiritual or temporal good of the community or of another private person. L. 389-391, 1005-1007; Italian Civil Code, nn. 70ff.; Brazilian Civil Code, n. 1316; E. M.

950. **Note.** If for a grave cause denunciations were omitted before marriage, lest, for example, it be maliciously impeded, "then before its consummation the denunciations are to be made in the Church, so that if any impediments underlie, they may be more easily detected." Trent, sess. 24, c. 1, *De Reformatione Matrimonii*. Therefore, if it is established that there is no impediment, the spouses will not sin gravely against the decree by consummating. Indeed Trent soon adds that the denunciations can be remitted by the prudence and judgment of the bishop.

951. **In what place must the denunciations be made?** "It is certain that they must be made in the parish of each contracting party..., because custom so bears it. Laymann, etc., except, unless the parishes are very near... If one of the betrothed persons has been staying for a short time in some place, Pontius thinks it suffices if they are made in the place where that person is actually staying. But far more probably Sanchez, etc., from the declaration of the Sacred Congregation, say that they must altogether be made in the parish from which he departed, because denunciations are made so that impediments may be manifested, and therefore they must be made where the betrothed have lived longer. And here it must be noted that if one of the betrothed persons is an outsider, the parish priest must not make the denunciations unless after that person has proved his or her free state before the Ordinary by authentic proof, as is had from the Instruction of the Sacred Congregation of the Holy Office... But as regards wanderers, Trent, sess. 24, c. 7, *De Reformatione Matrimonii*, commands parish priests not to assist at their marriages unless after diligent inquiry has been used, and unless they have first obtained permission to assist from the Ordinary. Hence Roncaglia rightly says that a parish priest would sin gravely if he did not observe such a precept." L. 991.

Hence if the betrothed persons came six months ago to where they now are, the denunciations are to be made there; otherwise also in the place from which they departed. "For generally satisfaction is made to the Tridentine decree if marriages are denounced where those about to contract marriage are parishioners at the time of the denunciations." Schmalzgrueber, bk. 4, tit. 3, n. 14. But as regards the place of origin and former domicile, or where they have stayed longer, it is enough to seek testimony of free state. But if one or both betrothed persons have equal domicile in two places, or domicile in one place and quasi-domicile in another, the banns must be proclaimed in both. Many doctors say that the proclamations can be made outside the church in a place of great gathering, because in this way the end of the Council is obtained. L. 991; E. M.

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952. **When must the proclamations be made?** They must be made on feast days of precept, continuous, during the solemnities of Mass. Trent, sess. 24, c. 1, *De Reformatione Matrimonii*. On feast days of precept, at least in the place of the proclamations. Many teach that they can also be made on a weekday if, for some cause, there is a great gathering of the people at the Church. Schmalzgrueber, bk. 4, tit. 1, n. 24.

Continuous, that is, with no feast day omitted from the first proclamation to the third. St. Alphonsus, n. 992, thinks it probable that one does not sin gravely if the feast days are not continuous, one or another being interposed, especially if there is question of feasts besides Sunday. For there is light danger that the people will forget. But whether proclamations can be made on feast

days immediately succeeding each other, if they occur? This is controverted, and there is a twofold probable opinion.

During the solemnities of Mass, that is, in the parish or conventual Mass. The doctors add probably that for a just cause they can be made in a sermon, or on the occasion of a procession, when the people are gathered. They cannot be made in private Masses, nor in Vespers. Nevertheless if the parish priest has forgotten to make the final proclamation in Mass, and the nuptials are urgent, he can supply it in Vespers. Once the proclamations have been made, it is licit to contract immediately, even on the same day. But if, after the proclamations have been made, marriage does not follow within two months, the proclamations are more probably to be repeated, unless it seems otherwise to the bishop. Roman Ritual. And after three months have elapsed, there is also need of a new testimony of free state, unless again something else seems right to the bishop. Sacred Congregation of the Inquisition, Feb. 24, 1847, ad 4; L. 991, 992, 993; E. M.

953. **Must known impediments of marriage be revealed?** There is, in itself, a grave obligation of revealing impediments of marriage. The reason is drawn from the motive of religion and charity, and from the very precept of banns.

This obligation pertains to all persons of whatever sex, age, parish, or diocese, even friends and blood relatives; and it must be fulfilled as soon as morally possible, lest perhaps, after dispensation has been obtained from one or another proclamation, marriage immediately follow. But after marriage has followed, the positive law indeed ceases; nevertheless the natural law can require revelation according to circumstances.

The aforesaid obligation is present however hidden the impediments are, and even if someone knows them under natural secrecy, even simply committed or promised, even sworn. For a secret of this kind does not oblige when grave damage threatens a community or a particular person. But more probably there is no obligation of revelation if the secret was entrusted for the sake of seeking counsel, for example to an advocate, physician, parish priest, etc. The common good seems to require this. But those who know impediments of marriage in this way must at least warn the betrothed persons that they desist from marriage.

Someone is bound to reveal impediments even though he alone knows them and cannot prove them, since here the testimony of one person suffices. And the contracting parties themselves are bound to reveal, since there is not question of undergoing punishment, but of avoiding sin and scandal.

But one is not bound, as otherwise, to reveal with grave damage to oneself, if grave scandal of others would follow from it, if the revelation would be useless or rather would harm those contracting in good faith, if a dispensation has already been obtained, etc. L. 994-1002.

954. **Can the parish priest ever dispense in the denunciations?** Response: Negatively, because he has no jurisdiction in the external forum. "Nevertheless Sanchez, Laymann, etc., very probably say that in cases in which the bishop is bound to dispense, and cannot be approached, and there is danger in delay, he will be able to declare that the precept of proclamations does not oblige, provided he is certain that no impediment is present. Indeed in cases of this kind Busembaum, Pontius, etc., judge that the betrothed persons themselves, if they are certain that they are not impeded, can enter marriage without denunciations." L. 1007.

I. On Betrothals and Banns

955. **What must the parish priest do if the betrothed persons are already in the Church to contract marriage, and from their confession he discovers that an impediment is present?** If the nuptials cannot be deferred without danger of infamy, or other most grave inconveniences, and the penitent is in invincible ignorance of the impediment, the warning is to be omitted, and the celebration of marriage is to be permitted until a dispensation is obtained.

If the penitent is in vincible ignorance, or if he openly knows the impediment, and the marriage cannot be deferred without infamy or scandal, not even to obtain a dispensation from the bishop, then the difficulty is very great. According to St. Alphonsus and others, the confessor or parish priest could declare that the law of the Church concerning impediments does not oblige in such great straits of infamy and scandal, and proceed to the celebration of marriage. For all power has indeed been given for building up, not for destruction. Nevertheless as soon as possible, at least for caution, he ought to seek a dispensation. According to others, a simulation of the contract of marriage could be permitted with the intention of seeking dispensation from the impediment as soon as possible. But the impediment, they say, cannot naturally cease; for an invalidating law never ceases because of a particular inconvenience, whatever it may be. Whenever the bishop can be approached, he must be approached, because, according to the common opinion, in that case he can dispense from ecclesiastical impediments. C. *Ubi* 2, *De sponsalibus impuberum*; L. 613, 1122; E. M.

But at present almost every difficulty vanishes. For bishops have faculty, among the quinquennial faculties, "of dispensing over impediments of affinity from illicit intercourse, even in marriages to be contracted, and of subdelegating the faculty of dispensing, even habitually, to parish priests of their own diocese." Form of Faculties, May 5, 1896. Cf. also 1044.

II. On the Nature and Properties of Matrimony

956. **What is matrimony?** First, matrimony can be regarded in two ways, namely as contract and as sacrament, since it is both. Matrimony as contract is a covenant by which a man and woman legitimately hand over to one another dominion over their bodies in relation to acts of themselves apt for the generation of offspring, and obligate themselves to an undivided society of life. Matrimony as sacrament is defined: a sacrament of the New Law conferring grace for sanctifying the legitimate union of man and woman, and for piously receiving and holily educating offspring. Trent, sess. 24, doctrine on the sacrament of matrimony, canon 1; L. 879, 880; St. Thomas, Supplement, q. 42; q. 44.

957. **You will resolve:** Matrimony therefore is licit; and its use is licit. Nevertheless it is not necessary for individuals, since by its intrinsic nature it is necessary only for the perfection of the multitude, and not for the perfection of each individual. St. Thomas, Supplement, q. 41, aa. 2, 3; E. M.

958. **What is the division of matrimony?** Matrimony can be regarded both as to the union of man and woman, and as to the bond which arises from it. Hence first it is called *in fieri* or *in facto esse*. Matrimony *in fieri* is called the actual contract itself, which is perfected by the mutual

consent of man and woman. But *in facto esse* is called the marriage-union persevering in the bond which comes from the matrimonial contract.

Furthermore, matrimony is distinguished as legitimate, ratified, and consummated. Legitimate matrimony is called that which is contracted according to the norm of natural and civil law, yet does not have the ratification of the Church or the nature of a sacrament, such as was formerly entered in the law of nature and the Mosaic law, and is even now entered among Jews and gentiles. Ratified matrimony is that which is contracted between Christians entangled by no impediment, between whom nevertheless after the contract conjugal intercourse has not yet intervened. Ratified, because not only nature and civil law, but also the Church approves it and holds it ratified. C. *Quanto* 7, *De divortio*. Consummated matrimony is called that which has been completed by intercourse of the spouses; and this must be understood not only of ratified matrimony, but also of merely legitimate matrimony.

That marriage can be called consummated, two things are required: first, that the carnal union be perfect and sufficient for generation, so that, as is had in c. *Verum* 2, *De conversione coniugatorum*, the spouses together have been made one flesh. Therefore that union would not suffice from which, although the integrity of bodily virginity had been taken from the woman, nevertheless, with suitable emission of male seed lacking, generation could not follow. Second, that legitimate consent or ratified matrimony preceded a union of this kind. Therefore intercourse had before the matrimonial contract does not bring it about that the marriage afterward contracted is judged consummated; and therefore it will operate neither indissolubility nor the other effects of consummated marriage. Hence you conclude that one who, bound by a vow of religion, has violated a woman, can marry her and then, unless another cause stands in the way, enter the vowed religion, if after he married her he has not known her again. Schmalzgrueber, bk. 4, tit. 1, nn. 227, 228.

II. On the Nature and Properties of Matrimony

Continuation of 958. Another distinction of matrimony is into true, presumed, and putative.

True matrimony is called that which has in reality and validly been contracted, and is proved as such by some one of those arguments by which other business matters also are customarily proved, such as the testimony of the parish priest or others, the marriage register, confession of the spouses, or long cohabitation with an honorable woman. Lighter proofs suffice when there is question of sustaining a marriage than when the matter is of dissolving it. Schmalzgrueber, bk. 4, tit. 1, n. 233.

Presumed matrimony is called that which is presumed by law; and this presumption of law especially has place in three cases. First, when in places where the decree of Trent concerning the form of marriage is not in force, after betrothals entered absolutely between two capable persons, carnal intercourse has followed between them; for then consent about the future is presumed to have passed into consent in the present, and the intercourse is presumed to have been admitted with conjugal affection. Schmalzgrueber, bk. 4, tit. 1, nn. 115ff.; Pirhing, eod. tit., n. 27; Barbosa on c. *Is qui*, eod. tit., nn. 3ff.; St. Thomas, Supplement, q. 46, a. 2. Second, when after betrothals entered under condition, before its outcome carnal intercourse intervened between the betrothed persons; for the Church, making abstraction from the aforesaid decree of Trent concerning form, then presumes that the betrothed persons receded from the condition, and therefore wished to contract marriage

purely and absolutely. This is clear from c. *Per tuas* 6, *De conditionibus appositis*. Third, when after betrothals in the present tense invalidly contracted by those under puberty in whom malice does not supply for age, signs of ratified consent intervene between the same, when they have obtained puberty; such signs are not only carnal intercourse but also kisses, embraces, cohabitation, etc. This is clear from c. un., § *Idem quoque*, *De desponsatione impuberum*, in VI. Yet this case too can have place only where the aforesaid decree of Trent is not in force. Cf. Schmalzgrueber, bk. 4, tit. 1, n. 234.

But by the decree of Leo XIII, Feb. 15, 1892, this presumption of law, which was at the same time a presumption *de iure*, admitting no contrary proof, was abrogated. By this decree, indeed, the presumption from carnal intercourse is explicitly abrogated. But consequently and implicitly the presumption from other signs, which are of lesser force, must be judged abrogated. The presumption, however, is abrogated. Therefore, if intercourse or other signs in reality express consent in the present from the real intention of the contracting parties, the marriage will still be valid in places where the decree of Trent is not in force. Spanish Civil Code, n. 83.

Finally, putative matrimony is called that which is thought to have been legitimately contracted, when nevertheless on the side of the reality, because of some hidden impediment, it is null. About this the doctors therefore inquire, so that it may be established when it has force for legitimating offspring received from it, and other effects of law. Moreover, two things are necessary for this: first, that it was contracted in good faith by at least one of the spouses, who was unaware of the impediment. Thus in c. *Ex tenore* 14, *Qui filii sint legitimi*. Indeed neither error of law nor doubt about the validity of marriage excludes this good faith, as Covarruvias proves, *De sponsalibus*, part 2, c. 8, § 1, n. 9. But in doubt this good faith is presumed. Second, that the marriage was contracted publicly and in the face of the Church, that is, before the parish priest and witnesses, and with the denunciations having been premised, or at least dispensed. Cf. c. final, *De clandestina desponsatione*, § 1.

Another distinction of matrimony must also be remembered: into canonical, political or civil, and of conscience. Canonical is said of that in which all things concur which are prescribed by the sacred canons for marriage. Political or civil is said of that in which those things also concur which are required by civil law, namely certain solemnities, dowry agreements, etc.; without these, marriage is indeed canonically valid, but is judged civilly illegitimate, and therefore lacks civil effects, for example, as regards the paternal power of husband and wife, the succession of children, the dowry of the woman, etc. Matrimony of conscience, or morganatic, is called the legitimate union of a man with a woman of lower condition, entered under this agreement, that the wife and children born from it are content with the nuptial gift or another certain portion destined at the time of betrothals, and abstain from the other ancestral and paternal goods, together with titles, dignities, and insignia. Schmalzgrueber, bk. 4, tit. 1, nn. 236ff.

But matrimony of conscience or occult matrimony is called that which is contracted secretly before the parish priest, or another priest deputed by the Ordinary, and two familiar witnesses, who are bound to preserve secrecy. Marriages of this kind, and the baptism conferred on children born from them, are noted in the secret book of marriages and baptisms. In these one must take care lest the marriage, which is occult, be held with scandal as shameful concubinage, lest the children be judged illegitimate and be deprived of a legitimate portion, and their education be neglected. Therefore it cannot be done without the bishop's faculty. Benedict XIV, const. *Satis vobis*, Nov. 17, 1741; E. M.

II. On the Nature and Properties of Matrimony

959. **What are the essentials of matrimony insofar as it is a contract?** Like all contracts, matrimony consists of thing, cause, and consent.

The thing is what is mutually given and accepted: power or right over the body, for coming together, in relation to generation. Therefore the commingling itself does not belong to the essence, but only to its consummation. Hence spouses can licitly abstain from the use of marriage, and desire that no more children be born than they can support, provided they do not positively impede them or procure abortion.

The cause is the procreation and education of offspring, the primary end of matrimony, and the mutual help of life, the secondary end of matrimony. Gen. 1:28. After Adam's sin, the remedy of concupiscence is also another secondary end of matrimony, 1 Cor. 7:2, 5, 9. And all these are intrinsic ends of matrimony. Hence marriage is licitly contracted as a remedy of concupiscence, provided offspring is not positively impeded. And this must be asserted of the very use of marriage for quieting concupiscence. St. Thomas, Supplement, q. 49, a. 5, ad 2, thinks the contrary. But St. Alphonsus, n. 882, recedes from him, and rightly, since this is drawn by a more proper interpretation from the text of St. Paul cited above. It is likewise licit to contract marriage because of an honorable extrinsic end, for example, to reconcile the peace of families, to preserve love among blood relatives, to preserve the honor of the family, to protect health, etc. The reason is that "this is not disorder: to choose some one of the honorable secondary ends before the primary end, provided that this is not excluded. But it is otherwise if the end is not honorable, namely if it is of pleasure, or desire of riches, or vain honor." L. 883.

Finally, matrimony is perfected by consent, namely the true will of both concerning the same thing, that is, the right of coming together, by handing it over back and forth, by which marriage is contracted. And because matrimony is perpetual, if one of them has the purpose of contracting it only for a time, from defect of legitimate will, even if not externally manifested, nothing will have been done. Therefore there can indeed be marriage without the good of offspring and without the good of faith or fidelity, because these two goods of marriage regard the use of marriage, and the being of a thing does not depend on its use; but there cannot be marriage without the good of sacrament or inseparability. For this "belongs to marriage according to itself, because from this very fact, that by the conjugal pact the spouses hand over to one another power over themselves perpetually, it follows that they cannot be separated; and from this it is that marriage is never found without inseparability." St. Thomas, Supplement, q. 49, a. 3. L. 879-883; St. Thomas, Supplement, q. 41, a. 1; q. 42, aa. 2, 4; q. 44, a. 1; q. 45, a. 1; q. 48, a. 1; q. 49; q. 54, a. 3; q. 58, a. 1, ad 3; IV, dist. 2, q. un., a. 4; dist. 26, q. 2, a. 4; Commentary on 1 Corinthians, lect. 1; French Civil Code, n. 146; Brazilian Civil Code, n. 1325; E. M.

960. **Of what kind must the consent be?** Consent must be: first, mutual; for matrimony consists in a contract, which is essentially the consent of two, or mutual consent. Hence if it is lacking on one side, there will be none. Second, in the present tense; because by a promise about the future there are made only betrothals, not marriage. This is also deduced from c. *Si inter* 31, *De sponsalibus et matrimonio*. Third, deliberate and voluntary; because it is a contract concerning a grave thing, and therefore inducing a grave obligation. But no one is judged to impose a grave

obligation on himself unless he consents freely and fully. This is clear from canon law, which invalidates marriages contracted from grave fear. Fourth, manifested by external signs; because every agreement among human beings must be known by some external sign: for an agreement necessarily supposes mutual acceptance among contracting parties. St. Thomas, Supplement, q. 45; E. M.

961. **Must consent be expressed by words?** Response: Negatively as regards validity, because by natural law in a contract it suffices that consent be expressed by some certain sign. C. un., § final, *De desponsatione impuberum*, in VI; c. *Is qui fidem*, *De sponsalibus*; c. *Tuae fraternitati* 25, *De sponsalibus*. Therefore it suffices that consent be externally manifested, for example, by the handing over and acceptance of a ring, and as regards the woman even by silence. L. 882, 887; St. Thomas, Supplement, q. 45, a. 2; q. 47, a. 3.

Affirmatively as regards liceity, because otherwise one would act against the rubric and custom of the Church. Nevertheless it does not seem to exceed venial sin if words are not used; indeed shame or another reasonable cause would excuse from all fault. L. 888.

II. On the Nature and Properties of Matrimony

962. **What must be done if someone says that he consented fictitiously?** As regards the external forum, faith is not given to him, unless from circumstances it is clear that he was deceived by deceit or induced to contract by grave fear; for it cannot be supposed that one who freely entered marriage consented fictitiously.

As regards the internal forum, one who asserts that he consented fictitiously must be obligated to abstain from asking and rendering the debt until he has truly consented, and ordinarily also to put forth true consent, so that he may thus repair the injury inflicted on the other party. Ordinarily, because if the other party consents to separation, or he himself was compelled to contract, he is not bound to supply consent. But it suffices that the consent of the other accede to a preceding and not revoked consent. Therefore, if someone before the parish priest and witnesses did not truly consent, he satisfies by consenting afterward.

For the rest, a spouse who has put forth true assent is not obligated to believe the other asserting that he or she consented fictitiously, unless the other confirmed this by oath; and therefore he or she would licitly ask for the debt until the defect of consent were evidently proved. Sacred Congregation of the Council, Feb. 24, 1720; St. Thomas, Supplement, q. 45, a. 4, ad 2.

But the obligation of entering marriage by true consent easily shows itself most grave, not only because otherwise one sins gravely against the reverence due to the sacrament, but because through injury a most grave damage is inflicted on the other party. Indeed, since in the external forum fiction can be proved with the greatest difficulty, other nuptials are not permitted to the deceived party, and therefore this alone remains to that party: either to enter Religion, or to remain unmarried in the world. L. 887, 1113, 1114; Schmalzgrueber, bk. 4, tit. 1, nn. 265ff.

II. On the Nature and Properties of Matrimony

963. **Does consent by proxy suffice?** Response: Affirmatively, as regards validity, provided the required conditions are present, because matrimony has the whole nature of a natural contract. But any contract can be made by proxy.

The conditions for contracting marriage in this way are: first, that the proxy have a special mandate; that the mandate be for contracting with a determinate person; that the proxy execute the mandate by himself, c. final, *De procuratoribus*, in VI; second, that the mandating party has not revoked the mandate, not only mentally, but even tacitly, for example by celebrating betrothals with another; third, that the proxy show the mandate to the parish priest and witnesses; nevertheless it also suffices that the mandate be given orally; fourth, that he contract marriage before the same persons according to the Tridentine form; fifth, that he not exceed the limits of the mandate, if, for example, the condition required by the mandating party is that it be contracted with such a dowry, at such a time, etc.

Negatively as regards liceity, unless a very grave cause urges. The reason is that this mode of contracting is contrary to the ordinary practice of the Church, and marriages are scarcely made in this way among others than princes and magnates. Hence the parish priest ought not by his own authority to bless marriages of this kind, as is clear from the practice of the Church and the Rituals. L. 885, 886, 889; Sanchez, bk. 5, disp. 8, n. 24.

964. **Is a marriage entered under condition valid?** It is certain that it is valid if the condition is about the past or about the present, and is verified. The reason is that this conditioned consent immediately passes into absolute consent, and therefore nothing is lacking to the validity of the sacrament.

If an honorable and possible condition about the future is added, the marriage is not perfected until the condition is fulfilled; because the contract must transfer mutual right over bodies in the present. But once the condition has been fulfilled, the marriage is valid without new consent, since a conditioned contract, once the condition is fulfilled, passes into an absolute contract, and by that very fact is valid by reason of the sacrament, because among Christians the contract of marriage cannot be separated from the sacrament. Without new consent; nevertheless, since many deny this, and probably according to St. Alphonsus, n. 895, it is safer to renew consent.

Although the marriage is valid even if the contracting parties do not know that the condition has been fulfilled, because the existence of the condition does not depend on knowledge of it, nevertheless they cannot use the marriage before receiving knowledge of its fulfillment; otherwise at least by will and intention they would commit fornication.

An impossible condition from the nature of the thing, or only in fact, is held as not added in the external forum, because in so grave a matter it is presumed not to have been seriously attached. C. final 7, *De conditionibus appositis*. But because presumption yields to truth, for both the external forum and the internal forum those cases must be excepted in which truth is certainly opposed to and prevails over the presumption. But if there is doubt, then the condition is held as not added for both forums, lest perhaps those who are legitimately joined be separated, and joined illegitimately to others.

Fifth, "if there is a necessary condition about the future, such as that the sun rise tomorrow, then there is marriage; because such future things are already present in their causes." St. Thomas, IV, dist. 29, q. un., a. 3, q. 3; L. *Si pupillus* 9, § 1, ff., *De novationibus*. L. 890, 892, 895; St. Thomas, Supplement, q. 47, a. 5; Schmalzgrueber, bk. 4, tit. 5, nn. 37, 60ff.

965. **Is it licit to contract with conditioned consent?** Response: Negatively. Such a mode of contracting is illicit, especially if the condition is about the future, unless perhaps, as St. Alphonsus, n. 892, has it, a most urgent cause is present. The reason is that many and grave inconveniences can easily follow from such a mode of contracting, namely ambiguities, difficulties, and from these quarrels and scandals.

966. **Is a marriage valid which is entered under a shameful condition?** If the shameful condition is not opposed to the substance of marriage, the marriage is judged valid in the external forum; for in it the condition is held as not added. C. final, *De conditionibus appositis*. But because this rests on presumption, hence if from elsewhere it is certainly established that it was seriously added, and that consent in reality was not furnished except under its outcome, then surely in neither forum will the marriage be judged valid unless the condition occurs. But once the condition has been verified, as regards the internal forum it is controverted, as in other contracts. Ordinarily, however, it is not judged a condition *sine qua non*, but a mere purpose or promise independent of the matrimonial contract; and therefore consent is not judged suspended by such a condition unless this is altogether established. For the rest, in doubt one must always judge in favor of marriage. L. 891.

But the marriage is judged invalid in the internal forum if this condition is opposed to the substance or essence of marriage, namely to its threefold good: first, the good of sacrament; second, the good of faith; third, the good of offspring. This would occur if the betrothed persons in contracting marriage positively excluded fidelity in marriage, or perpetuity in marriage, or the generation of offspring. The reason is that when such a condition is attached, whether only internally in the intention of one or both contracting parties, or only externally, either consent to true marriage is not had, or at least is not externally expressed, since the very substance or essence of marriage is taken away by force of such a condition. But in the external forum, unless the condition is brought into an express pact, presumption is for the validity of the marriage, since the cause is favorable and of the common good.

All the more is marriage invalid if such a condition opposed to the substance of marriage is expressly attached and brought into a pact, in both forums, even if interior consent were present, because sufficient exterior consent would be lacking. C. *Si conditiones* 7, *De conditionibus appositis*. If the shameful condition is not about the future, but about the present or about the past, according to the more common opinion the marriage is valid if the condition is verified, and not valid if it is not verified. The reason is that such a condition is not properly a condition. L. *Institutio* 10, §, ff., *De conditionibus institutionum*. L. 881, 882, 891; St. Thomas, IV, dist. 29, q. un., a. 3, q. 3; dist. 31, q. 1, a. 3; Schmalzgrueber, bk. 4, tit. 5, nn. 90ff.; Lugo, *De Sacramentis*, disp. 8, n. 129; E. M.

II. On the Nature and Properties of Matrimony

967. **You will resolve:** First, if a shameful condition does not affect the contract itself, but only affects the execution of the contract, because they indeed will to be bound by marriage, but do not will to fulfill the offices of marriage, then they sin gravely, but the marriage is valid.

Second, in places where there is a law of divorce, if knowledge of the law holds antecedently as regards consent, that is, if they therefore contract because they know that this is permitted to them, and otherwise would not contract, the marriage is invalid. But if it holds concomitantly, because they have a general will of contracting, so that they would equally contract without such knowledge, the marriage is valid. In the external forum a general will of contracting is always presumed, unless the contrary is proved, as Benedict XIV teaches, *De Synodo*, bk. 13, c. 22, n. 7, and Pius VI declared in the letter to the Archbishop of Prague, July 11, 1789.

Third, if marriage has indeed been entered under a condition excluding the good of offspring, but one which is honorable, namely under the condition of preserving chastity, the marriage is valid; for consent and object are still had, which are altogether essential to the contract. For the object is the mutual handing over and power over one's own body. Nevertheless others deny this. L. 881, 882; Lugo, *De Sacramentis*, disp. 8, nn. 131, 132; *Collectanea S. C. de Propaganda Fide*, nn. 1291, 1292, 1299, 1301, 1302.

968. "**It must be noted here** that a condition differs from a demonstration, cause, mode, and day. For a demonstration, or an added cause, for instance if someone says, 'I marry you, who are a virgin,' or 'because you are a virgin,' does not vitiate or suspend marriage, granted that the cause is false or shameful, even against the substance of marriage, as Sanchez, bk. 5, disp. 19, n. 2, says. For although he would not contract if he knew that she was not a virgin, nevertheless he then furnishes absolute consent, which is not impeded except by error concerning the substance, or concerning substantial conditions of marriage.

Nor does a mode suspend, if it is said, for example, 'I marry you, so that you may serve me'..., even if the mode concerns a shameful or impossible thing, 'I marry you, so that you may kill,' etc. The reason is that consent does not depend on a mode as it depends on a condition. And even if, says Viva with Palaus, the mode is against the substance of marriage, namely, 'I marry you, so that you may commit adultery,' etc. But the Salamancans with Sanchez more probably contradict him in this, because one who has an intention opposed to the contract does not seem to have the mind of contracting.

But whether an attached day suspends the contract, for example if it is said: 'I marry you after three days'? Sanchez denies it. But Viva with Coninck, etc., more probably affirm it, because the contracting party then does not intend to put forth perfect consent until after the third day." L. 896. St. Thomas, Supplement, q. 48, a. 2; Schmalzgrueber, bk. 4, tit. 5, nn. 136ff.; Sanchez, bk. 5, disp. 19, nn. 2, 3.

969. **What are the essentials of matrimony insofar as it is a sacrament?** The sacrament of matrimony is not something distinct from the matrimonial contract itself, but is the very contract of matrimony, elevated by Christ our Lord to the being of a sacrament. Pius IX, allocution, Sept. 27, 1853; propositions 67 and 73 of the Syllabus condemned by Pius IX.

Hence it is clear that the contracting parties themselves are the ministers and subjects of this sacrament. Florence, Decree for the Armenians; Trent, sess. 24, c. 1, *De Reformatione Matrimonii*. But the matter and form are contained in the contract itself. The remote matter is the bodies themselves, or the right over the bodies of the betrothed persons, to be handed over to one another in the contract of marriage in relation to generation. But the proximate matter is the mutual handing over of bodies, which is perfected by words or signs expressing consent in the contract; and the form is the mutual acceptance of the contracting parties, expressed by words or signs.

Therefore among Christians laboring under no impediment, whether natural, divine, or canonical, a contract of marriage cannot be had without the sacrament of marriage being had at the same time, and conversely the sacrament cannot exist without the contract. Among Christians, for human beings not baptized are not capable of the sacraments. Under no impediment, etc.; for although in itself every baptized human being is a subject capable of the sacrament of matrimony, nevertheless accidentally many are kept from validly contracting marriage because of various impediments.

But from the aforesaid mutual acceptance and handing over, the bond of marriage arises, namely a mutual right and obligation over bodies in relation to generation, and therefore the union of husband and wife for one generation and education of offspring, and again for one domestic life. L. 879, 880, 897-899; St. Thomas, IV, dist. 26, q. 2, a. 1, ad 1; dist. 28, q. 1, a. 3; Supplement, q. 44, a. 1; q. 45, aa. 1, 2; q. 48, a. 1; E. M.

970. **You will resolve:** First, the marriage of unbelievers, although it is valid in the nature of a contract, nevertheless is not a sacrament. St. Thomas, Supplement, q. 59, a. 2. Whether the marriage of a believer with an unbeliever, with the Pope's dispensation acceding, is a sacrament, some deny and others affirm. But marriage contracted by unbelievers, when both spouses are converted to the faith, passes into a sacrament by reception of baptism.

Second, heretics and schismatics who, in entering marriage, observe the laws of the Church as regards the substance of marriage, contract validly and are furnished with the sacrament.

Third, all Christians who altogether do not will to receive the sacrament do not contract validly, even if they will to contract marriage; and if they truly will to contract marriage, they also receive the sacrament, even if they do not will to make the sacrament. Lugo, *De Sacramentis*, disp. 8, nn. 120-130; Schmalzgrueber, bk. 4, tit. 1, nn. 302-304; bk. 19, nn. 164-176; Ferraris, v. *Matrimonium*, a. 1, n. 19; Clericati, *De Matrimonio*, decis. 4, n. 25.

II. On the Nature and Properties of Matrimony

971. **Whether is matrimony governed by civil or ecclesiastical authority?** Since among Christians the very contract of marriage is a sacrament, matrimony cannot be governed as contract by civil power and as sacrament by ecclesiastical power; nor, insofar as it is contract and sacrament, can it be governed at the same time by both civil and ecclesiastical power; but it must be governed exclusively, both as contract and as sacrament, by the authority of the Church. Therefore it belongs to the Church alone to establish especially those things which regard the substance of this contract, both as to the incapacity of persons and as to the form and solemnity to be constituted, namely as to establishing diriment impediments. Likewise

matrimonial causes, and causes of betrothals and of other directly impedient impediments, belong to the Church alone. Trent, sess. 24, canons 4, 12; Benedict XIV, const. *Singulari*, §§ 7, 9; Syllabus, proposition 74.

But since families are members of Civil Society, hence matrimony in Civil Society produces civil rights and obligations, which are called the civil effects of marriage. Therefore if civil princes can do anything concerning marriages, that regards only those things which are situated in the civil order. Leo XIII, encyclical *Arcanum*, and letter of Feb. 8, 1893.

But marriage is not some civil contract, but especially a natural one. The contract of marriage was instituted by God himself at the beginning of the world, Gen. 2:18; and besides this, it always was and is a sacred thing. Trent, sess. 24, doctrine on the sacrament of matrimony; Leo XIII, encyclical cited. Hence, as regards unbelievers, marriage, both as natural contract and as sacred thing, does not at all depend on the power and jurisdiction of civil princes as to impediments invalidating it, according to the opinion of many and grave doctors. But there are other doctors who judge that marriages of unbelievers, since they are not sacraments and therefore cannot be governed by canon law, lest the contracting parties be without law in so grave a matter, are governed by the power and jurisdiction of princes, whether faithful or unbelieving. St. Thomas, IV, dist. 39, q. 1, a. 2, ad 3, seems to adhere to this second opinion, since "those things which pertain to natural law are determinable by positive law; and therefore if they are prohibited by some positive law among those unbelievers from contracting marriage with unbelievers of another rite, disparity of worship impedes marriage among them." St. Thomas, Supplement, q. 42, a. 2; IV, dist. 34, q. 1, a. 1; Schmalzgrueber, bk. 4, tit. 1, nn. 360ff.; bk. 18, nn. 2-8; *Collectanea S. C. de Propaganda Fide*, n. 1289; E. M.

972. **You will resolve:** Therefore impediments diriment of marriage are to be taken from Canon Law, by no means from Civil Law, unless insofar as the approval and confirmation of the Church has acceded to it, or insofar as Civil Law is conformable in this matter to Canon Law; from this, where it is discordant, it must be corrected. Trent, sess. 24, decree *De Reformatione Matrimonii*, etc.; Italian Civil Code, nn. 56ff.; French Civil Code, nn. 161ff.; Spanish Civil Code, nn. 83ff.; Austrian Civil Code, nn. 47ff.; Brazilian Civil Code, nn. 1303ff.

973. **Note.** Since in present Italian, French, and German Civil Law marriage is not admitted unless civil, namely entered according to civil law, hence if this is omitted, many grave damages can follow, both spiritual and temporal. Spiritual, because it will be open to one to depart from the other and enter another civil marriage. Temporal, because the husband is not compelled by law to support the wife, and the children, as not at all recognized by the law as legitimate, do not succeed to the paternal inheritance, by force of civil law, in the external forum. Therefore civil ceremonies are not to be omitted. And if by civil law the betrothed man and betrothed woman are prohibited from marriage, it is not licit to join them in marriage without the order of the bishop. Sacred Penitentiary, Jan. 15, 1866. Cf. Italian Civil Code, nn. 70ff., 93ff., 721; French Civil Code, nn. 165ff., 723; Brazilian Civil Code, nn. 1317, 1324. But it is otherwise from the Austrian Civil Code, nn. 69ff., 75ff., and from the Spanish Civil Code, nn. 42ff., 75ff. Cf. vol. 1, nn. 223, 680; *Collectanea S. C. de Propaganda Fide*, n. 1390; E. M.

974. **Is the state of grace required for the sacrament of matrimony?** Betrothed persons contracting marriage ought to be in the state of grace, because matrimony is a sacrament of the

living. Those who contract in mortal sin become guilty of sacrilege, and do not receive sacramental graces. Nevertheless those graces are probably only suspended, and, once the obstacle or mortal sin is removed, are applied to the soul. If no fruit is hoped for from warning, it will be better not to warn the unworthy person about sacrilege, so that at least in this way he or she may sin less; and rather that person should be induced at least to approach confession as soon as possible. L. 884.

975. **Must the parish priest require that a certificate of confession be shown by the betrothed persons?** He cannot require this of himself, unless a law or precept of the bishop establishes it. The reason is that although the state of grace is required for receiving this sacrament, nevertheless confession is not necessarily required, since contrition absolutely can suffice even for those who are in the state of mortal sin. From elsewhere, it is generally not known to the parish priest that the betrothed persons are not in the state of grace.

Where a particular law exists, the parish priest must require testimony of confession. Nevertheless cases can occur in which this law admits exception, as if the marriage has already been contracted civilly, and one party shows the required testimony of confession, etc. And if the betrothed man is not a public sinner, nor is his unworthiness established, even less grave reasons suffice. Cf. 372 seq.

II. On the Nature and Properties of Matrimony

976. **Must marriage be celebrated in Church, and blessed in Mass by the parish priest?** It is fitting that marriage be celebrated in Church, and the spouses are to be exhorted to receive the nuptial blessing. If they omit it, either they are free from all fault, or certainly from grave fault. Marriage can be celebrated at any time, even in forbidden time or during interdict.

The nuptial blessing is given only in Mass, and can be given even after the marriage has been celebrated, even if the betrothed woman approaches pregnant. It is given, however, only by the bishop or proper parish priest, in their own proper territory only, and outside forbidden time and interdict. In Mass, namely if possible the votive Mass for bridegroom and bride; this is therefore permitted on any day, except doubles of the first and second class, feast days of precept, and the vigil of Pentecost. But on these days the prescribed commemoration for bridegroom and bride is to be added to the Mass; and besides this, after the Lord's Prayer and the *Ite, missa est*, the prayers are added which are had for this in the Mass for spouses. But once it has been given either to a man or a woman, it cannot be given again in second nuptials. Yet since that blessing chiefly regards the woman, if the woman has never received it, it can be given whether she marries then for the first time or again. Cc. 1, 3, *De secundis nuptiis*; Trent, sess. 24, c. 1, *De Reformatione Matrimonii*; Roman Ritual, this title; Benedict XIV, instruction 80, n. 8; L. 984, 988; *Collectanea S. C. de Propaganda Fide*, nn. 1536, 1537, 1559; E. M.

977. **What about the unity of matrimony?** The unity of matrimony consists in this, that marriage is the union of one man with one woman.

It is certain that polyandry, or the simultaneous union of several men with one woman, conflicts with natural law, because it is opposed to the principal ends of marriage, namely generation of offspring

and its good education.

It is certain that simultaneous polygamy, or the simultaneous union of several women with one man, is prohibited in every case, at least by divine positive law of the New Law, as is clear from Luke 16:18: "Everyone who dismisses his wife and marries another commits adultery." It is likewise clear from Trent, sess. 24, doctrine on the sacrament of matrimony, canon 2.

It is certain that second and further nuptials are licit both for a man and for a woman, even under the Evangelical law. This is clear from the authority and practice of the Church, and also from Sacred Scripture, 1 Cor. 7:39: "A woman is bound to the law for as long a time as her husband lives; but if her husband has fallen asleep, she is freed: let her marry whom she wishes, only in the Lord." St. Thomas, Supplement, q. 63; q. 65; E. M.

978. **What about the firmness of matrimony, insofar as it regards the bond?** Matrimony is indissoluble, that is, once marriage has been contracted, divorce as regards the bond cannot occur, at least by divine positive law. It is of faith.

Proof, first, from the words of Christ, Matt. 19:6: "Therefore now they are not two, but one flesh. What therefore God has joined, let not man separate."

Second, from the words of St. Paul, 1 Cor. 7:10, 11: "But to those who are joined in marriage, I command, not I, but the Lord, that the wife not depart from the husband; but if she has departed, let her remain unmarried, or be reconciled to her husband. And let the husband not dismiss his wife."

Third, from Trent, sess. 24, canons 5, 7. Therefore even before consummated marriage, if a case arises such that, while it stood, marriage could not have been entered, for example, if the man becomes impotent or the woman becomes insane, the bond of marriage perseveres. C. 25, cause 32; L. 955; St. Thomas, Supplement, q. 67; *Collectanea S. C. de Propaganda Fide*, n. 1295; Brazilian Civil Code, n. 1348; E. M.

II. On the Nature and Properties of Matrimony

979. **Is any exception given with regard to the aforesaid firmness of matrimony?** A threefold case must be excepted.

980. The ratified and non-consummated marriage of Christians can be dissolved, for a grave cause, by dispensation of the Pope, from a power divinely granted to him. This is clear from the fact that the Supreme Pontiffs have already used this power many times, as St. Gregory VII, Paul III, etc.; Benedict XIV, constitution *Dei miseratione*. Cf. Perrone, *De Matrimonio*, t. 3, sect. 2, c. 6, a. 4.

This faculty, moreover, must be extended to marriages consummated in unbelief, if the spouses after baptism, by which the marriage becomes ratified, have not again consummated it; and likewise to marriages consummated in unbelief, when a spouse converted and baptized is permitted, by Apostolic Authority, to remain with a wife who has been converted and baptized with him, as with a legitimate wife, the others having been dismissed, although she is not his first wife; or when, because the absent unbelieving spouse cannot be admonished, it is permitted, by Apostolic Authority, that the

spouse converted to the faith and baptized contract marriage with any faithful person. Indeed this marriage is valid and firm, even if afterward it becomes known that the prior unbelieving spouse was unable, because justly impeded, to declare his or her will, and had also been converted to the faith at the time the second marriage was transacted. This is most clearly established from the letters of St. Pius V, Aug. 2, 1571; Gregory XIII, Jan. 25, 1585; Urban VIII, Oct. 20, 1624, and Sept. 17, 1627.

Non-consummated, namely by an act in itself suitable for the effect of generation; and, according to St. Alphonsus, n. 1036, and St. Thomas, IV Sent., dist. 41, q. 1, a. 1, q. 4, ad 2, by an act complete on both sides.

The consummated marriage of Christians can in no way be dissolved, Matt. 19:6; Trent, sess. 24, c. 7, *De Matrimonio*; and the same must be said if marriage is contracted by a faithful person with an unbeliever by dispensation of the Roman Pontiff. Clement XIII, Aug. 2, 1759; Holy Office, Aug. 1, 1753; L. 955, 956, 959; *Collectanea S. C. de Propaganda Fide*, n. 1308.

2. A ratified and non-consummated marriage can be dissolved by the solemn religious profession of one of the spouses, and this from a special privilege granted by Christ and declared by the Church. C. *Verum*, C. *Ex parte*, *De conversione coniugatorum*; Trent, sess. 24, c. 6.

Solemn, that is, not of simple vows, even in the Society of Jesus, but of solemn vows. Profession, not mere entrance into religion.

Moreover, so that the spouses may deliberate about the use of this privilege, by the law itself they have two months granted to them after the nuptials, during which time they are not bound to render the debt. C. *Verum*, C. *Ex publico*, *De conversione coniugatorum*. And "each of the spouses can licitly deny the debt within the two-month period, although he or she does not have the intention of entering religion, because he or she uses his or her right." L. 956. Indeed even after that two-month period, if the marriage has not been consummated, even through illicit denial of the debt, this privilege remains. Nor is it impeded by fornication had between the betrothed before the celebration of marriage, unless marriage is necessary for legitimating offspring, repairing scandal, or repairing the honor of the betrothed woman.

If within the two-month period violence is applied, and the marriage is thus consummated, while the bride was in fact thinking of embracing religion, although the marriage is now indissoluble, nevertheless the bride can even in this case enter religion. But he sins who contracts marriage with the intention of entering religion without warning the other party. L. 870, 958; St. Thomas, Supplement, q. 61, aa. 2, 3; Schmalzgrueber, l. 3, t. 32, n. 11 seqq.

3. The consummated marriage also of unbelievers can be dissolved by divine concession, when one or the other spouse is converted to the Christian faith, even not Catholic but heretical faith, by reception of baptism, and the other refuses to cohabit peacefully with him or her, or does not cohabit except with injury to the Creator and contempt of the Christian religion, or makes an attempt to draw the faithful party into mortal sin.

This divine concession is drawn from the words of the Apostle, 1 Cor. 7:12-15, where he says: "If any brother has an unbelieving wife and she consents to dwell with him, let him not dismiss her... but if the unbeliever departs, let him depart; for the brother or sister is not subject to servitude in such

matters; but God has called us in peace." Innocent III explains the same more fully in C. *Quanto* 7, *De divortiis*. L. 955, 956; St. Thomas, Supplement, q. 59, aa. 3-6; E. M.

980. **Note.** 1. Marriage is not immediately dissolved by the reception of baptism: "Crimes are dissolved in baptism, not marriages," C. *Gaudemus* 8, *De divortiis*; C. *Si quis*, 28, q. 2; but it is dissolved when the converted and baptized spouse enters a new marriage. But when the spouse converted passes to other nuptials, since the prior marriage is already dissolved, the spouse who remains in unbelief also can validly and licitly contract another marriage.

Regularly, by the prescription of law in C. *Quanto* 7, *De divortiis*, interpreting the Pauline privilege, "But if the unbeliever departs, let him depart," the converted party cannot pass to other vows before the unbeliever, having been interrogated, either absolutely refuses to cohabit with him or her, or is unwilling at least to cohabit without insult to the Creator.

If the unbeliever cannot be interrogated because he or she is far away and has fled, or is hidden, many hold, according to Sanchez, l. 7, disp. 74, nn. 13-15, that the interrogation can be omitted, because there is no obligation to impossibilities; nor is it needed, since it is already morally certain that the unbelieving spouse is unwilling to be converted and unwilling to dwell peacefully. Others, to whom Benedict XIV adheres, *De Synodo*, l. 6, c. 4, n. 3, think that pontifical dispensation is necessary; and the Sacred Congregation of the Council adhered to this opinion on Jan. 17, 1722, in the same Benedict XIV, loc. cit., and the Holy Office on Sept. 16, 1824. Cf. *Collectanea S. C. de Propaganda Fide*, n. 1328.

When, in some places, by law or custom, in order to remove a peculiar danger of perversion, it is forbidden that the converted party cohabit with the unbeliever unless the latter also is willing to be converted to the faith, the unbeliever must be interrogated not only whether he or she consents to cohabit peacefully, but also whether he or she wishes to embrace the Christian faith. But if, after the time fixed by law or custom has elapsed, he or she has declared unwillingness to be converted to the faith, although otherwise willing to cohabit peacefully, the converted spouse recovers freedom, and it is permitted to him or her to hasten to new nuptials.

By the Pauline privilege the converted party is not granted power to enter a new marriage with another unbeliever, or even with a male or female catechumen, but only with a baptized faithful person. S. C. de Propaganda Fide, Jan. 16, 1683, Aug. 7, 1891; *Collectanea* cited, n. 2183; L. 956, 957; St. Thomas, Supplement, q. 59, aa. 3-6; Benedict XIV, *De Synodo*, l. 13, c. 21; Sanchez, l. 7, disp. 73; E. M.

2. When one of two unbelieving spouses is converted to the faith, while the other remains in unbelief, the converted one can receive sacred orders or profess religion. In the first case the marriage is not dissolved, and therefore if the other spouse is converted he or she cannot contract a new marriage. Sanchez, l. 7, disp. 76, n. 11. But in the other case, "it must entirely be held," says Sanchez, loc. cit., n. 9, "that the prior consummated marriage is dissolved by profession, just as it would be dissolved by a subsequent marriage."

II. On the Nature and Properties of Matrimony

981. **What is divorce, how many kinds are there, and by what cause and authority may it licitly occur?** Divorce is separation and disjunction. It is threefold: with respect to the bond, with respect to dwelling, and with respect to the bed.

Divorce with respect to the bond is that by which the very bond of matrimony is dissolved, so that the prior spouses can licitly and validly enter another marriage; this is verified in the three cases set forth in the preceding number.

Divorce with respect to dwelling is separation merely with respect to cohabitation, the bond of marriage remaining. Divorce with respect to the bed is separation regarding the very use of marriage and the conjugal debt, the bond of marriage again remaining.

A spouse can separate from a spouse with respect to dwelling and bed:

1. By mutual consent, which is evident in itself, provided danger of incontinence is absent; either for a time, because of affairs, or perpetually because of desire for a more perfect life.
2. Because of adultery of the spouse, on account of violated fidelity, Matt. 5:32; 19:9; 1 Cor. 7:11; Cc. 4, 5, 8, *De divortiis*. Because of adultery, namely morally certain, not condoned either expressly or implicitly by the conjugal act, not mutual, because then compensation would exist, voluntary, not perpetrated because violence was inflicted, perfect and consummated. Whether also because of sodomy and bestiality? The common opinion affirms, from which St. Alphonsus, n. 362, says one must not depart, but he says that it is not really proved. St. Thomas, IV Sent., dist. 39, q. 1, a. 1, ad 4.
3. Because of supervening heresy. C. *De illa*, *De divortiis*.
4. Because of any grave danger of body and soul. Can. 28, cause 1; Cc. 8, 13, *De restitutione spoliatorum*; Trent, sess. 24, c. 8; for example, if danger of life, mutilation, enormous or frequent cruelties threatens, or danger of perversion.

The aforesaid divorce from bed because of adultery certainly can be made by one's own authority; likewise from bed and dwelling, provided, if the offense is hidden, scandal is absent, which can scarcely be absent; and more truly also because of heresy; and because of the aforesaid danger, if it is proximate and clear.

But no one per se is bound to make divorce; indeed neither is one bound to this from justice, as is undoubted, nor from charity, which does not urge with grave inconvenience, which ordinarily is present in divorces. Besides, provision is made for one's own and the other's incontinence, and greater scandals are prevented.

One divorce is perpetual, another temporary. Perpetual, per se, is divorce made because of adultery, or by authority of a judge. Once perpetual divorce has been made, the innocent spouse, in whose favor it exists, can still recall the spouse to himself or herself whenever he or she wishes, yet is not compelled to admit the spouse, since this is not without grave inconvenience, even if the other spouse has been converted to good conduct, or, more probably, even if he or she afterward has fallen into the same offense, for example adultery, whether the divorce was made by one's own authority or,

more truly, by authority of a judge. But if the divorce is temporary, the spouse is compelled to receive the spouse who has returned to the faith, C. 6, *De divortiis*, or when the danger on account of which he or she separated has now been removed. L. 960-977; St. Thomas, Supplement, q. 59, aa. 3, 6, q. 62; Sanchez, l. 10; Schmalzgrueber, l. 4, t. 19; E. M.

982. **What about educating children after divorce has been made?** Doctors unanimously establish that the children are to be educated with the innocent party. But when one spouse is an unbeliever or heretic, the offspring must always be educated with the faithful one, although this one is guilty; and this in favor of the faith, from C. fin., *De conversione infidelium*. But the expenses for educating the offspring must be made by the father, if he is at fault, Auth. *Si pater*, at L. 976. But if the mother is at fault, the law establishes nothing; nevertheless Sanchez, l. 10, disp. 20, n. 8, judges it equitable that what is established for the father also be understood for the mother. But if, once divorce has been made, the husband retains the dowry, the wife would already seem to contribute sufficiently to the education of the offspring.

These things according to Roman law. But now the more recent laws of various places must be consulted. Italian Civil Code, 148 seqq.; French Civil Code, 229 seqq.; Spanish Civil Code, 104 seqq.; Austrian Civil Code, 103 seqq.; Belgian Civil Code, 1585, 1635, 1636, 1685. Schmalzgrueber, loc. cit., nn. 181-183.

983. **What about a sentence of divorce from the bond, to be pronounced by a lay judge?** Where a civil law of divorce is in force, not only from bed and from dwelling, but also from the bond of marriage itself, spouses cannot in any way petition for the judge's sentence; nor consequently can advocates petition for and defend it; nor can judges in any way pronounce it, namely a sentence which is opposed to natural, divine, and ecclesiastical law concerning the indissoluble bond of marriage. For it is a question of a thing intrinsically illicit.

But if by the greatest wickedness spouses have petitioned for and obtained from a judge a sentence of this kind, namely of divorce from the very bond of marriage, the civil registrar cannot in any way admit these spouses to another civil marriage and authorize it by his presence. For then by his authority he would admit them only to public and legal adultery, which would be protected by the very favor of law. Hence he would inflict the highest injury upon the pre-existing marriage, and would authoritatively declare them capable of the civil effects of marriage, although, while the prior marriage still remains, they are altogether incapable of these effects. Belgian Civil Code, 1564 seqq.; E. M.

III. On the Impediments of Matrimony

984. **What is an impediment of matrimony; how many kinds are there; by what law is it constituted, by what superior, and whom does it affect?** Impediments of matrimony are certain conditions or circumstances constituted by law, which prohibit the contracting of marriage. By law, for a particular precept or prohibition made to someone or to some persons is not usually called an impediment.

Impediments which forbid entering marriage licitly are called impedient; those which bar one from contracting marriage validly are called diriment. Contracting, for if perhaps they supervene after it has already been contracted, they in no way render it void. Diriment impediments fall back upon incapacitating and invalidating laws. Therefore regularly neither ignorance nor force nor fear, even of death, excuses from incurring them.

All diriment impediments exist either by natural law, or by divine law, or by canon law. Nor can bishops constitute them, but only the Roman Pontiff. Impediments introduced by Christian princes are neither diriment nor properly impedient, and therefore do not bind in conscience except merely per accidens, from the harm which would occur if they were not observed.

Impediments of natural and divine law oblige all, even unbelievers. Impediments of canon law oblige only Christians, C. 4, *De consanguinitate*; C. 8, *De divortiis*, namely Catholics and heretics; and thus when the Holy See permits mixed marriages of Catholics and non-Catholics, if some diriment impediment is present, it first dispenses it. And if marriage is entered by a faithful person with an unbeliever, an impediment of ecclesiastical law certainly does not directly affect the unbeliever; nevertheless it directly affects the faithful person, and because marriage is a contract, and a contract exists between two and cannot be invalid on one side and valid on the other, the impediment also indirectly affects the unbeliever, as may be seen in the impediment of disparity of cult, of crime, etc. C. 1, *De conversione infidelium*. Trent, sess. 24, cc. 3, 4; Sanchez, l. 7, disp. 5, disp. 78, n. 3; Schmalzgrueber, l. 4, t. 1, n. 375, t. 7, n. 46; La-Croix, l. 6, p. 3, n. 525; Benedict XIV, *De Synodo*, l. 8, c. 14, n. 5, l. 13, n. 23; Lugo, *Responsa Moralia*, l. 1, disp. 45, n. 4; E. M.

985. **You will resolve.** Hence, if after marriage has been contracted a woman certainly discovers a diriment impediment, by force of which there was no marriage, she cannot petition for the debt or render it, even if she were forced to this by threat of death, because the union would be fornicatory, which is licit in no case. Probably except the case in which the woman would behave merely passively, so that she would cooperate with such an act altogether materially, if she is forced to it by fear of death, with the danger of consent always excluded.

986. **How many and what are the impedient impediments?** Today four are numbered: prohibition of the Church, time, betrothals, vow. Formerly six were enumerated. For there were also impediments of catechism and of crime. But these two impediments are now held as obsolete by the consent of all theologians as well as canonists.

The impediment of catechism was contracted by the one who answered for an infant in the profession of faith which precedes the conferral of baptism, and it constituted an impedient impediment in the same degrees as with a baptismal and confirmation sponsor.

The impediment of crime was a certain penalty imposed by the old law upon certain graver crimes, by which namely the guilty person was prohibited from contracting any marriage with any person, either altogether, if unmarried, or after the death of the spouse, if married. Schmalzgrueber, l. 4, t. 11, n. 59 seqq., t. 13, nn. 3, 27-29, t. 16; Sanchez, l. 7, disp. 15.

987. **What is the prohibition of the Church?** It is a prohibition, either general or particular, made by the Church or some ecclesiastical superior, that some marriage not be celebrated.

A particular prohibition is had when, for a just and special cause, marriage is interdicted to someone, whether by a parish priest, by a bishop, or by the Pope; the last of these can also add invalidation to the prohibition. C. *Tua* 4, *De sponsa duorum*. Moreover, the Pope and bishop can attach a censure to the prohibition. C. ult., *De matrimonio contracto contra interdictum*.

The just causes for which, according to the common opinion of doctors, marriage can be interdicted are especially numbered as three: 1. an objection concerning betrothals by which one of the betrothed had previously bound himself or herself with another person; 2. a non-empty suspicion of a hidden impediment, either diriment of the marriage between them or even merely impedient; 3. a non-groundless fear that from that marriage grave quarrels, enmities, scandals, or other inconveniences will follow.

A general prohibition, namely one which specially regards marriage, is had: 1. lest marriage be contracted without the consent of parents, cf. 928, 940; 2. without banns, cf. 949 seqq.; 3. clandestinely, cf. 1026; 4. with a non-Catholic, cf. 1010. Schmalzgrueber, l. 4, t. 16, n. 1; Pirhing, l. 4, t. 16, n. 1.

988. **What is time?** It is some determinate time through the course of the year, which is called forbidden time, and during which the Church forbids the solemnities of nuptials. Trent, sess. 23, c. 11, C. 10, *De reformatione matrimonii*. Now this time is the time which runs from the first Sunday of Advent to Epiphany inclusively, and from Ash Wednesday to the Octave of Easter likewise inclusively.

Now, for before the Tridentine Synod the forbidden time was: 1. from the first Sunday of Advent to Epiphany; 2. from Septuagesima Sunday to the Octave of Easter; 3. from the Monday of Rogations to the Octave of Pentecost; 4. two or three weeks before the Nativity of St. John the Baptist.

For the rest, Trent prohibits only the solemnities of nuptials in the aforesaid time, namely blessing the spouses, together with the Mass for bridegroom and bride, in which that solemn blessing is had, leading the bride home with noise, and preparing more solemn wedding banquets. It does not, however, forbid the parish priest to make proclamations, or even to join the spouses privately, although in various places this also is prohibited because of custom.

The custom of certain places namely has it, not indeed that proclamations not be made, or that the marriage contract not be celebrated, or that it not be consummated during forbidden times, but that nuptials not be celebrated except either when some necessity urges, or when the license of the Ordinary has been obtained, even, if it can be done, in a case of necessity. It is certainly fitting that parish priests accommodate themselves to this custom. Nor, according to the ancient canons, must one abstain from consummation of marriage, either by precept or by counsel. For those canons speak only of the solemn leading of the bride, not of consummation of marriage; and thus it is not necessary to explain them as a mere counsel and not as a precept, for that solemn leading is in fact interdicted by precept. Roman Ritual, *De Matrimonio*; Schmalzgrueber, l. 4, t. 16, nn. 27, 31-41; Benedict XIV, instruction 80; L. 983, 984; St. Thomas, Supplement, q. 64, a. 10.

III. On the Impediments of Matrimony

989. **What are betrothals?** Any betrothals, whether ecclesiastical or private, seriously contracted, unless they have been legitimately dissolved either by mutual consent of the contracting parties or by another just cause, are an impedient impediment to marriage. This is clear from natural law; for there exists a grave obligation of justice to observe a pact from an onerous contract. But if someone, notwithstanding that impediment, contracts nuptials, the marriage will indeed be valid, since this impediment is only impedient, yet it will not be licit. C. *Duobus* 1, *De sponsa duorum*.

990. **What is vow?** A fourfold vow impeding marriage is distinguished, namely the vow of chastity, the vow of not marrying, the vow of entering religion, and the vow of receiving sacred orders.

Vow of chastity. One who has emitted such a vow sins gravely by entering marriage with the intention of consummating it, because he violates the vow. He also sins gravely even when this intention is excluded, because he exposes himself to the danger of violating either the vow or the right of the other spouse.

After marriage has been contracted, he can neither petition for nor render the debt while the first two-month period remains, because by divine privilege the spouses during this time are exempted from the obligation of the conjugal debt. But after this time has elapsed, he can indeed render the debt and satisfy the right of the other, yet he cannot petition without dispensation from the vow, or without suspension or indirect invalidation of the vow made by the other spouse.

He must abstain altogether if the other consents, or has lost the right of petitioning, for example because of adultery or incest. But if he can abstain only with difficulty, he must seek dispensation as soon as possible, or seek the aforesaid invalidation from the other spouse. If the other spouse dies, he cannot hasten to new nuptials unless he has obtained dispensation from his vow also for this effect. La-Croix, l. 3, n. 564.

Vow of not marrying, or vow of virginity. One who, after emitting this vow, contracts marriage sins gravely, as is manifest. Once marriage has been contracted, he can render and also petition for the debt, because observance of the vow has now been made impossible. For the same reason, when the spouse has died, he can at least probably contract a new marriage.

In practice it is sometimes doubtful whether someone has vowed virginity or celibacy, or rather chastity. The penitent must be asked whether he or she was led by the intention of freeing himself or herself from the burdens of marriage and serving God more holily, or solely by love and affection for purity. In the first case the person must be judged to have vowed celibacy and virginity, but in the second truly chastity. La-Croix, n. 357.

Vow of entering religion. One who has emitted such a vow sins gravely by entering marriage, both because he deceives the other, and because he exposes himself to the danger of violating the vow.

Before consummation of the marriage he is bound to enter religion; and therefore he sins mortally when for the first time, whether by petitioning or by rendering the debt, he consummates the marriage, because he must fulfill the vow when he can. But he can fulfill it by not consummating the

marriage in the first two-month period, since then by divine privilege either spouse can enter religion, and the other party, when the spouse solemnly professes, is freed from the bond of marriage.

After the marriage has been consummated, he can petition for and render the debt, because execution of the vow has been made impossible, and petitioning for the conjugal act is not against that vow, since he did not vow chastity but religion.

Even when the marriage has been consummated, he per se is bound to enter religion whenever he can do this without injury to the right of the other party; for example, if the other consents, or loses the right of petitioning for the debt in perpetuity, or if the marriage is dissolved by death, because the obligation of the vow always subsists. In practice, however, in these cases it is more expedient that recourse be had to dispensation. More expedient, for in practice circumstances by reason of age, of offspring perhaps received from the marriage, of state of fortune, and also of fitness for religious duties have been so changed that, because of change of matter, the obligation of the vow almost ceases of itself, nor is there need of dispensation.

Vow of receiving orders. One who has emitted that vow sins gravely by entering marriage, as is established. He is bound to receive orders if he can, for example if he obtains the consent of the other. According to many, he is bound to enter religion before consummation of the marriage, even against the will of the other, so that he may be able to fulfill the vow. But others more probably deny this. Once marriage has been entered, he can consummate it if he can no longer fulfill the vow. When his wife has died, or when separation has been legitimately made, he is bound to receive sacred orders unless he is dispensed. For the vow does not cease. St. Thomas, Supplement, q. 53.

III. On the Impediments of Matrimony

991. **Who can dispense in impedient impediments?** No one can dispense, except the Supreme Pontiff and for a just cause, from an impediment arising from valid betrothals, since in this matter there is question of a strict debt of justice, which no one except the supreme prince can remove. The same must be said of the necessity of parental consent, which must be traced back to natural law; nevertheless this naturally ceases if the parents dissent unjustly.

Bishops, or ordinary pastors of souls enjoying full jurisdiction in the external forum, can dispense: 1. in the obligation of banns; 2. with respect to contracting during forbidden time, where custom also forbids this; 3. in the vow of temporary chastity, and of virginity or not marrying.

But they cannot dispense: 1. with respect to a vow of perpetual chastity; 2. with respect to a vow of entering religion; 3. with respect to the impediment of disparity of cult between Catholics and heretics; 4. with respect to clandestinity, or marriage to be contracted in the face of the Church; 5. with respect to the solemnities of nuptials, S. R. C., Aug. 14, 1858; 6. with respect to proof of free state. For these impediments are reserved to the Pope.

Regulars, by their privileges, can dispense merely for the internal forum in a vow of virginity, or of not marrying; for they have the same power of dispensing from vows in the internal forum which belongs to bishops by ordinary right, according to the common opinion of doctors. L. 987, 1119, 1128; Benedict XIV, instruction 80, n. 15; Sanchez, l. 1, disp. 61.

992. **Note.** The bishop, when necessity urges, namely when there is danger in delay, can dispense in a vow of chastity for contracting marriage. Likewise, once marriage has been contracted, the bishop can dispense, when necessity urges, in the same vow of chastity, for petitioning for the debt; and the bishop can also do this absolutely by force of the quinquennial faculties, and a confessor who has the faculty-sheet of the Sacred Penitentiary can do it as well. Cf. the respective formulas.

The bishop can do the same in a vow of continence, by which one or the other spouse after contracting marriage has obligated himself or herself. For since by force of this vow the person is indeed prohibited from demanding the debt, yet can render it, indeed must render it, it is not a vow of perfect chastity, and therefore is not reserved to the Supreme Pontiff. The contrary must be said if by common consent each spouse had vowed perpetual continence. L. 986, 987, 1126.

993. **How many and what are the diriment impediments of matrimony?** Today twenty diriment impediments are numbered absolutely.

Five are from the part of consent and liberty: 1. error of person; 2. error of servile condition; 3. madness and insanity; 4. force; 5. abduction.

Fourteen are from the part of the contracting persons. If someone is impeded simply from contracting with any person whatever, the impediment will be: 6. either of impotence; 7. or of age, because he or she cannot contract at all, either perpetually or only for a time; or because he cannot because of an office received, and this is the impediment 8. of order; or because he cannot because of a vow emitted, and there is had the impediment 9. of vow.

But if someone is impeded from contracting only with a determinate person, either this is because of an obligation to another, and it is 10. the impediment of bond; or because of excessive distance from that person, and it is 11. disparity of cult; or because of excessive nearness, and it is 12. consanguinity, 13. spiritual relationship, 14. legal relationship, 15. affinity, 16. public honesty; or because of undue union with that person, and thus it is crime, namely 17. adultery, 18. homicide, 19. both together.

Finally, one is from the part of extrinsic solemnity, and it is the impediment 20. of clandestinity. St. Thomas, Supplement, q. 50, a. 1.

The aforesaid impediments are contained in the following little verses of Laurentius Rocci, S.J. The first includes the five impediments from the part of consent; the four following contain the fourteen impediments from the part of the contracting persons; the last contains the impediment from the part of form.

1. Error, 2. condition, 3. madman, 4. violence, 5. abduction;
2. Not capable, 7. or age, 8. order, 9. and vow, 10. bond,
3. Disparity of cult, 12. blood, 13. sacred relationship,
4. Or one arisen by adoption, 15. affinity, 16. copular honesty,
5. Assaulting the marriage-bed, 18. killing, 19. or both crimes;

6. If clandestine: the twice ten related things dirime.

7. **What are the impediments of impotence and age?** For contracting marriage there is essentially required a matter capable of being contracted; for the substantial things of a contract are matter, cause, and consent. The matter is the right of intercourse to be handed over and accepted mutually. Therefore impotence for intercourse, so that a man and woman cannot become one flesh, constitutes the diriment impediment of matrimony which is called the impediment of impotence. C. 1, § 1, *De frigidis*; Sanchez, l. 7, disp. 92, n. 7.

One impotence is natural, another accidental. The first is that which is naturally present, such as frigidity of the man, by which intercourse in itself apt for generation cannot be completed at all; or excessive heat, by which the man always emits seed outside the vessel before he can penetrate. The other is that which exists by accident, for example, from the man's abhorrence toward the woman, from disease, from cutting off, from malefice. Likewise one impotence is temporary, another perpetual. If it can be removed either by some licit remedy without danger to life, or by the progress of years, it is temporary; otherwise perpetual. C. 1, *De frigidis*; St. Thomas, IV Sent., dist. 24, a. 2. And thus the impotence of excessive heat is temporary, and the impotence of a sick person even in danger of death. One perpetual impotence is absolute, namely if the impotence is for intercourse with all; another is relative, if it forbids mixture only with some person.

Only perpetual impotence, if it precedes marriage, whether absolute or relative, dirimes marriage, and this by natural law; and therefore even if it is unknown. Temporary impotence, however, does not obstruct marriage. Cc. 1, 2, 3, 6, *De frigidis*; Sanchez, l. 7, disp. 92, n. 6, disp. 97, n. 2.

Therefore a marriage contracted with a castrate or eunuch, lacking both testicles, who does not have true seed, is null; Sixtus V, constitution *Cum frequenter*; Sanchez, l. 7, disp. 92, n. 20. The same is true with one who is frigid, or so worn down by disease or old age that there is no power for the conjugal work; otherwise, however, one is by no means prohibited from marriage even by extreme old age. Likewise null is a marriage contracted with a woman from whom someone is withheld either by malefice, by natural repugnance, or because of excessive narrowness. C. 4, cause 33; Cc. 5, 6, *De frigidis*.

If a marriage is null because of the impediment of impotence, the spouses are separated by authority of an ecclesiastical judge, and another marriage is permitted to the potent party. Cc. 5, 6, 7, *De frigidis*.

Several grave doctors assert that it is enough if the man can emit seed at the mouth and entrance of the vagina, and the woman can receive it within herself; for experience itself establishes that this suffices for generation. Gury-Ballerini, n. 855; D'Annibale, ed. 3, p. 3, n. 431. Others, however, deny this. And thus La-Croix, l. 6, p. 3, n. 793, says: "If the man cannot penetrate the female vessel, although he emits seed at its entrance..., this must be judged impotence, because such insemination does not suffice in itself for such spouses to be judged to become one flesh in the natural mode." Cf. Sanchez, l. 2, disp. 21, nn. 2, 5; St. Thomas, *Quodlibet* 6, a. 18; *Acta Sanctae Sedis*, vol. 26, p. 534 seq.

This impediment of impotence, of natural and divine law, is entirely irrationally and unjustly not admitted by the French Civil Code. The Italian Civil Code, 107; Spanish Civil Code, 83; Austrian Civil Code, 60, admit it. But it is had only implicitly and limitedly in the Belgian Civil Code, 1333, 1334.

By positive law only, the marriage of the impubes is invalid, because they are presumed to labor under a certain natural impotence, although only temporary. Puberty is had by the same canon law for males when the fourteenth year is completed, for females when the twelfth year is completed, because proximate power of generating usually begins and ends earlier in females than in males.

Therefore the marriage of impubes is valid if they can already have intercourse and sufficiently understand the burden of the conjugal bond; and the marriage of an impubes who already can, with a pubes who cannot yet have intercourse, is valid. Likewise the marriage of impubes who have the use of reason is valid among unbelievers, who are not subject to the laws of the Church. Cc. 2, 6, 7, 9, 10, 11, 14, *De desponsatione impuberum*; Benedict XIV, constitution *Magnae nobis*, June 29, 1748; Sanchez, l. 7, disp. 104, n. 9; Schmalzgrueber, l. 4, t. 2, nn. 48-60.

For a just cause the Supreme Pontiff can dispense the faithful in this impediment, and sometimes in fact has dispensed. Schmalzgrueber, l. 4, t. 2, nn. 50-52; Navarrus, cons. 4, 5, title *De desponsatione impuberum*; De Iustis, l. 8, n. 55.

The Austrian Civil Code, 48, and the Spanish Civil Code, 83, agree with canon law concerning the required age. But since full and perfect puberty is had, as regards a man, in the eighteenth year, and as regards a woman, in the fourteenth year, hence other more recent codes require the eighteenth year in the man and the fifteenth in females; Italian Civil Code, 55; French Civil Code, 144. From Belgian Civil Code, 1303, a man before majority and a woman before the sixteenth year cannot contract marriage. L. 1064-1066, 1095-1104; St. Thomas, Supplement, q. 58; E. M.

995. **Note.** 1. In doubt about antecedent impotence, one must stand for the validity of the marriage, and the spouses must be permitted to attempt intercourse. Indeed for this a three-year period is granted to them by canon law, notwithstanding greater probability for perpetual impotence. C. *Laudabilem, De frigidis et maleficiatis*.

996. In doubt about consequent impotence, it is likewise licit for the spouses to attempt intercourse until they are certain that it can in no way be completed, "although often or always they emit seed outside the vessel." L. 1103.

997. Impotence must not be confused with sterility. Sterility regards the effect of the conjugal act, not the conjugal act itself. Hence sterile persons, since they are not impotent for the conjugal act, can licitly have intercourse; indeed they can also enter marriage. Although generation does not follow per accidens, nevertheless when intercourse has been duly completed, the act is still in itself apt for generation. And thus the old who can consummate marriage contract validly; likewise women who can receive seed, even if they do not retain it, Gousset, n. 791; L. 1095; and women lacking an ovary. E. M.

998. "Excessive heat can scarcely be a perpetual impediment." St. Thomas, Supplement, q. 58, a. 1, ad 2. "Continuator Tournely and Cabassut probably judge that spouses of this kind, if they are young, are not to be separated, because by the progress of time that fervor diminishes, and thus they can become apt." L. 1096.

III. On the Impediments of Matrimony

996. **What is the impediment of bond?** From the part of the matter another impediment is had, namely the impediment of bond: if one no longer has the right over one's own body, because by a pre-existing marriage it has already been handed over to another; hence it can in no way be transferred to another, and it is a diriment impediment. Therefore bond is the bond of a prior marriage, which by force of unity and indissolubility impedes another marriage so long as the preceding marriage endures. French Civil Code, 147, 184; Belgian Civil Code, 1309, 1326; cf. ibid., a. 1348.

But if the right over one's own body has only been promised to another by betrothals, then there is had only an impedient impediment, since, apart from injury to the other, the right of intercourse cannot be transferred to another; except the case in which there is question of blood relatives of the betrothed woman in the first degree, for then a diriment impediment of public honesty is had. Cf. 1014.

Hence if there is doubt concerning the death of a prior spouse, then it is not licit to contract marriage, because, since the preceding marriage is certain, another cannot be entered with prejudice to the prior spouse, if perhaps that spouse has not died; rather, the spouse's death must be morally certain. C. *Dominus* 2, *De secundis nuptiis*; C. *In praesentia* 19, *De sponsalibus*; L. 901, 902; Holy Office, May 6, 1891.

From Belgian Civil Code, 13 seqq., an absent person can be declared dead after some years determined by the law itself. But this is only a certain mere presumption of law. St. Thomas, Supplement, q. 62, a. 5, q. 65, q. 67; Schmalzgrueber, l. 4, t. 21, n. 4 seqq.; E. M.

997. **What is the impediment of consanguinity?** The matter in contracting marriage must not only be possible, whence the impediments of impotence and bond arise; but it must also be honorable, whence because of reverence for joined persons the impediments of consanguinity, affinity, and public honesty arise; because of reverence for religion the impediments of order and vow are had.

Moreover, these impediments exist partly by natural law and partly by canon law. Those which are constituted by canon law do not touch unbelievers. But if, having been converted to the faith, they wish to enter marriage, then the natural bond of consanguinity and affinity, which existed before baptism and certainly perseveres after baptism, obstructs marriage. C. ult., *De divortiis*; St. Thomas, IV Sent., dist. 41, q. 1, a. 1, q. 1; Sanchez, l. 7, disp. 65, n. 4.

Consanguinity is the bond of certain persons among themselves from the fact that they descend from one and the same proximate common stock by carnal generation, and therefore it arises from unity and participation of the same blood. Three things must be distinguished in consanguinity, namely: 1. stock, or the person from whom others draw origin; 2. degree, or the measure of distance of one person from another; 3. line, or the series of persons descending from the same stock.

Line is twofold: one is direct, and the other collateral or transverse. The former is the series of persons of whom some descend from others, either immediately, as children from parents, or mediately, as grandchildren from grandparents, or from great-grandparents, etc. The latter is the

series of persons who, although they have a common stock, nevertheless do not descend one from another, as are brothers, cousins, etc. The collateral line is equal or unequal, according as blood relatives are equally or unequally distant from the common stock, as will be explained below. Cf. 998.

Consanguinity dirimes marriage in the direct line indefinitely, Nicholas I to the Bulgarians, cc. 37, 39, and by natural law, at least in the first degree. At least, for about the other degrees there is dispute; L. 470, 1029; Sanchez, l. 7, disp. 51, n. 7; Schmalzgrueber, l. 4, t. 14, n. 30.

In the collateral line, it dirimes up to the fourth degree. C. 8, *Non debet*, *De consanguinitate*. But whether by natural law marriage is dirimed at least in the first degree, namely between brother and sister, is controverted. Yet it seems more true that it is dirimed only by canon law, from Gen. 20:12. But this is certain, that the Church has never dispensed in this degree. Benedict XIV, constitution *Aestas anni*, Oct. 11, 1757; Schmalzgrueber, l. 4, t. 14, nn. 45-48; L. 470; Lugo, *Responsa Moralia*, l. 1, disp. 40, n. 9. As regards the other degrees, according to all, marriage is dirimed only by ecclesiastical law.

Consanguinity dirimes marriage also between those who are born only from the same father, or only from the same mother; that is, between blood relatives only through the male line, or only through the female line; as also between blood relatives begotten from illegitimate births. The reason is that diversity of father or mother, that is, that the common stock is only the father or only the mother, or illegitimacy of birth, does not prevent carnal consanguinity from really existing. C. *Per tuas*, *De probationibus*.

Consanguinity between the same persons can arise from a double or even multiple head, and then there is a double or multiple nearness, or impediment, to be opened in petitioning for dispensation. This happens from the fact that from near ascending blood relatives either some have contracted marriages among themselves, or blood relatives from one stock have contracted with blood relatives of another stock. And thus, for example, if two brothers marry two sisters, the children proceeding from each marriage will be blood relatives among themselves in a double way, and this circumstance must necessarily be declared. Cf. De Iustis, *De dispensationibus matrimonialibus*, l. 2, c. 3, n. 31 seqq.

But it must be noted that multiplicity of relationship is not caused by the fact that two persons are from the same father and mother. For it is one thing to be brothers or paternal cousins, another to be blood relatives in a double way. Therefore one must distinguish between the quality and the quantity or multitude of degrees of relationship. Quality is the first, second, third, fourth degree; a pure or mixed degree. Quantity is a simple, double, triple degree, etc. Trent, sess. 24, c. 3; L. 1029; St. Thomas, Supplement, q. 54; E. M.

There are those who hold that in consanguinity account must be taken only of the proximate stock; Gallo, *Suppetiae Evangelicorum Praeconum*, vol. 4, p. 149 seq. But others hold that account must also be taken of a more remote stock when marriage intervened in the higher degrees; indeed then, if this marriage had not intervened, they would still be blood relatives from the more remote stock.

And thus, for example, Caius the grandson and Caia the granddaughter of Titius the grandfather are blood relatives to each other in the second degree in the collateral line. These enter marriage with each other. Their grandson and granddaughter, Sempronius and Sempronia, are likewise blood relatives to each other in the second degree from the nearer stock, Caius and Caia; and they are also blood relatives in the fourth degree from the more remote stock, Titius, and that in a double way,

namely through the paternal and maternal line, through Caius and Caia. The Holy Office approved this second opinion on March 11, 1896, and decreed that three impediments are to be declared: namely the impediment proceeding from the nearer stock, and two impediments proceeding from the more remote stock through the lines joined in the intermediate stock. E. M.

998. **What are the rules for computing degrees of consanguinity?** Three rules are assigned from canon law.

First rule. In the direct line, as many degrees are numbered as there are persons, the stock being removed; or there are as many degrees as there are generations. Hence between father and son there is one degree, because there is one generation, or one person of the son, the father being set aside as stock. Between grandson and grandfather two degrees are numbered, because there are two generations, although three persons intervene, namely grandfather, father, and his son, or grandson with respect to the grandfather. Suppose similarly a great-grandfather or great-great-grandfather, and you will have three or four degrees.

Second rule. In an equal collateral line there are as many degrees as there are persons on one side, the stock being removed. Hence brother and sister are in the first degree, because if the common stock or father is set aside, one person remains on each side; and since each is distant by one degree from the stock, they are also distant from each other by one degree. Similarly paternal cousins, or children of brothers, and maternal cousins, or children of sisters, are each distant by two degrees from the common stock, or from the grandfather, and therefore are blood relatives to each other in the second degree. Thus also one must speak of the others.

Third rule. In an unequal collateral line there are as many degrees as there are persons on the more remote side, the stock always being removed. Hence if one is distant from the common stock by two degrees, and his blood relative by three, they will be blood relatives to each other in the third degree, according to the saying: the more remote degree draws the nearer to itself. Therefore Bertha will be a blood relative in the second degree with her paternal uncle, or brother of her father, because she is distant by two degrees from the common stock, namely from her grandfather, although the paternal uncle himself is separated by one degree from the same stock, since he is the son of the stock, or brother of Bertha's father. Thus also it must be established concerning any others whatever. C. *Vir qui*, fin., *De consanguinitate et affinitate*; St. Pius V, constitution *Sanctissimus*, March 20, 1566; Benedict XIV, constitution *Etsi pastoralis*, Sept. 30, 1755.

The rule from civil law is one. For computing degrees according to Roman civil law, the number, or sum, of all persons in each line is taken, the stock being removed. Therefore in the direct line they are computed in the same way as canonical degrees; in an equal collateral line the canonical degrees are doubled; in an unequal collateral line the lesser line is doubled and the excess of the greater is added. C. 2, cause 35, q. 5; L. 1029; St. Thomas, Supplement, q. 54, a. 2; Schmalzgrueber, l. 4, t. 14, nn. 15, 19, 60, 107.

It must be noted here that in an unequal transverse line, in the supplication for dispensation, both from one side and from the other side the nearer and more remote degree must be expressed. If the nearer is kept silent, "the marriages are indeed valid, but illicit, provided the dispensations do not touch the first degree; and therefore until declaratory letters, or what they call *perinde valere*, are issued, the spouses must be separated." Holy Office, Dec. 12, 1748. Except the first degree, because

in that first degree the Pope does not intend to dispense unless it is expressed. St. Pius V, constitution *Sanctissimus*, Aug. 20, 1566; L. 1031; Benedict XIV, *Quaestiones Canonicae*, 183; De Iustis, l. 1, c. 4, n. 121 seqq.

It must likewise be noted from Austrian Civil Code, 41, 65, that degrees are computed as in Roman law; but marriage is not prohibited according to all the degrees constituted by canon law, to which one must adhere. Spanish Civil Code, 84, 915, also follows Roman law with respect to computing degrees of consanguinity, except in marriage, in which with respect to impediments of marriage it follows canon law, except that it restricts the impediment of consanguinity from illegitimate intercourse to the second degree in the collateral line. Therefore also in this matter one must adhere to canon law. For Trent changed nothing about this impediment concerning the ancient law, although it contracted affinity to the second degree. Schmalzgrueber, l. 4, t. 16, n. 9. The French Civil Code, 161-164, 735 seqq., and Italian Civil Code, 48 seqq., 59, 68, observe the same rule of Roman law in computing degrees of consanguinity. But with respect to matrimonial impediments they depart from canon law, as the Belgian Civil Code also departs from it, 1310, 1327, 1589. But in this matter canon law alone must be observed. And let this also have been said for the other impediments.

III. On the Impediments of Matrimony

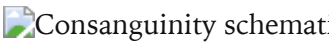
999. **What is understood by cognate and agnate?** Cognation is nearness between persons of a different family, joined to one another through the female line. Agnation is nearness between persons born to the same family, and therefore joined to one another through the male line. Therefore they are called cognates, that is, joined, if they descend through the female line; they are called agnates, that is, joined, if they descend through the male line. "Because those who are born follow the family of the father, not of the mother." Institutes, l. 1, t. 15, § 1; Schmalzgrueber, l. 4, t. 14, n. 10.

1000. **Who are blood relatives in the direct line?** Keeping within only four degrees above the father and below the son, they are the following, in this order, beginning from the fourth higher degree: 1. great-great-grandfather (*trisavolo*); 2. great-grandfather (*bisavolo*); 3. grandfather (*nonno*); 4. father (*padre*); 1. son (*figlio*); 2. grandson or granddaughter (*nipote*); 3. great-grandson or great-granddaughter (*pronipote*); 4. great-great-grandson or great-great-granddaughter (*terzo nipote, terza nipote*).

1001. **Who are blood relatives in the transverse line, or collaterals?** Collateral blood relatives on the father's side are: 1. great-great-uncle on the father's side (*terzo zio paterno*), brother of the great-grandfather; great-great-aunt on the father's side (*terza zia paterna*), sister of the great-grandfather; 2. great-uncle on the father's side (*prozio paterno*), brother of the grandfather; great-aunt on the father's side (*prozia paterna*), sister of the grandfather; 3. paternal uncle (*zio paterno*), brother of the father; paternal aunt (*zia paterna*), sister of the father; 4. brother, sister. Brothers are called consanguineous if they have only a common father but a different mother; uterine if they have only a common mother and a different father; full siblings if they have a common father and mother; 5. paternal cousins (*cugini paterni*), sons or daughters of the father's brother; 6. second paternal cousins (*secondi cugini paterni*), sons or daughters of paternal cousins; 7. children of second cousins (*terzi cugini paterni*).

Collateral blood relatives on the mother's side are: 1. great-great-uncle on the mother's side (*terzo zio materno*), brother of the great-grandmother; great-great-aunt on the mother's side (*terza zia materna*), sister of the great-grandmother; 2. great-uncle on the mother's side (*secondo zio materno*), brother of the grandmother; great-aunt on the mother's side (*seconda zia materna*), sister of the grandmother; 3. maternal uncle (*zio materno*); maternal aunt (*zia materna*), sister of the mother; 4. brother and sister; 5. maternal cousin (*cugino materno*), son of the mother's sister; cross-cousins (*cugini paterni e materni*), two children of whom one was born from a brother and the other from a sister; 6. second maternal cousins (*secondi cugini materni*), children of maternal cousins; 7. children of second cousins (*terzi cugini materni*). Institutes, l. 3, t. 6.

In the following consanguinity scheme the various degrees and lines may be seen. The persons who are joined by a line are among themselves in the direct line; with the others they are in the collateral line. On the right side, where the brother is placed, male blood relatives are placed, and females joined through the male sex. On the left, where the sister is placed, female blood relatives, and males joined through the female sex, are placed. The empty cell with the letter N is the person concerning whose relationship the inquiry is made, and who wishes to contract marriage with another. One must see in what other cell this person is to be placed, and, once the proper cell has been assigned to him or her, one must ascend up to the cell in which the lines are joined; for there the stock is had. But the number inscribed in the cell indicates the degree of consanguinity, and always designates the more remote degree with respect to N.


Consanguinity schematic for section 1001

Plain-English guide to the schematic. Put yourself at *N*, the person in the center. The number in each circle is the canonical degree of blood relationship to N. The vertical trunk is the direct line: ancestors above N and descendants below N. The branches show collateral relatives: siblings, uncles and aunts, cousins, nephews and nieces, and their descendants.

Latin in the image	Plain English relative to N	Degree
N	N, the person whose relationship is being measured	-
Pater / Mater	Father / mother	1
Avus / Avia	Grandfather / grandmother	2
Proavus / Proavia	Great-grandfather / great-grandmother	3
Abavus / Abavia	Great-great-grandfather / great-great-grandmother	4
Filius / Filia	Son / daughter	1
Nepos / Neptis	Grandson / granddaughter, when on the vertical trunk	2
Pronepos / Proneptis	Great-grandson / great-granddaughter, when on the vertical trunk	3
Abnepos / Abneptis	Great-great-grandson / great-great-granddaughter	4

Collateral relatives in the branches. In the branch labels, *Horum Filii* means "children of these people," so its exact English meaning depends on the circle immediately above it.

Latin in the image	Plain English relative to N	Degree
Frater	Brother	1
Soror	Sister	1

Latin in the image	Plain English relative to N	Degree
Fratris Filii	Brother's children, that is nephews or nieces through a brother	2
Sororis Filii	Sister's children, that is nephews or nieces through a sister	2
Fratris Nepotes	Brother's grandchildren	3
Sororis Nepotes	Sister's grandchildren	3
Fratris Pronepotes	Brother's great-grandchildren	4
Sororis Pronepotes	Sister's great-grandchildren	4
Patruus / Amita	Father's brother / father's sister, that is paternal uncle / paternal aunt	2
Avunculus / Matertera	Mother's brother / mother's sister, that is maternal uncle / maternal aunt	2
Patruus magnus / Amita magna	Grandfather's brother / grandfather's sister, that is paternal great-uncle / paternal great-aunt	3
Avunculus / Matertera magna	Grandmother's brother / grandmother's sister, that is maternal great-uncle / maternal great-aunt	3
Propatruus / Proamita	Great-grandfather's brother / great-grandfather's sister	4
Proavunculus / Promatertera	Great-grandmother's brother / great-grandmother's sister	4
Patrueles / Amitini	First cousins through the father's side	2
Consobrini / Amitini	First cousins through the mother's side, or cross-cousins	2
Sobrini	Cousins' children or more remote cousins in that branch	3
Horum Filii	Children of the relatives named just above that circle	usually 3 or 4
Nepotes	Grandchildren of the relatives named above that branch	usually 3 or 4
Pronepotes	Great-grandchildren of the relatives named above that branch	4

1002. **What is the impediment of affinity?** Affinity is the nearness which someone contracts with the blood relatives of the person with whom he or she has carnal commerce; or it is the nearness which arises from carnal intercourse between one person and the blood relatives of the other, for example, between the husband and the blood relatives of the wife, and conversely.

Affinity from licit intercourse dirimes marriage in the transverse line up to the fourth degree, and even further in the direct line, C. *Non debet* 8, *De consanguinitate*; from illicit intercourse up to the second, Trent, sess. 24, c. 4, *De reformatione matrimonii*, and therefore from public concubinage and from merely civil marriage it is not extended beyond the second degree.

But does it also arise from a null marriage? Some affirm, whether the man and woman have had intercourse in good faith or in bad faith. Carriere, *De Matrimonio*, p. 163. According to others, if the man and woman have had intercourse in good faith, it is extended to the fourth; but if in bad faith,

according to many, says Scavini, Milan 1874, ed. 12, l. 3, n. 794, it is extended to the fourth; according to others, to the second. And this latter seems more true according to Trent.

The degrees and lines of affinity are taken from consanguinity, and as in consanguinity; so that one who is, for example, a blood relative of the wife in the first degree, whether of the direct or transverse line, is an affine to the husband in the same degree of direct or transverse line; and as in consanguinity, so in affinity the distance is taken from the more remote degree. Therefore no dispensation from affinity because of illicit intercourse is needed when one person is distant from the stock in the first degree and the other in the third. Belgian Civil Code, 1310, 1327, 1590.

According to the certain opinion of all, affinity dirimes marriage by ecclesiastical law alone in the collateral line, and much more probably in the direct line, if perhaps the first degree is excepted. Concerning the first degree of the direct line there is controversy; Schmalzgrueber, l. 4, t. 14, nn. 82-84, 101-105; Benedict XIV, epistle *Aestas anni*, Oct. 11, 1757; *De Synodo*, l. 9, c. 13. Nevertheless the Church has never dispensed in affinity arisen from legitimate marriage, although it has dispensed in affinity arisen from illicit commerce, for example if someone marries a woman after having fornicated with this woman's daughter or mother. For affinity from fornicatory intercourse arises only because of the union of bodies; from legitimate consummated marriage, it arises both because of carnal intercourse and because of conjugal society in a common and undivided life. St. Thomas, IV Sent., dist. 41, q. 1, a. 1, q. 3, q. 4, ad 2; Lugo, *Responsa Moralia*, l. 1, disp. 40, 43. Yet since the matter is not certain, if two unbelievers, affines in the first degree of the direct line from legitimate marriage, after contracting legitimate marriage between themselves, were converted to the faith, they could not be separated without pontifical dispensation.

Affinity from marriage, whether it is a diriment impediment from the law of nature or from ecclesiastical law, is certainly natural affinity. Therefore an unbeliever converted to the faith cannot contract with the daughter, mother, or sister of that wife whom he legitimately had in the time of unbelief. The reason is that a natural bond arises even among unbelievers from marriage, and because it perseveres after baptism, it now becomes liable to the invalidating law of the Church.

But does the aforesaid natural bond also arise from illicit intercourse? Sanchez, l. 7, disp. 65, n. 9, Lugo, loc. cit., and others deny; but many other grave doctors more truly affirm from St. Thomas, IV Sent., dist. 41, q. 1, a. 1, q. 3; for if a man and woman, although having intercourse illicitly, nevertheless become necessarily and naturally one flesh, necessarily and naturally each enters the boundaries of the other's kindred and is joined to the other's blood relatives. Therefore an unbeliever converted to the faith cannot without dispensation enter marriage with the mother, daughter, or sister of the woman whom he had previously known fornicatorily. And this is also established from the response of the Holy Office, Aug. 26, 1891.

Affinity can also be multiple, namely if someone has had carnal commerce with several blood relatives; but by no means if several times with the same blood relative. For affinity is multiplied not from acts, but from persons. Sanchez, l. 8, disp. 24, nn. 4, 5. L. 1067, 1069; St. Thomas, Supplement, q. 55; Schmalzgrueber, l. 4, t. 14, n. 67 seqq.; E. M.

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1003. **Note.** 1. When there is question of a man who wishes to marry a daughter after having fornicated with her mother, in the dispensation the condition is usually added: provided intercourse with the mother did not precede the birth of the daughter; namely so that danger may be guarded against, lest someone marry his own daughter. But the condition can be judged sufficiently fulfilled if intercourse with the mother preceded at such a time that that danger is entirely absent.

1004. For contracting affinity, it is certain that insemination by the man is required. But is insemination also by the woman required? Pontius and others deny, because female seed is not necessary for generation. St. Bonaventure and others affirm, "both because, according to the opinion of many others, the seed of the woman also is required for generation, and because, and this reason presses more strongly, affinity is not contracted unless those having intercourse become one flesh; but they do not become one flesh unless the seeds are mixed. And this opinion is greatly strengthened from the authority of St. Thomas... In doubt, presumption must be made in favor of perfect intercourse by the man, because from things commonly happening this is prudently presumed to have been present... And thus also the insemination of the woman is always presumed when she has felt great pleasure in intercourse, although she did not notice insemination. Indeed, in the external forum, where intercourse is established, judgment must always be pronounced for the impediment of affinity contracted, and thus also judgment must be made in the internal forum, which must always conform itself to the presumption of the external forum, and it is not established that this presumption is false." L. 1075; Schmalzgrueber, l. 4, t. 14, nn. 71-73.

These are the words of St. Thomas, IV Sent., dist. 41, q. 1, a. 1, q. 4, ad 2: "A man and woman are made one flesh by the mingling of seeds. Hence however much someone invades the barriers of modesty, unless a mingling of seeds follows, affinity is not contracted from this."

3. Affinity contracted between spouses cannot dirime their marriage, since it supervenes upon a marriage already contracted indissolubly; nevertheless it impedes the use of that marriage as a penalty for the adulterous and incestuous spouse. C. *Si quis*, *De eo qui cognovit*, etc. But this affinity, as arising from illicit intercourse, by force of the decree of Trent, sess. 24, c. 4, *De reformatione matrimonii*, is not contracted except from intercourse with blood relatives of the other in the first and second degree. This is confirmed from the express declaration of Gregory XIII, according to St. Alphonsus, n. 1070.

4. Italian Civil Code, 52; French Civil Code, 162; Austrian Civil Code, 40, do not seem to recognize any affinity except from marriage; hence under it the bond of public honesty is also included. But it is otherwise from Spanish Civil Code, 84, rightly distinguishing legitimate affinity from merely natural affinity; and under the former public honesty is also included. As regards Roman law, cf. Schmalzgrueber, l. 4, t. 14, n. 70.

5. **You will resolve.** 1. Persons who are carnally joined are not properly affines to each other, but are the principle of affinity and, as it were, hold the place of the stock.

6. Affinity cannot exist between two persons neither of whom has had intercourse with a blood relative of the other; therefore the blood relatives of one spouse have no affinity with the blood relatives of the other.
7. No one is prohibited, after his wife has died, from marrying her brother's widow, or from successively marrying the widows of two brothers. Two brothers can marry two sisters; a father and son can marry a mother and daughter; indeed the son can marry the mother, and his father the daughter of the same woman. Hence the axiom: affinity does not beget affinity. C. *Non debet* 8, *De consanguinitate*; Schmalzgrueber, l. 4, t. 14, nn. 74, 75.
8. He who has sinned with two sisters, or with first cousins, or with mother and daughter, can marry none of these.
9. A man who has sinned with the sister, cousin, or aunt of his spouse is bound to render the debt to the spouse petitioning, although he himself cannot petition. The reason is that since there is question of a merely prohibiting law, the innocent should not suffer from the fault of the guilty.
10. One who sins with his own blood relatives is not deprived of the right of petitioning for the debt, because from this he contracts no affinity with his wife.
11. If each spouse by incest has contracted affinity with the other, neither is bound, indeed neither can render the debt to the other. L. 1068, 1069; St. Thomas, Supplement, q. 55; E. M.
12. **Has a wife, known by force or fear by a blood relative of the husband, lost the right of petitioning for the debt?** Response: negatively, if the force was absolute; for that impediment of petitioning for the debt, as regards incestuous spouses, has only the nature of a penalty. But there can be no penalty where there is no fault.

Negatively also when the wife who suffered force or fear did not sin gravely; because a grave penalty has no proportion with light fault.

Indeed it seems more probably also to be denied if that wife sinned gravely, because grave fear excuses from human laws, even if it cannot excuse from natural law. Therefore, since in our case it excuses from the law insofar as it is ecclesiastical, it ought also to excuse from the penalty inflicted by that law. Schmalzgrueber, l. 5, t. 39, n. 79; L. 1071.

1006. **Does ignorance excuse from the impediment of petitioning for the debt?** Response: more probably affirmatively, if there is ignorance of the law, namely of the human law prohibiting this. The reason is that as ignorance excuses from transgression of a human law, so also it excuses from penalty.

If there is ignorance of fact, namely that this person is a blood relative of the wife, it is common that the impediment is not incurred. The reason is that where the fault of incest is lacking, the penalty is also lacking. This is also clear from C. *Si quis* 1, *De eo qui cognovit*, etc., where this impediment is imposed on one sinning knowingly.

Ignorance of the penalty also excuses with sufficient probability, since it is an extraordinary penalty. L. 1072-1074.

1007. **Who can dispense in this impediment of petitioning for the debt?** "Very commonly they teach that the bishop can always and absolutely dispense.... The reason is that, granted that the bishop could not do this from the disposition of the law, nevertheless he can do it well by reason of custom. Moreover, he can delegate this faculty of dispensing to another not only in particular, but also in general. In addition, all regular mendicant confessors deputed to this office by the provincial can also dispense in this impediment, from several privileges." L. 1076.

Bishops indeed can do this by force of the quinquennial faculties, and also approved confessors having the faculty-sheet of the Sacred Penitentiary. Cf. that faculty-sheet.

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1008. **Who are affines?** The principal affines by reason of licit intercourse are the following:

1009. Father-in-law, the father of the husband, to whom daughter-in-law corresponds, the wife of the son. Great father-in-law, the grandfather of the husband, to whom great daughter-in-law corresponds, the wife of the grandson. Father-in-law is also the wife's father, to whom son-in-law corresponds, the husband of the daughter. Great father-in-law, or *prosocer*, is likewise the grandfather of the wife, to whom great son-in-law corresponds, the husband of the granddaughter.

Mother-in-law, the mother of the husband, to whom daughter-in-law consequently corresponds, or the wife of the son. Great mother-in-law, the husband's grandmother, to whom great daughter-in-law corresponds. Mother-in-law is also the mother of the wife, to whom son-in-law corresponds. Great mother-in-law, or *prosocrus*, the grandmother of the wife, to whom great son-in-law corresponds.

2. Stepfather, the husband of the mother; stepmother, the wife of the father; to whom stepson and stepdaughter correspond, the son or daughter from the first marriage of the father or mother.

3. Brother-in-law, the brother of the wife, the brother of the husband; sister-in-law, the sister of the wife, the sister of the husband; brother's wife; sister's husband.

4. **What is spiritual relationship?** Spiritual relationship is a certain nearness of persons, which arises from baptism and confirmation. It dirimes marriage by ecclesiastical law: 1. between the minister of the sacrament and the subject, and the subject's parents; 2. between the godfather or godmother and the godson or goddaughter, and their parents. Trent, sess. 24, c. 2, *De reformatione matrimonii*.

Therefore it is contracted neither by the spouse of the one baptizing, nor by the spouse of the sponsor, St. Pius V, *Cum illius vicem*, nor among the sponsors themselves. Hence a godfather and godmother can enter marriage with each other.

For contracting relationship, baptism is a necessary condition as regards all. Therefore if either the one baptizing or the parents of the one to be baptized are unbelievers, although catechumens, relationship is not contracted by them. For this reason both the faithful person who baptized the offspring of an unbeliever, and the one who received the offspring from the sacred font, could

contract marriage not indeed with the baptized offspring, but with the offspring's parents after they had been converted to the faith. Schmalzgrueber, l. 4, t. 11, nn. 32-35.

But it is certain that this relationship is contracted also by a heretic, both if he baptizes and if he holds at the sacred font, and also if another baptized person, whether heretic or Catholic, either baptizes or holds the offspring of that heretic. The reason is that whoever has the baptismal character is capable of this relationship, and is subject to the laws of the Church. Sanchez, l. 7, disp. 60, n. 2; Pirhing, l. 4, t. 11, n. 40.

This relationship also can be multiple. It is multiplied from the sacraments, for example, if someone held Caius in baptism and confirmation; not likewise if he held several sons of Titius in baptism or confirmation. Holy Office, Apr. 29, 1894. It is likewise multiplied from persons, if two persons reciprocally have held each other's children, etc. Reiffenstuel, l. 4, t. 21, appendix *De dispensationibus*, n. 201; Schmalzgrueber, l. 4, t. 16, n. 208; Sanchez, l. 7, disp. 54, n. 17; De Iustis, l. 1, c. 4, n. 170; Corradus, l. 8, c. 8, n. 16. St. Thomas, Supplement, q. 56; cf. 442 seqq.; E. M.

1010. **Note.** Parents baptizing their children in necessity or in good faith contract no spiritual relationship by which they are prohibited from the use of marriage; for this prohibition has the nature of a penalty, which is not incurred without fault. Indeed, probably they do not seem to contract the same relationship even if deliberately, necessity excluded, they baptized their offspring. Truly doctors disagree, and some affirm, others deny. La-Croix, l. 6, p. 1, n. 358; L. 150; Schmalzgrueber, l. 4, t. 11, nn. 38, 39, 43 seqq.; E. M.

1011. **What is legal relationship?** Legal relationship is nearness of persons which arises from legal adoption. Adoption is a legitimate act by which one who is not a child by nature is assumed as a son or grandson.

A twofold adoption is distinguished in common law. 1. Perfect adoption, which is also called arrogation, is that by which an outside person of his own right, by rescript of the prince, passes into the power and family of the adopter, acquires all the rights of a legitimate son, and becomes a necessary heir. 2. Imperfect adoption, which is called simple, is that by which an outside person who is not of his own right, but remains in the power and family of his natural father or grandfather, is assumed as a son or grandson by authority of any competent judge, yet does not pass into the family and power of the adopter, and therefore does not become this one's necessary heir by testament, although he succeeds him ab intestato. Cf. vol. 1, n. 663.

Legal relationship, namely perfect adoption, constitutes a diriment impediment by ecclesiastical law, Roman law approving it, through which this impediment was first introduced. It is drawn from the responses of Nicholas I and Paschal II, C. *Ita diligere* 1, cause 30, q. 3; C. *Post susceptum* 5, loc. cit.; C. un., *De cognatione legali*. And the reason is that relationship obstructs nuptials because of dangers of cohabitation. St. Thomas, IV Sent., dist. 42, q. 2, a. 3, ad 2.

Hence this impediment is in force where adoption is observed according to Roman law, not according to more recent law, by which the adopted person does not pass into the family of the adopter and under his paternal power. Thus Gury, n. 809; D'Annibale, ed. 3, p. 3, n. 433, and others, against others who hold that imperfect adoption also, and therefore also adoption by more recent law, dirimes marriage. "They say more probably," says St. Alphonsus, n. 1027, with St. Thomas,

Supplement, q. 57, a. 2, Sanchez, l. 7, disp. 73, n. 9, Salmanticenses, n. 41, and others, "that legal relationship arises only from perfect adoption." Thus indeed from L. *Adoptivus* 14, ff. *De adoptionibus*; L. *Si paterfamilias* 15, ibid.; L. *Quin etiam*, § 2, ff. *De ritu nuptiarum*, etc.

Moreover, that a canonical impediment may be had from adoption, it must have been entered legitimately; Sacred Penitentiary, May 16, 1826. Adoption entered privately, without any solemnity of law, produces no impediment. Holy Office, Apr. 16, 1761.

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Legal relationship, in the likeness of natural relationship, dirimes marriage from Roman law between the following persons:

1. As if in the direct line, between the adopter and the adopted person and his children, while they are constituted under paternal power.
2. Between the adopted person and the children of the adopter, as if in the collateral line, while these children are under paternal power and have not been emancipated.
3. Between the adopter and the wife of the adopted person, and conversely between the adopted person and the wife of the adopter, as if in the direct line after the manner of affinity, as is established from the declaration of the Sacred Congregation of the Council in the Hortana case, Sept. 25, 1734.

These relationships differ among themselves, and consequently also the impediment arising from them, in that the first and last are perpetual. Therefore the adopter, for example, cannot take an adoptive daughter or granddaughter as wife, even if adoption has been dissolved by emancipation; nor can an adoptive stepson or daughter-in-law be joined in marriage with the adoptive stepmother or father-in-law, although adoption has ceased either by emancipation or by the death of the adopter. Therefore a dispensation of the Apostolic See would be required, which nevertheless even in the last case is granted with greatest difficulty. But the second, in the collateral line, lasts only as long as the adoption lasts. Lugo, *De Poenitentia*, disp. 16, n. 327.

Adoption, however, is dissolved in six ways from Roman law: 1. by the natural death of the adopter; 2. by the civil death of the same; 3. because of incestuous nuptials; 4. because of dignity, for example episcopal dignity; 5. by sentence; 6. by emancipation.

Since this impediment is of common law, only the Supreme Pontiff can dispense. In the direct line and in legal affinity he dispenses with greatest difficulty and for a grave cause. In the transverse line dispensation is rarely sought, since by emancipation this impediment is removed, and thus without any dispensation the adopted person can contract marriage with the natural daughter of the adopter. Schmalzgrueber, l. 4, t. 12, n. 37.

According to Italian Civil Code, 213 etc.; French Civil Code, 353 etc.; Austrian Civil Code, 181; Spanish Civil Code, 178, 179, adoption is made by the intervention of a public magistrate and with the other prescriptions of the law observed. According to Italian Civil Code, 211, and French Civil Code, 349, adoptive parents are bound to procure, if there is need, the education of the adopted person and to provide him necessary assistance and sustenance. The adopted person is bound by the

same obligation regarding sustenance toward the adopter. Spanish Civil Code, 176, establishes the same regarding sustenance.

According to Italian Civil Code, 737, 806; French Civil Code, 350; Austrian Civil Code, 183, 755, the adopted person with his descendants is heir of the adopter together with legitimate children, and succeeds him ab intestato. Yet he has no right in the goods of the blood relatives or cognates of the adopter. According to Spanish Civil Code, 177, the adopted person acquires no right to inheritance except by testament or special agreement.

According to Italian Civil Code, 210; French Civil Code, 347; Spanish Civil Code, 175; Austrian Civil Code, 182, the family name of the adopter is conferred on the adopted person, who adds it to the name of his own family.

According to Italian Civil Code, 210, 212, and French Civil Code, 348, 349, the adopted person remains in his natural family, and in it preserves all his rights and obligations. Therefore the adopted person does not pass into the family of the adopter, nor is he subject to the latter's paternal power, as in perfect adoption or arrogation of Roman law. According to Austrian Civil Code, 183, and Spanish Civil Code, 177, the adopted person indeed preserves his rights in his own family, but passes under the paternal power of the adopter, the prior paternal power having been dissolved.

Nothing is had in the Italian and French Civil Codes concerning dissolution of adoption, and therefore it seems to last perpetually until death. According to Austrian Civil Code, 185, adoption can be dissolved. According to Spanish Civil Code, 180, an adopted minor can impugn the adoption within four years after attaining majority.

According to Italian Civil Code, 60, and French Civil Code, 348, marriage is forbidden between the adopter and the adopted person and his descendants; between the adopter and the spouse of the adopted person; between the adopted person and the spouse of the adopter; between the adopted person and the children of the adopter who are born after the adoption; and between adoptive children of the same person. According to Spanish Civil Code, 84, the adopting father or mother and the adopted person cannot contract marriage as incapable persons; nor the spouse of the adopting father or mother and the adopted person; nor the adopting father or mother and the spouse of the adopted person; nor the legitimate descendants of the adopter and the adopted person while the adoption remains. According to Belgian Civil Code, 1311, the adopter cannot contract marriage with the adopted person and his descendants so long as the adoption endures.

From the Italian and French Civil Codes, adoption is not had except as imperfect adoption, since the adopted person does not pass into the family of the adopter, nor is constituted under his paternal power. Hence more probably no diriment impediment is had from it, until the Church certainly reckons adoption of this kind among diriment impediments, as it reckoned perfect adoption or arrogation of Roman law. For more probably only perfect adoption or Roman arrogation is a diriment impediment from canon law.

On the contrary, for the opposite reason, adoption from the Spanish and Austrian Civil Codes seems to be a diriment impediment. And as regards Austria, in the instruction of Cardinal von Rauscher, commended by the Nuncio, it is said, § 29: "Adoption of the Austrian Empire dirimes marriage whenever the adopted person is subjected to the paternal power of the adopter, or is received into his

house to cohabit after the manner of children of the family." Benedict XIV, *De Synodo*, l. 9, c. 10; Schmalzgrueber, l. 4, t. 12, nn. 3, 10, 26 seq.; L. 1027; St. Thomas, Supplement, q. 57; E. M.

1012. **Does legal relationship dirime marriage up to the fourth degree between the adopter and descendants of the adopted person, or conversely?** It is certainly restricted to the first degree as regards the adopted person and the descendants of the adopter. This is established from canon law.

It is controverted as regards the adopter and descendants of the adopted person. Probably the relationship is not extended beyond the first degree, or beyond the adopted person, unless he has descendants constituted under his power. For according to the more common opinion of Sanchez, l. 7, disp. 63, n. 34, from Roman law the impediment extends itself to those who pass into the power of the adopter together with the adopted father of the family. L. 1027.

1013. **You will resolve.** Therefore, while adoption endures, marriage can stand:

1014. Between the adopter and the mother and sister of the adopted person.

1015. Between the adopter and the daughter of an adoptive woman, because the latter is not in the power of the mother, and therefore does not pass into the power of the adopter.

1016. Between the adopter and the illegitimate daughter of the adopted person, because illegitimate children are not in the power of the father, and therefore the daughter of the adopted person in this case does not pass into the power of the adopter.

1017. For the same reason, marriage will stand between the illegitimate son of the adopter and the latter's adoptive daughter.

1018. Between the son and daughter of two adoptive brothers, because these are bound among themselves by no bond of relationship.

1019. Between two adopted persons of one adopter, for this is forbidden by no law.

1020. Between the adopted person and the sister or mother of the adopter. Schmalzgrueber, l. 4, t. 12, n. 31 seqq.; L. 1027; St. Thomas, IV Sent., dist. 42, q. 1, a. 2, ad 5.

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1014. **What is public honesty?** Public honesty arises:

1015. From valid and certain betrothals, but by no means from invalid and uncertain betrothals, C. un., *De sponsalibus*, in VI; Trent, sess. 24, c. 3, *De reformatione matrimonii*, even if hidden, Holy Office, Aug. 11, 1852; Sacred Penitentiary, Sept. 10, 1834; *Acta Sanctae Sedis*, vol. 2, p. 381; Schmalzgrueber, l. 4, t. 1, n. 108.

If betrothals were entered under a resolutory condition, since they are valid immediately, the impediment of public honesty arises and perseveres, although the betrothals are dissolved. But if they were entered under a suspensive condition, while that condition is pending there are neither betrothals nor an impediment; but when it has been fulfilled, if consent has not been revoked, they are valid without new consent and produce the impediment.

It is contracted between the betrothed man and the blood relatives of the betrothed woman, and between the betrothed woman and the blood relatives of the betrothed man, whether legitimate or illegitimate, C. 8, *De sponsalibus et matrimonio*, only in the first degree of both the direct and oblique line; Trent, ibid.

2. It arises from ratified marriage, even invalid marriage, namely because of some diriment impediment, for example impotence, relationship, disparity of cult, crime, bond, provided it was not invalid from defect of consent, from error, from fear, from fictitious consent, although the defect is hidden; nor from a prior impediment of public honesty from validly contracted betrothals.

There is no explicit text of law, but it is deduced a fortiori; for the bond of ratified marriage is stronger than that which arises from betrothals, C. un., *De sponsalibus*, in VI; St. Pius V, constitution *Ad Romanum Pontificem*, § 35; Schmalzgrueber, loc. cit., nn. 101, 104-106.

Hence if Titius, for example, after entering betrothals with Bertha, leaves her and marries her sister, he can and must return to the first, nor does he need dispensation unless he has consummated the marriage. Ratified, for when it has been consummated, it passes into perfect affinity and produces no other impediment. For public honesty is a certain inchoate affinity. Benedict XIV, *De Synodo*, l. 9, c. 13, n. 3.

It arises from ratified marriage, not from civil marriage in places where the decree of Trent concerning contracting marriage before the parish priest and witnesses has been promulgated. Leo XIII, March 17, 1879.

But does it not arise also from clandestine marriages? Sanchez, l. 7, disp. 70, n. 13, thought so; but Pontius, l. 7, c. 35, n. 5, held the contrary. Many indeed adhered to Sanchez; far more to Pontius. Yet after the cited decree of Leo XIII, Sanchez's opinion consequently must be preferred altogether. And the reason for both is that civil marriage, where Trent has been promulgated, and clandestine marriage do not have the form of marriage, and form gives being to the thing; hence they are nothing at all in the being of marriage, and therefore the impediment of public honesty cannot arise from them as from an invalid marriage.

This impediment, arising from marriage whether ratified or invalid, proceeds up to the fourth degree of the direct and collateral line. C. un., *De sponsalibus*, in VI; L. 1061.

And this impediment of public honesty, once contracted, is perpetual and endures after betrothals and marriage have been dissolved. But it has no natural bond, no natural relationship, for its foundation, from betrothals and from ratified marriage, whether invalid or valid, contracted in unbelief. Therefore unbelievers converted to the faith are not bound by it. L. 1061-1064; Mansella, *De impedimentis*, etc., p. 66; E. M.

1015. **What are the impediments of vow and order?** The vow diriming marriage is only the solemn vow of chastity, emitted by profession in an approved religion, C. 10, *De conversione coniugatorum*; C. un., *De voto*, in VI; chastity, but not the religious vow as such, because religious profession dirimes marriage for this reason and to this extent, insofar as it includes

the solemn vow of chastity. Therefore the vows, although solemn, of certain equestrian orders, who profess only conjugal chastity, do not dirime marriage. Schmalzgrueber, l. 4, t. 6, n. 45.

Solemn: for the simple vow of chastity, even perfect and perpetual, even emitted in religious congregations of men and women, does not dirime marriage, but only impedes it. By special privilege of Gregory XIII, the simple vows which are emitted in the Society of Jesus after two years of novitiate must be excepted.

Order diriming marriage is sacred order, namely priesthood, diaconate, and subdiaconate. C. *De diacono* 1; C. *Ex litterarum* 2, *Qui clerici vel voventes*; Extravagant *Antiqua*, *De voto*; Trent, sess. 24, c. 9.

Sacred order also among the Greeks and Italo-Greeks, Ruthenians, and Maronites dirimes marriage. But the same certainty is not had for all. For as regards Italo-Greeks, Benedict XIV declared such a marriage attempted by subdeacons, deacons, and priests invalid. For Ruthenians, the Synod of Zamosc in 1720, approved in specific form by the Apostolic See, and for Maronites, the Synod of Lebanon in 1736, likewise approved by the Apostolic See, declared invalid the marriage, the former of a priest, the latter of a deacon, priest, and bishop. As regards other Greeks, there is not yet an express definition of the Apostolic See; but the opinion is consonant both with the opinion of the tribunals of the City and with the ancient law itself of the Eastern Church. Benedict XIV, constitution *Eo quamvis tempore*, §§ 38, 39; constitution *Anno vertente*, § 13; constitution *Etsi pastoralis*, § VII, n. 27; S. C. de Propaganda Fide, March 24, 1858.

Moreover, as regards vow, it must have been emitted: 1. voluntarily and deliberately; 2. with true intention of obligating oneself; otherwise the vow would not be valid. As regards order, it is required: 1. that it be received validly; 2. that it be received voluntarily, and therefore not from grave fear.

The impediment of order, according to the common opinion, dirimes only by ecclesiastical law. The reason is that on the one hand order of itself is not repugnant to the conjugal state; nor on the other hand is there any divine prohibition which is found in Scripture or in tradition. L. 1059.

But since the solemnity of a vow is of ecclesiastical law, by that very fact the Pope can dispense, provided a sufficient cause is present, that is, one proportioned to the gravity of the matter. That the Pontiff can dispense from this impediment is the very commonly received opinion of doctors, whom Sanchez, *De Matrimonio*, l. 8, disp. 8, n. 7, cites in a long series; and indeed examples of this dispensation being granted are everywhere available, as may be seen in Schmalzgrueber, l. 3, t. 35, n. 48; Albitzi, *De inconstantia in fide*, c. 36, n. 132 seqq.

It is confirmed from the decree of the Holy Office, Feb. 20, 1888, by which Leo XIII granted bishops the faculty of dispensing, "either by themselves or by an ecclesiastical person well-pleasing to them, those sick persons constituted in gravest danger of death, when there is not time to have recourse to the Holy See, concerning impediments, however public, diriming marriage by ecclesiastical law, except the sacred order of priesthood and affinity of the direct line arising from licit intercourse." Benedict XIV, *De Synodo*, l. 2; L. 808, 1025, 1026, 1059, l. 3, n. 256; Mansella, *De impedimentis*, etc., p. 92 seqq.; St. Thomas, II-II, q. 88, a. 11; Supplement, q. 53; E. M.

Modern laws are those which admit even those ordained in sacred orders to marriage. Indeed there is no law forbidding this in the Italian and French Civil Codes. Hence they permit a free path to such

persons for most shameful and sacrilegious concubinage. But it is otherwise in Austrian Civil Code, 63, and Spanish Civil Code, 83.

III. On the Impediments of Matrimony

1016. **What is the impediment of disparity of cult?** If the cause of marriage is considered, marriage was instituted for the mutual help of life. Lest, instead, danger to religion and life must be feared for the spouses from it, provision has been made for each danger by the impediment of disparity of cult and of crime: by barring Catholics from nuptials with non-Catholics, and the criminal spouse, when the spouse has died, from nuptials with the accomplice in crime.

One disparity of cult is between a Catholic and a non-Catholic; another is between a Christian and an unbeliever.

The first impedes marriage but does not dirime it. Benedict XIV, constitution *Singulari nobis*. It belongs only to the Holy See to permit mixed nuptials of Catholics with non-Catholics; Pius VII, letter *Vix nova*, Feb. 17, 1809, to the bishops of France. It permits these only for a grave cause, provided nothing is to be feared for the faith of the Catholic spouse, the Catholic spouse procure according to his or her strength the conversion of the non-Catholic, and on this express condition, that both spouses promise that they will educate all children to be born in the Catholic religion. Gregory XVI to the Archbishop of Freiburg, May 23, 1846.

If the heretical party, after dispensation has been obtained, afterward is unwilling to acquiesce that the children be educated in the Catholic religion, the marriage is valid, because the nature of a merely impedient impediment is not changed from that. But if a Catholic contracts mixed nuptials either without having obtained dispensation or without observing the aforesaid law of the dispensation, he or she is barred from the sacraments until promising the confessor to educate the children in the Catholic religion and to repair the scandal given to other faithful. Pius VI, epistle to Cardinal de Frankenberg, July 23, 1782.

When dispensation has been obtained with the usual clauses, the parish priest can assist at this marriage, Holy Office, Dec. 20, 1838, the banns having been omitted unless they seem necessary and opportune in the judgment of the Ordinary for detecting impediments, and mention of the religion of those who are to contract nuptials having been omitted in them. S. C. de Propaganda Fide, May 11, 1871.

The celebration of this marriage must be made before the parish priest and two witnesses according to the prescription of Trent, yet outside the church, under which the sacristy is included, and without the blessing of the parish priest. Holy Office, Nov. 25, 1838. Hence it is clear that the priest then cannot wear stole and surplice. Nevertheless, where graver evils would be present, it is committed to the judgment of bishops that, with the other necessary cautions observed, "they judge when the mentioned conditions concerning contracting these mixed nuptials outside the church and without the blessing of the parish priest can by no means be fulfilled, and when in entering these mixed marriages the custom of using the rite legitimately prescribed in the diocesan ritual for contracting

marriages can be tolerated, always excluding, however, the celebration of Mass." Pius IX, instruction, Nov. 15, 1858; *Collectanea S. C. de Propaganda Fide*, n. 1444.

The parish priest cannot assist at the marriage:

1. If mixed nuptials are contracted without dispensation having been obtained, although the law prescribes his assistance, unless the parish priest intervenes as a political magistrate. Holy Office, Dec. 20, 1838. Nevertheless the Supreme Pontiffs are accustomed to permit assistance of this kind where necessity requires it, provided otherwise that the promise of each party concerning offspring to be educated in Catholicism has been entirely required beforehand. Thus Pius VII granted the faculty to parish priests who are in Russia and Germany of assisting, if they were compelled, at mixed marriages entered without dispensation having been obtained. Yet the presence of the parish priest does not prevent the betrothed thus contracting from sinning gravely. Gregory XVI confirmed this.
2. If each spouse is unwilling to consent to the Catholic education of the offspring, but the heretical party absolutely demands that offspring of his or her sex follow his or her religion. Holy Office, June 17, 1829. But in the instruction which was added to the letters of Gregory XVI to the Primate and Bishops of Hungary, Apr. 20, 1841, these things are contained: "His Holiness declared that it can be tolerated that, whenever from the condition of times, places, and persons the marriage of a non-Catholic man with a Catholic woman, and conversely, although the necessary cautions have been omitted, cannot be impeded without graver danger, and furthermore it seems expedient for the utility of the Church and the common good, if that marriage, although forbidden and illicit, is contracted before a Catholic parish priest rather than before a non-Catholic minister, to whom the parties would easily flee, the same Catholic parish priest, or another priest acting in his place, may be present at that marriage itself with material presence only, no ecclesiastical rite having been employed, just as if he acted only as a mere qualified or authorizable witness, as they say; in such a way, namely, that when the consent of each spouse has been heard, afterward according to his office he may be able to record the validly transacted act in the marriage book." In Roskovany, tom. 2, p. 818.
3. If before or after marriage the betrothed also contract in a Protestant church by Protestant rite. Holy Office, Apr. 21, 1847.

The other disparity of cult, which is between a baptized person and an unbeliever, dirimes marriage, not from written law, but from custom having the force of universal law. Therefore it binds all who are received into the Church, even if they are in those places in which the Christian religion is first preached. Benedict XIV, constitution *Singulari nobis*, § 10; Sanchez, l. 7, disp. 71; Schmalzgrueber, l. 4, t. 6, nn. 121-124. It dirimes marriage although a baptized man marries a female catechumen, or an unbaptized man marries an apostate or heretic. Benedict XIV, constitution *Singulari nobis*, Feb. 9, 1749.

The conditions to be observed in dispensations as regards marriages between Christians and unbelievers are found prescribed from several instructions of the S. C. de Propaganda Fide as follows: 1. that cohabitation with the unbeliever not bring either insult to the Creator or danger of perversion; 2. that offspring be instructed in the Christian religion; 3. that dispensation be made only in places, understand province, vicariate, etc., not however a village in which perhaps there would be more

Christians, where there would be more unbelievers than Christians; 4. that dispensation be granted only for grave causes, so that dispensation should rather be made in impediments of consanguinity or affinity, if in this way marriages with unbelievers would be avoided; 5. sometimes there is added that there be a probable hope of conversion of the unbelieving contracting party. *Collectanea* cited, nn. 1261, 1263, 1270, 1301.

This dispensation is granted far more difficultly with Jews. But betrothals are valid between a baptized man and a woman still a catechumen, just as betrothals of impubes are valid. For betrothals concern the future, and in the future marriage can stand between them. Schmalzgrueber, l. 4, t. 6, nn. 130-131; Lugo, *De Poenitentia*, disp. 16, nn. 336, 343; St. Thomas, Supplement, q. 59, a. 1; E. M.

1017. **What is the impediment of crime?** Crime diriming marriage is threefold, namely: 1. adultery; 2. homicide of the spouse; 3. both together, provided certain conditions concur, which we set forth below. This impediment is an impediment of ecclesiastical law only.

1018. **What is required for adultery alone?** For incurring the impediment from this head, it is required:

1019. That the adultery be true, formal, and consummated. True, that is, that at least one of the fornicators be joined by a marriage not merely putative, but legitimate and valid, even if perhaps not consummated. Formal, and indeed on both sides, that is, that each know that one or the other is married. Therefore it suffices that someone knowingly approach a married woman, nor is it necessary that that married woman know that he with whom she commits adultery is also married. Formal adultery is not present even if only from culpable and crass ignorance the accomplice does not know that the other is married, provided the ignorance was not affected. For malice is required for formal adultery. Consummated, namely with perfect carnal intercourse intervening. In the external forum this is always presumed if the man has emitted seed within the vessel. But in the internal forum it will be difficult to define otherwise in a case; for consummation of marriage is had through mixture of seeds. St. Thomas, IV Sent., dist. 41, q. 1, a. 1, q. 4, ad 2; Schmalzgrueber, l. 4, t. 7, n. 55; L. 1036.

1020. That there be a promise of marriage made by one adulterer and accepted by the other at least by some sign, whether this promise precedes, accompanies, or follows the adultery. But if it precedes, it is required that it not have been retracted before the adultery. Both the promise and the acceptance must be true, and therefore a fictitious one does not suffice. L. 1039; Schmalzgrueber, l. 4, t. 7, nn. 22-24, who confirms this from C. *Significasti* 6, *De eo qui duxit*, etc.

In addition, a conditioned promise or acceptance does not suffice so long as the condition does not yet exist. The contrary must be said if the added condition is fulfilled before the death of the spouse, and much more if before the perpetrated adultery. Schmalzgrueber, loc. cit., nn. 25-28.

But because formal injury is needed to incur the impediment, therefore it is necessary to have knowledge of the marriage of each party or at least of one or the other; and ignorance excuses, provided it was not crass or supine. C. 2, *De constitutionibus*, in VI. Therefore each thing, both adultery and promise, must be understood formally. Therefore adultery committed ignorantly is not valid for this, although afterward a promise knowingly followed; nor adultery committed knowingly after a promise made ignorantly, so long as the promisor has not held it ratified, which is the truer opinion.

Sanchez, l. 7, disp. 79, n. 34; Schmalzgrueber, l. 4, t. 7, n. 13, and others think otherwise, judging that, just as marriage, of which we must speak immediately, so also a promise entered ignorantly is tacitly confirmed by adultery afterward knowingly committed. But there is not the same reason; and as a shameful promise is not easily presumed, so neither is a shameful ratification. Indeed, not even ratification suffices if it was made while the other was unaware.

More probably, however, a reciprocal promise is not required. C. 6, *De eo qui duxit*. Yet since the opposite opinion also is not lacking its own probability, Schmalzgrueber, l. 4, t. 7, n. 30, in doubt whether a reciprocal promise was added, the impediment can be judged merely probable, and therefore uncertain, which is as if none.

3. That both the promise of marriage and the adultery occur while the prior spouse is living, or while the same marriage is standing. Namely, both the adultery and the promise of marriage must yield to the injury of one and the same spouse. This would not happen if Bertha, for example, while her first husband was living, promised marriage to Titius, but committed adultery with the same when after the death of the first husband she had married Caius.

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Adultery from the law dirimes marriage, not only when a promise of future marriage is added, namely of marriage to be contracted after the death of the spouse, for if marriage to be contracted while the other spouse was still living were promised, the reason for the impediment would cease, as Schmalzgrueber notes with the doctors, l. 4, t. 7, n. 9; but also if the adulterer, while the spouse is still living, contracts marriage de praesenti with the adulteress, or rather truly and from the mind, not fictitiously, attempts it. This is clear from C. *Cum haberet* 5, *De eo qui duxit*, etc. Nor does it matter whether they attempt to contract marriage before the parish priest and witnesses, or clandestinely. For in establishing this impediment the value of the marriage or of the betrothals, if only a promise intervenes, which are contracted invalidly, as is clear, is not attended to, but the reason of the crime.

But if the accomplice was ignorant of the legitimate marriage of the other when entering marriage with him or her; either, after the other's marriage is discovered, the accomplice commits adultery without retracting the marriage, and thus the impediment is introduced, because if after knowledge has been received the accomplice perseveres in the marriage and afterward adds adultery, he or she holds the marriage ratified, which joined with adultery provokes no less toward seizing the death of the other than if it had been knowingly contracted from the beginning; or the accomplice retracts the marriage before adultery, or even ceases from adultery, which had previously existed materially and not formally, as soon as the other's marriage is discovered, and thus the reason for the impediment is absent. Schmalzgrueber, loc. cit., nn. 12, 15.

C. *Si quis vivente*, cause 31, q. 1; Cc. 1-8, *De eo qui duxit*, etc.; L. 1031 seqq.; E. M.

According to Belgian Civil Code, 1312, 1328, marriage cannot be contracted by a spouse juridically separated by divorce because of adultery with the person with whom the adultery was committed. A marriage of this kind is null.

1019. **What is required for homicide alone?** Three conditions are required for an impediment to be present from this:

1020. Mutual conspiracy, by mandate, counsel, etc. Hence it does not suffice that a spouse kill his or her own spouse if the person with whom he or she is about to enter marriage is ignorant of this action or contradicts it. Nor does it suffice that someone, hearing of the killing of the spouse, approve it and hold it ratified. Nor does mere consent seem to suffice, because the laws require contrivance. C. *Laudabilem* 1, *De conversione infidelium*; L. 1033.

1021. Intention of marriage. Thus commonly, although it is not expressed in the law. The reason is that the end of the law is that no one kill his or her own or another's spouse in hope of marriage. This intention is not required on both sides, but more truly it is required that that intention have been manifested to the other in some way. But St. Alphonsus, n. 1034, says it suffices that certain indications of this intention have preceded, for example familiarities, love letters, etc. Therefore the impediment is not present if Titius, with Caia cooperating, kills his wife so that he may enjoy Caia more freely, or marry her daughter.

1022. Death really following from the physical or moral action of one or the other accomplice. Cc. 1, 3, 6, *De eo qui duxit*; C. 1, *De conversione infidelium*; L. 1031 seqq.; E. M.

1023. **What is required for both together?** When the crimes of adultery and spouse-killing are found joined, mutual conspiracy for spouse-killing is not required, nor a promise of marriage; but the following suffice:

1024. Adultery such as was set forth above. It must precede the spouse-killing; nevertheless it is not necessary that it precede the contrivance of death. It must precede the spouse-killing, for if the death of the spouse precedes, adultery, which consists in intercourse with another's spouse, will no longer be able to have place. For it is required that there be material and formal adultery at the same time with respect to the slain spouse. Schmalzgrueber, l. 4, t. 7, nn. 49, 51; Sanchez, l. 7, disp. 18, n. 12.

1025. Contrivance of death by one of the adulterers from intention of marriage. It suffices that this intention be had by one. Gousset, n. 824; Carriere, n. 739. St. Alphonsus further requires, more probably, that this intention be manifested to the other.

1026. Death following from the contrivance of one of the adulterers, in the same way as was said above concerning homicide alone. L. 1036.

1027. Adultery and spouse-killing admitted while the same marriage stands.

This impediment, which because of the double crime united is called both together, constitutes a single impediment. On the contrary, if both adultery and homicide separately have their own proper conditions, as they have been set forth, they bring in a double impediment. Cc. 1, 3, 6, *De eo qui duxit*; C. 5, cause 31, q. 1; L. 1031 seqq.

III. On the Impediments of Matrimony

1021. **Note:** 1. The impediment of crime is both an impediment and a penalty. As an impediment, since it is an impediment of ecclesiastical law, it has no place among unbelievers, even if afterward they come to the faith. Baptism wipes away all crimes. The same must be said, as regards adultery alone, if either one element, namely the adultery, or only the promise, was

made after baptism, Schmalzgrueber, l. 4, t. 7, n. 3; and likewise, if the faithful party was not a participant in the killing which the unbeliever perpetrated; for then he does not incur the impediment from homicide alone; or if he himself did not perpetrate the killing, but the unbeliever did, who is exempt from such an impediment, although he himself committed adultery, because adultery without homicide does not introduce the impediment of both together. Schmalzgrueber, ibid., n. 46.

On the contrary, if a faithful person, after promising marriage, commits adultery with an unbeliever, and likewise if the faithful person was a participant in the contrivance or killing, or with adultery also perpetrated the killing, he incurs the impediment, by which consequently, although indirectly, the unbeliever also is bound, just as happens in the impediment of disparity of cult. Indeed this has place even if a faithful wife did this in order that an unbelieving husband, afterward entering marriage with her, might be converted to the faith, as is expressly held in C. *Laudabilem* 1, *De conversione infidelium*, where the Pontiff gives this reason, that the Church does not wish to compensate such a loss with such a gain. Schmalzgrueber, loc. cit., nn. 46-48; E. M.

2. As a penalty, since it is certainly an extraordinary penalty, ignorance of the impediment more probably excuses from the impediment. Nevertheless the more common authors deny this, "but on principles neither certain nor evident." D'Annibale, ed. 3, p. 3, n. 442; Gury-Ballerini, 788; Krimer, *in Decretal.*, l. 4, nn. 1011-1029; Sanchez, l. 9, d. 32, nn. 17, 21. Yet it can not without reason be denied that this impediment was constituted as a penalty for the crime; rather, because according to the public moral sense it is indecent and dishonorable that marriage be contracted between these criminal persons. Schmalzgrueber, l. 4, t. 7, n. 61.
3. This impediment can be multiple, and therefore then must be set forth in the petition for dispensation. It is multiple by reason of adultery, if both parties are married; by reason of homicide, if the spouse is killed by both; by reason of both together, if the circumstances just recalled concur at once.
4. Benedict XIV, epist. *Aestas anni*, says that "there is no example showing that the Pontiff dispenses in a public impediment of this sort ... If the impediment is occult, the Major Penitentiary dispenses in marriages, both contracted and to be contracted, for the internal forum, when adultery has been committed, but neither party contriving; but if the impediment arises from adultery with both or either one contriving, and is occult, the Major Penitentiary indeed has the faculty of dispensing, yet rarely and always for the internal forum only, with these things also observed: that grave necessity occur, or grave danger threaten, and that the case be proposed in the full Congregation or in the signature of the Penitentiary." Bishops also have the faculty of dispensing over the occult impediment of crime, provided it is without any contrivance, by force of the quinquennial faculties, and approved confessors by force of the faculties of the Sacred Penitentiary, which see in the respective formulae.
5. **What is the impediment of error, condition, madness?** On the part of consent the impediments of matrimony are those of error, condition, madness, fear, and abduction.

Error dirimes marriage by natural law if it concerns the person, since it is substantial error in the present matter, even if it is crass and concomitant, for example, if Titius, while falsely thinking he is

marrying Caia, says within himself: "I would marry this woman even if she were not Caia." It is otherwise, however, if he said: "I will to marry this woman, even if perhaps she is not Caia."

Error concerning the qualities of the person, or concerning the nature and properties of marriage, provided it is not concerning the very thing, the contract, does not dirime marriage. For it is greatly in the public good that marriages not be dirimed because of any other error besides substantial error; for example, if someone contracts marriage with an error of fact, thinking, for example, that he is marrying a virgin, a healthy woman, a noble woman, and on the contrary he marries a harlot, a leprous woman, one born at a crossroads, although he errs through the efficacious deceit of the coparty, and certainly would not have wished to contract with such a woman; since that will is interpretative, and since it does not exist, it can effect nothing. The same should be said if someone errs with an error of law, thinking, for example, that marriage can be dissolved.

Three kinds of accidental error must be excepted which dirime marriage.

The first case is when the quality is the condition under which consent is given; for it is manifest that when the condition is lacking, the conditioned thing also, that is, the consent, is lacking.

The second case is when the quality is determinative of the person with whom someone intends to contract; or when he does not know or determine the person with whom he contracts except from the indication and mark of that quality. On this matter Pirhing, l. 4, t. 1, n. 163: "If by the quality in which there is error a certain and individual person is designated and conceived in the mind, who before was unknown by sight, then the error redounds into error of the person." Likewise Sanchez speaks quite clearly, l. 7, d. 18, n. 38: "To explain when error concerning a quality redounds into error of the person diriming marriage, I say briefly that this occurs when there is error concerning a quality which designates a certain person, who previously was not known to the contracting party apart from that quality (namely except from that quality); nor is it established that the mind of the contracting party was to consent to the person present to him, whoever she might be."

The third case is error concerning the servile condition of the coparty, which dirimes marriage by ecclesiastical law, as is clear from book 4 of the Decretals, title 9. This impediment no longer has place in Europe, not because the law ceases, but because occasion commonly is lacking, unless perhaps in parts of the Turkish empire, or if persons still bound to servitude come from elsewhere into other parts of Europe. But error in this matter, according to the common opinion of the doctors, dirimes marriage, even if it was crass. St. Alphonsus, 1019; Schmalzgrueber, l. 4, t. 9, nn. 29-31.

But if the contracting party knows the servile condition of the other, or if, after the marriage was contracted ignorantly, then, after the error is known, he ratifies it, it is certain by the opinion of all that the marriage is valid. But by the disposition of Canon Law, C. *Si viduam* 15, d. 34, one knowingly contracting with a female slave becomes irregular, St. Alphonsus, 1018; Schmalzgrueber, loc. cit., nn. 15-18; and in the second case consent would have to be renewed before the parish priest and witnesses, unless perhaps the nullity of the preceding contract were so wholly occult that it could not be proved; for then consent newly emitted by the free party would suffice. Schmalzgrueber, l. 4, t. 3, n. 121, and t. 9, n. 18.

This impediment, moreover, as is clear, is valid only as regards the marriage of a free person with a slave; for, and these things should be carefully noted for places in which servitude still flourishes, marriages between slaves are to be held valid beyond controversy, Schmalzgrueber, loc. cit., n. 7; cf.

C. 2, q. 2, c. 29, and St. Thomas, 2.2, q. 104, art. 5, even if they are contracted without the master's consent, C. *Dignum* 1, *De coniugio servorum*; Schmalzgrueber, loc. cit., n. 10. Hence just as a slave licitly contracts marriage even against his master's will, so the master sins gravely against justice if he either positively prevents the slave from marriage, or after the slave has contracted treats him more harshly on account of this. Leo XIII, letters of May 5, 1888; Sanchez, l. 7, d. 21, n. 15; Schmalzgrueber, loc. cit., nn. 13, 14. C. I. 105; C. G. 180; C. A. 57-59; C. B. 1332-1334.

3. "It must be said that madness either precedes marriage or follows it. If it follows, it in no way dirimes it; but if it precedes, then either the madman has lucid intervals, or he does not. If he has them, then although, while he is in that interval, it is not safe for him to contract marriage, because he would not know how to educate offspring, nevertheless if he contracts, it is marriage. But if he does not have them, or if he contracts when he does not have them, then, because there cannot be a contract where the use of reason is lacking, there will not be a true marriage." St. Thomas, Suppl., q. 58, a. 3. C. B. 1325; St. Alphonsus, 1009 seqq.; St. Thomas, Suppl., q. 51, q. 52.
4. **What is the impediment of force or fear?** Light fear, even unjust fear, does not dirime marriage. The reason is: 1. because light fear is not considered to influence consent gravely and efficaciously; 2. because by positive law only grave fear makes marriage invalid; 3. because otherwise innumerable marriages would become invalid, to the greatest harm of society.

But grave fear certainly dirimes marriage by ecclesiastical law. Yet the following conditions are required, namely, that the fear be inflicted: 1. by an external and free cause; 2. unjustly; 3. for the end of contracting marriage. C. 10, 14, 15, 18, 28, *De sponsalibus*; C. 2, *De eo qui duxit*. By ecclesiastical law; whether also by natural law? This matter is disputed among the doctors. Trent, sess. 24, cc. 1, 2, *De reformatione matrimonii*; St. Thomas, Suppl., q. 47, aa. 3, 4; Sanchez, l. 4, d. 12, n. 3; Lugo, *De iustitia et iure*, d. 22, n. 175 seqq.; Schmalzgrueber, l. 4, t. 1, n. 399; St. Alphonsus, 1050; C. I. 105; C. G. 180; C. A. 55; C. B. 1335.

Whichever law you say it is dirimed by, this impediment does not admit dispensation, but it is necessary that the cause of the fear be removed. C. *Cum locum* 1, *De sponsalibus et matrimonio*. Therefore, while the cause of the fear perseveres, the marriage is not convalidated either by intercourse or by cohabitation, for these otherwise are presumed to have been extorted by fear. For while fear lasts, just as marriage cannot validly be contracted, so neither can a marriage invalidly contracted be convalidated. It must be said otherwise if intercourse is admitted wholly freely and with marital affection, as the doctors commonly hold after St. Thomas, 4, d. 29, q. 1, a. 3, q. 2, ad 2; or if there is also spontaneous cohabitation, which in C. *Ad id* 21, *De sponsalibus et matrimonio*, is taken as ratification of consent. In this case, if there was an occult impediment, it certainly will not be necessary to renew consent again before the parish priest, according to the general doctrine which Benedict XIV confirms from the decrees of the Sacred Penitentiary issued by the authority of St. Pius V, and from the declarations of the Sacred Congregation of the Council and the practice of the Sacred Rota, *Instructio* 87, n. 62. Sanchez, l. 2, d. 36, n. 2.

Nor indeed is it necessary that the other spouse also, who did not know the impediment, be informed of it when marriage must be convalidated by new consent. For although perhaps this is more probably required when the consent of both contracting parties is invalid because of an

impediment by which both are by law itself incapable of contracting, Sanchez, loc. cit.; St. Alphonsus, 895; nevertheless the opposite seems to be said in the present case, when the matter is only of a defect of consent, as also happens when either contracting party fictitiously consents. Sanchez explains the reason thus, *De matrimonio*, l. 4, d. 18, n. 2: "Second, it must be supposed that if after a marriage extorted by fear there follows intercourse had spontaneously with conjugal affection, the prior marriage is ratified, and from then begins to be valid, if the other, who had consented without fear, perseveres in the first consent. And the reason is that, since the consents do not have to exist at the same time, and the consent of the one who did not suffer fear was legitimate, only the spontaneous consent of the one who consented through fear was desired for marriage, as I said, l. 4, d. 15, n. 2. But this consent is sufficiently expressed through intercourse, etc., from C. *Is qui* 30, *De sponsalibus*. Therefore once that has followed, the prior marriage is ratified." And in the same way a little later, ibid., n. 3, he reasons concerning consent expressed through long, mutual, and spontaneous cohabitation, confirming it from the explicit definition of law in C. *Ad id* 21, *De sponsalibus et matrimonio*.

In doubt whether fear is to be considered grave, the common doctrine is that one must judge in favor of the validity of the marriage, both because the cause of marriage is favorable and because of reverence for the sacrament. Laymann, l. 5, tr. 10, p. 2, c. 5, n. 4. To this looks that saying of Innocent III, C. *Licet* 47, *De testibus et attestationibus*: "It is more tolerable to leave some persons joined contrary to the statutes of men, than to separate those legitimately joined contrary to the statutes of the Lord." Schmalzgrueber, l. 4, t. 1, n. 432.

The disagreement of the doctors about the sufficiency of reverential fear is easily reconciled, if you consider that this fear also, according to the variety of circumstances, is rightly considered now light, now grave. Thus, with others, Laymann, loc. cit., n. 3, who judges in a similar way concerning importunate prayers, which according to the diverse circumstances of persons one may contradict easily or with the greatest difficulty, as Sanchez, l. 4, d. 7, n. 7, Konink, Lessius, etc., also note.

When marriage was contracted from grave fear, one is not bound in the forum of conscience, speaking per se, to perfect it, and can withdraw, even if the other is unwilling. And this is valid also of the one who was free from fear, even if the fear was inflicted by himself or by his fault. Thus Sanchez and others, and it is probable according to St. Alphonsus, 1057. Speaking per se, that is, unless the damage inflicted could not be repaired except through marriage. St. Alphonsus, 1045 seqq.; E. M.

III. On the Impediments of Matrimony

1024. **What is the impediment of raptus?** Raptus is the violent abduction of a woman from a safe place into another, where she is detained under the power of the abductor, for the sake of entering marriage. Raptus dirimes marriage by ecclesiastical law between the abductor and the abducted woman. Trent, sess. 24, c. 6, *De reformatione matrimonii*.

Three conditions are required for this impediment to be incurred, namely:

1. That the abducted woman be led away from place to place. A woman, whatever she herself may be. Whether also a betrothed woman? It must be affirmed, because the law does not

distinguish. Others, however, deny it, because a betrothed woman can be compelled to the nuptials, unless perhaps she has a just cause of withdrawing from the betrothals. An abducted woman: the impediment is not incurred if a woman abducts a man, because Trent speaks only of a male abductor. Led away: not if she is retained unwillingly in a place to which she had come spontaneously, since here a strict interpretation is needed. But it is the same whether the abductor executes the abduction by himself or through others, and likewise whether he keeps the abducted person in his own power by himself and with himself, or through others and with others. S. C. C., June 25, 1864; A. S. S., vol. 1, pp. 15-24. But the impediment is incurred by one who abducts for himself, not by those who abduct for another, although these can incur other penalties decreed against abductors by both civil and canon law. Schmalzgrueber, l. 5, t. 17, n. 20. From place to place: the impediment is not contracted if she is led away from one room to another room of the same house, because thus she is not properly placed under the abductor's power.

2. That the woman be abducted only for the sake of marriage; therefore the impediment is not incurred if the woman is led away for another reason, for example, for satisfying lust. For Trent intends nothing other than to favor the liberty of marriage. Nor is the impediment incurred if marriage is contracted between the abductor and the abducted woman after she has been freed from the abductor's power. This clearly appears from the text of Trent. On the contrary, this impediment lasts as long as the abducted woman is in the abductor's power, even if she consents freely.

3. That the raptus occur while the woman resists, or is wholly unwilling, force being brought or fear being inflicted. Hence the impediment is not had if the woman consents to the leading away; for then there is not raptus but flight, although those under whose power she is may be unwilling. And on the contrary the impediment is present if, while they consent, she herself is led away unwillingly. What is called raptus of seduction, by inducing a woman through blandishments or gifts to follow, does not constitute the impediment, because no force, no fraud is used against the abducted woman, nor injury inflicted upon the parents. But if a woman, having been led around by deceit, unknowingly comes into the power of the one attempting abduction, raptus is still had, and the marriage is dirimed. S. C. C., April 24, 1868; June 25 and August 27, 1864; A. S. S., vol. 1, p. 23; Riganti, ad Cancell. reg. 49, n. 79 seqq. St. Alphonsus, 1107 seq.; St. Thomas, 2.2, q. 154, a. 7, ad 4; Schmalzgrueber, l. 5, t. 17, nn. 37-40.

4. **Are betrothals valid when contracted while an abducted woman is under the power of the abductor?** There are two probable opinions. The first opinion denies it, because betrothals require liberty just as marriage itself does; for a penal law is extended where the same reason applies. The second opinion affirms it, and St. Alphonsus calls this more probable with La-Croix, etc. The reason for this opinion is that betrothals, as being always rescindable, require less liberty than marriage. St. Alphonsus, 1107.

5. **What is the clandestinity of marriage?** Besides the matter, cause, and consent, in marriage its solemnities must be considered, namely, that extrinsic form of marriage by which marriage as a contract is validly completed, and by which the sacrament is holily entered. Hence another impediment of marriage arises, namely that of clandestinity.

A clandestine marriage is said to be one which is contracted without the solemnity required by the Church, namely, without the assistance of the proper parish priest and at least two witnesses. This impediment is of ecclesiastical law alone, since it was constituted by Trent, sess. 24, c. 1, *De reformatione matrimonii*.

Here the proper parish priest is the parish priest of domicile or quasi-domicile, Benedict XIV, C. *Paucis abhinc*, Collectan. S. C. de P. F., n. 1409, but not of origin, unless perhaps someone has domicile there; and as regards vagrants, the parish priest of the place in which they are staying, even if only one of the spouses is a vagrant. St. Alphonsus, 1089. If someone has domicile in two places, or in one place domicile and in another quasi-domicile, he can contract before any one of them. But the proper parish priest is either that of the groom or that of the bride in his own parish. Indeed "the parish priest of the man suffices even in the parish of the woman; because marriages are matters of voluntary jurisdiction, and because the Council expressed nothing about place, and because the Council seems to have willed the presence of the parish priest and witnesses for taking away clandestinity alone, for which one parish priest, whether of the man or of the woman, suffices." S. C. apud Fagnan, in C. *Quod nobis de clandestina desponsatione*, n. 33; Barbosa, *De officio parochi*, p. 2, c. 21, n. 45; Benedict XIV, *Notificatio* 33, n. 5 seqq.; *Quaestiones canonicae* 182; St. Alphonsus, 1087.

The parish priest: the marriage is equally valid if it is contracted before the bishop or his vicar general, Benedict XIV, *Quaestiones canonicae* 182, or, the See being vacant, before the capitular vicar. Cardinals also have the faculty of assisting at marriages, each in his own Title, and Pontifical Legates in the provinces entrusted to them. For Cardinals in their Titles are Ordinaries and have episcopal jurisdiction; and likewise Pontifical Legates, whether ordinary or extraordinary, whether *a latere*, or merely sent, or even native, have ordinary jurisdiction in the provinces entrusted to them. Ferraris, v. *Matrimonium*, a. 3, nn. 12, 20, 45; v. *Cardinales*, a. 3, nn. 12, 20; v. *Legatus*, nn. 12, 45. The parish priest: a pro-parish-priest, or vicar, validly assists also, if he has from the Ordinary, or from the parish priest himself, absolute, full, and unrestricted power in the parish. Benedict XIV, *De synodo*, l. 13, c. 23, n. 1.

Since the parish priest is present as a qualified and authorized witness, there is no need of power of order or jurisdiction. Therefore he is licitly present even if he is only a cleric; and validly, even if he is suspended, irregular, excommunicated, vitandus, or non-Catholic, schismatic, even if the bishop has prohibited this to him. The same must be said of a vicar general, if against the bishop's prohibition he either assists at the marriage himself or has given to some priest the faculty of assisting. Likewise the parish priest is validly present, although he is falsely the parish priest, but has a colored title and by common error is regarded as parish priest; and more probably even if there is only common error, without a colored title. The parish priest is validly present also in another's territory, even if the parish priest or Ordinary of this place is unwilling, although he cannot solemnly bless the marriage. Likewise he can delegate another, provided he delegates a priest, not a deacon; and validly any priest whatever, even a vitandus. Not a deacon, unless perhaps he is held by common error to be a priest. Sanchez, l. 3, d. 22, n. 61. General delegation also, even tacit or extorted by fear, but not presumed, suffices, for example, for exercising parish duties. But the vice-curate also can delegate another, since he himself is delegated for the universality of causes. Ferraris, v. *Matrimonium*, a. 2, nn. 179-181.

It makes no difference even if the parish priest and witnesses are present by chance, deceit, or force. For it suffices that they know what is happening, whether from words, if they are blind and recognize

the voices of the contracting parties; or from signs, if they are deaf; or through an interpreter, if they are ignorant of the language. Therefore the marriage is valid even if the parish priest pretends not to hear, blocking his ears with his fingers, not to see, closing his eyes, nor to understand, provided that in reality from the antecedent and consequent acts he has perceived the consent of the parties; if, for example, he has by no means heard the voice of the bride or groom, but has seen the groom holding the bride by the hand, S. C. C., January 12, 1715, or handing a ring to her, S. C. C., November 28, 1671. For it suffices that all are morally present, like witnesses who must give testimony concerning the matter completed. Benedict XIV, *De synodo*, l. 13, c. 23; St. Alphonsus, 899. For the validity of marriage any witnesses whatever suffice, whether males or females, even parents, nuns, unbelievers, whether of age or minors, provided they have the use of reason and can testify concerning the contracted marriage.

Domicile and quasi-domicile here must be reckoned by Canon Law, not Civil Law, namely by the intention of dwelling in the place perpetually or for the greater part of a year; nor indeed is there need of the fact itself of dwelling for the aforesaid time, but as soon as someone has come into that place, he acquires domicile or quasi-domicile and validly contracts. But it was declared for the United States of America that dwelling for a space of at least one month suffices, without an inquiry having to be made about the intention of remaining in the place for the greater part of a year. S. O., May 6, 1886.

As regards students, youths, and girls in colleges and monasteries, foundlings, and the sick in hospitals, if they are going to remain in that place for the greater part of a year, the proper parish priest of quasi-domicile is not the rector of the college, monastery, or hospital, nor the confessor or chaplain, but the parish priest in whose parish the college, monastery, or hospital is situated. Likewise as regards domestics, the proper parish priest is the parish priest in whose parish the masters whom they serve have domicile, even if perhaps in the same city or town the same domestics have a house and domicile. Those detained in prisons, whose case has not yet been finished and for whom the prison is only a place of custody, must be joined in marriage by the parish priest of their own domicile or quasi-domicile. But if their case has been finished, and they have been condemned permanently or for a determined time, and the prison is a place of punishment, then their proper parish priest is the one in whose parish the prison is situated. Benedict XIV, *Notificatio* 33, 88; Ferraris, v. *Moniales*, a. 1, n. 36.

Clandestine marriages are altogether invalid in all places where the decree of the Council was promulgated, and, in doubt, where it was at some time observed in the parish as the decree of the Council. S. C. C., January 18, 1663. Indeed Trent renders those contracting clandestinely incapable of contracting in that way thereafter, that is, without parish priest and witnesses. Therefore those also contract invalidly there who, both of them or only one of the spouses, have domicile or quasi-domicile in places where Trent does not flourish. But they are not invalid in places where this promulgation, culpably or inculpably, was omitted; or where the decree fell into desuetude, even if only one of the spouses has domicile or quasi-domicile there, while the other has domicile or quasi-domicile in a place where Trent flourishes, because of the indivisibility of the contract. Benedict XIV, *De synodo*, l. 6, c. 6, n. 12; Clement XIII, 1767, to the Archbishop of Mechlin; Collectan. cit., n. 1400.

Therefore in these places the marriage which is called civil is ratified, and the marriage is valid of those who have domicile or quasi-domicile in a place where Trent flourishes, unless they came to that

place in fraud, that is, with the sole intention of contracting marriage without parish priest and witnesses; but by no means if they first acquired domicile or quasi-domicile there. S. C. C., September 5, 1626; Urban VIII, brief to the Archbishop of Cologne, August 14, 1627; Benedict XIV, C. *Paucis abhinc annis*, *Notificatio* 33. Indeed the more common opinion holds that the marriage also is valid of those who, having domicile or quasi-domicile in a place where Trent flourishes, come into another place where Trent does not flourish, without the intention indeed of acquiring domicile or quasi-domicile, but at the same time without the intention of contracting clandestinely, if afterward they contract clandestinely there. Yet several decisions of the Sacred Congregation seem contrary. Sanchez, l. 3, § 13, nn. 27, 28, 35; Lugo, *Responsa moralia*, l. 1, d. 36; Pontius, l. 5, c. 9, nn. 2, 7; Engel, l. 4, t. 3, n. 20, *Dico* 3; Barbosa, *De officio episcopi*, p. 2, alleg. 32, n. 153; Reiffenstuel, l. 4, t. 3, n. 123; Verricelli, *Tr. de apost. mission.*, tit. 15, q. 251.

Clandestine marriages are illicit everywhere and prohibited under grave obligation. For the Church has always detested them, as Trent declares and Benedict XIV, *De synodo*, l. 8, c. 12, n. 4, clearly shows. St. Thomas, Suppl., q. 45, a. 5.

The Tridentine decree is recognized as received in Italy, Spain, Portugal, France, Holland, Belgium, Ireland, Bavaria, etc. But it was not received in England, Sweden, Saxony, Denmark, Prussia, and several federated provinces of Switzerland, etc. Cf. Perrone, *De matrimonio*, l. 2, s. 1, c. 6; Collectan. S. C. de P. F., nn. 1387, 1392, 1399, 1402, 1408, 1412.

Finally Benedict XIV issued a declaration in the year 1741, in which he established that clandestine marriages entered or to be entered in Holland and in the federated Provinces of Belgium between heretics, or between one heretical party and another Catholic party, are valid. But he established nothing concerning marriages of Catholics among themselves. Indeed Benedict XIV expressly declared that this disposition in no way pertains to Catholics. "Let them know," he says, "that unless they celebrate the nuptials before a Catholic minister and two witnesses, they will never be true and legitimate spouses either before God or before the Church." Letters of September 17, 1746, to Simon, missionary in Holland, § 3, *Bullarium*, tom. 3, supplement, n. III. See also *De synodo*, l. 6, c. 7. St. Alphonsus, 1078 seqq.; Pontius, l. 5; A. S. S., vol. 23, p. 751; E. M.

1027. **Note:** The Benedictine Declaration cannot be extended to other provinces or Dioceses without the judgment of the Holy See. Pius VII, to the Vicar of the Diocese of Trier, April 23, 1817. For that Declaration was not made by reason of law, because those marriages were marriages of heretics and heretics are exempt from the decree of Trent; but by a special reason of fact, namely because in those provinces there was very much doubt about the promulgation of the Tridentine decree, and at the same time marriages of this sort were considered valid. Therefore by the aforesaid Declaration the question is in no way settled: whether marriages of heretics and mixed marriages, entered without parish priest and witnesses, are valid or invalid in places in which Trent was promulgated, and in which, heretics coming together into a heretical society, heretical parishes entered in place of Catholic ones.

For there can be question only concerning these; since where heretics live together with Catholics and do not form a separate society, whether they have civil status, their own temples, and ministers or not, they are bound by the Tridentine form and ought to contract marriage before the Catholic parish priest and witnesses, where the Tridentine decree flourishes. But in those places in which

heretics, already at the time of the publication of the Tridentine decree, had coalesced into a separate and self-standing community or quasi-parish, they were not comprehended by the decree published in the Catholic parishes. S. O., March 18, 1884; cf. Collectan. cit., nn. 1388, 1399, 1404, 1424; E. M.

1028. **Does inability to recur to one's own parish priest or bishop excuse from the impediment of clandestinity?** Reply: Affirmatively, if that inability is common in some province, for example during some political and religious disturbance, and lasting, that is, at least for one month. The reason is that if the law obliged in such a case, it would be harmful to the common good and would tend to the detriment of society. Moreover this is proved from several declarations of the Holy See. S. O., January 15, 1874; Benedict XIV, *De synodo*, l. 12, c. 5, n. 5.

Negatively, if the inability concerns particular cases, because an invalidating law does not cease because of a private inconvenience in a particular case, for example, if the parish priest hides or flees, lest he assist at a marriage to which the parents object, to which the civil law objects, etc. St. Alphonsus, 1079; E. M.

1029. **Must the faithful contract before another priest when they cannot recur to their own parish priest?** They ought to seek the permission of the parish priest or bishop by letters, if this can easily be done, so that some priest may be delegated to assist at the marriage. If they cannot seek or obtain this faculty, they can validly contract, but before two witnesses, even without any assistance of a priest. The reason is that a simple priest, and likewise another parish priest who is not the proper parish priest of at least one of the contracting parties, can contribute nothing to the validity of the act. This is also clear from the response of the Sacred Congregation, April 22, 1795, approved by Pius VI. For it responded that in those circumstances only the blessing should be received from some Catholic priest. Collectan. cit., nn. 1388, 1396, 1400.

1030. **Are spouses who, with no parish priest available, contracted clandestinely bound to receive the blessing when the opportunity is given?** They are not indeed bound, but they are to be exhorted to this. But priests must declare to spouses that a blessing of this kind in no way pertains to the validity of marriage. S. O., July 6, 1817; January 15, 1874; Collectan. cit., n. 1394; A. S. S., vol. 26, p. 254 seqq.

III. On the Impediments of Matrimony

1031. **Is it licit to contract marriage with a doubtful impediment?** A twofold doubt must be distinguished: doubt of fact and doubt of law.

Doubt of fact is had when the doubt concerns the particular fact from which the impediment arises, for example, if there is doubt about the very fact of adoption, the office of sponsor, carnal copulation, etc. Doubt of law is had when it is doubtful whether an impediment arises from such and such a fact, otherwise certain; for example, the imperfect adoption is established, the office of sponsor exercised in private baptism is established, but whether an impediment arises from this is disputed among the doctors.

If the doubt is of law, it is licit to contract marriage with an impediment doubtful by ecclesiastical law. The reason is that, in the case of a doubt of law, if perhaps the impediment were really present, the Church is considered to supply the defect of a contract invalid by canon law, just as she supplies the defect of jurisdiction whenever the doctors commonly hold that she supplies jurisdiction in the sacrament of penance where common error intervenes. Moreover the opinion teaching that the Church supplies also in the present case of a doubtful impediment has generally been received as probable by innumerable doctors who support it. But in the case of a true doubt of fact, namely an insoluble doubt, then possession stands for liberty. Nevertheless, in a doubt of fact, it is more commonly not admitted that it is licit then to contract without a dispensation; and because the doctors more commonly do not hold this, the Church is not then considered to supply. La-Croix, 534, 535; St. Alphonsus, 901, 902.

But if, in a doubt of law or of fact, the matter concerns an impediment of natural and divine law, namely of bond, relationship, or impotence: in the first case, of doubt of bond, or of a preexisting marriage, whether it was validly contracted, whether the spouse has truly died, it is not licit to enter another marriage unless it is morally certain that the prior marriage was invalid or that it has been dissolved. The reason is that, according to the various cases, either there is a certain acquired right of a third party, of which it is not licit to despoil him because of a mere doubt, or certainly the matter of itself is exposed to grave public scandal. C. *Dominus* 2, *De secundis nuptiis;* C. *In praesentia, De sponsalibus*.

In the other case, of relationship, it likewise is not licit because of public scandal, because it publicly gives scandal perhaps to be mixed with a daughter or sister; or certainly there is danger of public scandal, if afterward she is discovered certainly to be a daughter or sister. In the third case, of impotence, it is licit to contract marriage, because it would be most grave to deprive someone of marriage because of a doubt, and he possesses a certain right to it, unless impotence is proved, or certainly the presumption favors him that he is naturally potent. "Yet," says St. Alphonsus, 1102, "before marriage he would have to warn the spouse about such a doubt. For the rest, circumstances and experiences being set aside, everyone is presumed capable, even if he has lived most chastely." St. Alphonsus, 1102, 902.

These things are said speaking per se; "for when a most grave cause urges, marriage can be contracted, provided that there is added the declaration of the Supreme Pontiff, as the sole interpreter of divine law." St. Alphonsus, 902. "For the rest they probably say ... that in doubtful impediments the bishop can well dispense. And the doctors most commonly say the same, speaking generally, concerning all cases or impediments reserved to the Pontiff, when there is doubt whether they need dispensation ... The reason is that, on the one hand, although the dispensation of impediments of this sort is reserved to the Pope, nevertheless since reservation is odious, it must be interpreted strictly and restricted only to certain cases ... and also because, since in cases which frequently occur an inferior can dispense in the law of a superior, the bishop will well be able to dispense in doubtful impediments, because in them it frequently happens that there is doubt about the need of dispensation." St. Alphonsus, 902. But these things are to be understood of cases in which the Supreme Pontiff is accustomed to dispense, not at all of others. Zitelli, *De dispensationibus matrimonialibus*, c. 2, § 1, par. *Secundam Nota*.

1032. **Is it licit for spouses to use marriage if, after the nuptials have been entered, doubt about some impediment arises?** Reply: Negatively, until a sufficient inquiry has been made concerning the truth. Yet if only one doubts, although he or she cannot petition for the debt, nevertheless he or she must render it to the other who petitions in good faith.

Affirmatively, if after serious diligence has been used to discover the truth, the doubt still remains; because in doubt the condition of the possessor is better; in doubt one must stand for the validity of the act; in a favorable cause, as marriage is, one must incline in its favor. C. *Inquisitioni* 44, *De sententia excommunicationis*; C. *Dominus* 2, *De secundis nuptiis*; St. Alphonsus, 903-908, 1102; E. M.

1033. **Is a marriage valid when contracted with a putative impediment, but one not existing?** If the contracting party is not wholly certain of the impediment, but in some way doubts about it, the marriage is valid. Thus commonly with La-Croix, 525. The reason is that he contracts at least conditionally, namely, insofar as I can, although he does not reflect on that condition; therefore, when the impediment does not exist, the consent is already absolute.

If he contracts with certainty of an impediment which he esteems little, so that he determines to live in concubinage, it is certain that the marriage is invalid. The reason is that then the will of contracting marriage is not predominant.

If indeed he contracts with certainty of an impediment, but grieving over the impediment and not daring to disclose it lest the marriage be impeded, or lest he be defamed, or from some inadvertence, or with some slight doubt which is usually mixed with putative certainty, the matter is controverted. More probably the marriage is valid because of the predominant will of contracting it. Thus La-Croix, ibid. Nevertheless, for caution in practice he would have to be induced to renew consent. Sanchez, l. 2, d. 33; Pontius, l. 4, c. 23; cf. vol. 1, n. 9.

1034. **What must be done if after marriage has been contracted an impediment is certainly established?** If the impediment is public, separation must be made, to avoid scandal. Cf. St. Alphonsus, 111.

If it is occult, and the spouses are in good faith, they are regularly to be left in that state, especially if there would be danger of separation or fornication because of scandal, which ordinarily is not absent. C. *Quia circa* 6, *De consanguinitate*; Benedict XIV, *Notificatio* 87; Sanchez, l. 2, d. 38.

If it is occult, and the spouses are not ignorant of it, either dispensation must be sought at once, and meanwhile they can neither petition nor render, C. *Consultationi* 4, *De frigidis*; or they are wholly to be separated even as to cohabitation, by the office of the judge, if scandals would otherwise arise, C. *Porro* 3, *De divortiis*, unless they prefer to cohabit as brother and sister, C. 4 cited, *De frigidis*, every danger of incontinence having been removed, which is not without difficulty. But they cannot enter other nuptials except after the legitimate sentence of the judge, which never passes into res judicata. Benedict XIV, C. *Dei miseratione*.

If only one of them knows the impediment, that one can neither petition nor render, C. *Dominus* 2, *De secundis nuptiis*; and either dispensation must be sought at once, or separation must be made even as to dwelling. E. M.

IV. On Dispensation From Impediments and Revalidation of Marriage

1035. **Can all impediments be dispensed, and are they dispensed?** Not all impediments can be dispensed, such as the impediments of impotence, bond, and consanguinity in the first degree of the direct line. Likewise not all are usually dispensed, such as consanguinity in the first degree of the collateral line, affinity and public honesty from licit intercourse in the first degree of the direct line, public crime; spiritual paternity and filiation, affinity from illicit intercourse in the first degree of the direct line, solemn vow, sacred order, disparity of cult, age. But some of these are never dispensed, as the four prior ones; some only very rarely and for a most grave cause, as the six later ones. On spiritual paternity and filiation cf. De Iustis, *De dispensationibus matrimonialibus*, l. 2, c. 5, n. 7; Schmalzgrueber, l. 4, t. 11, n. 57, t. 16, n. 144. On affinity cf. Collectan. S. C. de P. F., n. 1242. On public honesty cf. Ferraris, supplement, this word. On solemn vow and sacred order cf. Benedict XIV, *Quaestiones canonicae* 200.

But not all need dispensation: raptus, clandestinity, defect or vice of consent. Others which can and usually are dispensed, such as consanguinity, affinity, public honesty, apart from the degrees already excepted, and occult crime, usually are not dispensed without grave cause. Trent, sess. 24, c. 5, *De reformatione matrimonii*. Hence for the validity of obtaining a dispensation it is required that there be no obreption or subreption falling on the motive cause. For the superior is not considered to dispense except under the tacit condition: if the prayers rest on truth. Motive cause; for if falsity is brought forward, or truth is kept silent, only concerning the impulsive cause, the dispensation is valid. C. *Super litteris*, *De rescriptis*. St. Alphonsus, 1118-1120, 1129; E. M.

1036. **What are just causes for dispensation in diriment impediments?** Some causes are honorable, others famous, for avoiding scandals. Honorable causes are:

1037. The age of the girl, who, having already passed the twenty-fourth year of age, has thus far not found a man of equal condition whom she could marry.

1038. Lack of dowry, if the girl has none, or not enough, so that she could marry a man of equal condition in her own place in which she is staying.

1039. Narrowness of place, that is, if a woman in the place of origin or domicile, considering only the petitioner, cannot find a man of equal condition.

1040. Grave enmities to be quieted between blood relatives and relatives by affinity.

1041. Lawsuits to be settled concerning matters of great moment arisen between the man and woman, or between their parents.

1042. Poverty of a widow who is burdened with numerous offspring.

1043. Prerogative of royal dignity.

1044. Preservation of an illustrious family.

1045. Preservation of goods in the same family.

1046. Excellence of merits toward the Church.

1047. Christian virtues which probably would not be found in another man.

1048. A larger alms to be turned back into pious works.

Famous causes are:

1. Intercourse having followed between those wishing to contract, and legitimation of offspring.
2. Excessive familiarity, suspected and dangerous, and also cohabitation under the same roof, which cannot easily be impeded.
3. Infamy of the woman, arisen either from true or from false suspicion, whereby the woman is forced to remain defamed or unmarried, or to marry a man of unequal condition.
4. Danger of civil marriage.
5. Danger of mixed marriage, or marriage before a non-Catholic minister.
6. Danger of incestuous concubinage.
7. Cessation of public concubinage.
8. Removal of grave scandals, lest they fornicate again, lest enmities blaze up.
9. Revalidation of marriage.

Benedict XIV, response to the Archbishop of Tours, September 26, 1754; A. S. S., vol. 2, p. 62; instruction of S. C. de P. F., May 9, 1877; St. Alphonsus, 1129, 1130; E. M.

A dispensation is called without cause when none of these causes is present which are usually alleged as canonical; or when, with no proper cause alleged, the dispensation is usually sought and granted from certain and reasonable causes; and then an extrinsic cause is present, of composition, or of the more abundant alms, which the petitioners pay toward a pious cause. Therefore then the public good of the Church, which is promoted by the greater composition or alms, stands as the cause. Canonical causes are those which, from the style and approved custom of the Curia, are usually admitted for matrimonial dispensations. But it is by no means prohibited to set forth other causes also, by which others may be strengthened, for example, deformity, infirmity, etc. E. M.

1037. **What must be expressed in the petition for the validity of the dispensation?** 1. The names, surnames, and diocese, or dioceses, of the petitioners, from which they have origin, or of actual domicile. Error in the name or surname of the petitioners more probably does not harm the validity of the dispensation, if it is a likely error and the person is established.

These things must be expressed when the dispensation is sought from the Dataria. "But when it is sought from the Sacred Penitentiary, the names and other things are kept silent, but only the person and the place to which the letters are to be directed are expressed." St. Alphonsus, 1146.

2. The lowest species of the impediment or impediments, and their number, if there are several.
3. The motive cause of the dispensation.

Must the cause brought forward be true both at the time when the rescript is dispatched from Rome and at the time when the dispensation is put into execution? It is enough that the cause exist at the time when the delegate executes the dispensation itself, because the Pontiff seems to commit the affair according to those circumstances which the delegate will find. St. Alphonsus, 1132. Cf. vol. 1, n. 283, here 1045.

Nor indeed is it necessary that the cause of dispensing precede the concession of the dispensation; rather, it suffices that through the dispensation itself and its mode the cause itself be consummated. "For when a dispensation is given without cause, some satisfaction or fine is imposed for a pious work or for another common utility of the Church; through which work there arises the cause of the dispensation, which then occurs by way of commutation, just as also in the concession of indulgences we have said happens." Suarez, *De legibus*, l. 6, c. 18, n. 26; St. Alphonsus, 1130.

4. The other things which by law, or by custom, or by the style of the Curia must be set forth, lest the petition be subreptitious. And thus it must be set forth whether a null marriage has already been contracted, whether knowingly or even ignorantly, with the required solemnities neglected. Trent, sess. 24, c. 5, *De reformatione matrimonii*; C. *Cum inhibitio* final, *De clandestina desponsatione*. Pius VII, C. *Expositum nobis*, June 18, 1816; Benedict XIV, C. *Magnae nobis*; Sanchez, l. 8, d. 21; Reiffenstuel, l. 4, t. 21, appendix, n. 210 seqq.; St. Alphonsus, 1131; E. M.

5. **You will resolve:** 1. One impediment must not be expressed for another, although a greater one, for example, consanguinity for affinity.

6. In a vow it must be expressed whether it is of perpetual chastity, of not marrying, or of entering religion. In crime, whether it is adultery, homicide, or both together. Likewise in adultery, whether there was a marriage entered in fact while the spouse of the other was still living, since it is usually much more difficult to dispense.

7. In public honesty, if it is in the first degree, whether it is from marriage or from betrothals. But whether it is from marriage or from betrothals, the line must be expressed; and if from marriage, the degree. Hence it must be explained whether public honesty arises from betrothals entered by the groom with the mother of the woman to be betrothed; because the difficulty is greater than if it were a matter of betrothals entered with the sister of the woman to be betrothed, since there is greater dishonorableness. For the impediment in the first case is in the direct line; in the other, in the oblique line. But in an unequal degree it suffices to express the more remote one. C. *Vir* final, *De consanguinitate*. Besides this it must be added that the prior betrothals were dissolved; for otherwise a dispensation is not given by the Dataria; but by the Sacred Penitentiary it is given, yet under the condition, provided the prior betrothals were dissolved by mutual consent.

8. In legal relationship it is necessary to express only the line and degree. In spiritual relationship it must be expressed whether it is paternity or maternity, or fraternity; and, more safely, whether from baptism or from confirmation. Sanchez, l. 8, d. 24, n. 15; Corradus, l. 8, c. 8, n. 15.

9. In natural relationship it must be expressed: 1. whether it is consanguinity or affinity, and if affinity, whether from licit or illicit intercourse, if it is contained within the second degree. 2.

The line and degree must be expressed; and if a nearer degree has been set forth for a more remote one, the dispensation is valid. If the relationship is not simple, but mixed from consanguinity and affinity, this also will have to be expressed; and if the degrees are unequal, each must be expressed both in consanguinity and, more truly, in affinity. And if the nearer is the first, the dispensation otherwise is not valid. Likewise, if the relationship is multiple, this also must be expressed for validity. St. Pius V, C. *Sanctissimus*, August 20, 1566; Benedict XIV, C. *Etsi matrimonialis*, September 27, 1755; S. O., December 12, 1748. Cf. Sanchez, l. 8, d. 24, nn. 12, 13; Schmalzgrueber, l. 4, t. 16, nn. 190, 192. "Besides this, Tournely rightly warns that in a mixed degree the sex which is in the first degree must be expressed, because it is more difficult to grant that a nephew marry his aunt than that an uncle marry his niece; for there is a greater inversion of order, that the nephew be constituted head of his aunt." St. Alphonsus, 1136.

Nor indeed for validity must "incestuous intercourse, or the plan and intention of thereby obtaining dispensation more easily ... over whatever prohibited degrees of consanguinity, affinity, spiritual relationship, and also public honesty" be expressed. Leo XIII, June 25, 1885, circular letter of the Sacred Office. Incestuous intercourse, namely, had between those blood relatives, relatives by affinity, etc., who wish to contract marriage between themselves, and which previously necessarily had to be expressed. Likewise it is not necessary to say in the petition how many times intercourse was had with a blood relative of the bride, because from various acts of intercourse there arises one affinity; nevertheless intercourse had with various blood relatives of the bride must be expressed, because from these so many diverse affinities are contracted; and although these impediments are not diverse in species, nevertheless they are numerically distinct. This is manifest from the declaration of Benedict XIV, St. Alphonsus, 1138.

6. If someone labors under a double impediment, he must set forth both impediments together in the petition, if they are not disparate, but several in number in the same species, or of different lowest species connected with each other, for example, double consanguinity, both on the father's side and on the mother's side, double affinity, consanguinity and affinity, a vow of chastity and of entering Religion. And if one is public, the other occult, the dispensation of the former must be sought from the Sacred Dataria, but the dispensation of both together must then be obtained from the Sacred Penitentiary; since the former dispensation contains subreption, and therefore must be revalidated. Benedict XIV, C. *Pastor bonus*, § 41; Collectan. S. C. de P. F., n. 1470; Suarez, *De legibus*, l. 6, c. 24; Sanchez, l. 8, d. 23, n. 1; Lugo, *Responsa moralia*, l. 1, d. 43; St. Alphonsus, 1139.

7. If someone has previously obtained another dispensation and has used it, he must mention it when the matter concerns either the same vow of chastity, because the later dispensation is, as it were, an extension of the former; or the same crime, because crimes do not have remission of pardon unless committed once. Suarez, *De legibus*, l. 9, c. 23; Sanchez, l. 8, d. 22, nn. 2, 20. Likewise it must be manifested if the man abducted the woman, although he has already purged the raptus. Reg. 49, Cancell. Apost.; De Iustis, l. 2, c. 18, n. 30 seqq.

8. If a dispensation is to be granted for entering marriage because of illicit commerce, it must be expressed whether that commerce was had by one or by both under hope of obtaining the

dispensation more easily. If a dispensation is to be granted after marriage has been entered, it must be expressed whether the null marriage was contracted knowingly and in bad faith at least on one party's part, whether clandestinely, and whether afterward it was consummated; or, on the contrary, whether it was contracted ignorantly and in good faith at least on one party's part, whether with the banns neglected, and whether afterward it was again consummated after the nullity was known; whether these things were done under hope of obtaining dispensation more easily. Trent, sess. 24, c. 5, *De reformatione matrimonii*; Paul IV, C. *Ab ea ipsa die*; Clementina un., *De consanguinitate*; S. C. de P. F., May 9, 1877. Sanchez, l. 8, d. 25, n. 21; l. 3, d. 42, n. 7; Schmalzgrueber, l. 4, t. 3, n. 85.

9. If revalidation is sought of a null dispensation because of an occult defect of subreption in the second and third degrees, or the second and first degrees, it will have to be expressed whether the dispensation was dispatched in forma pauperum. Benedict XIV, C. *Pastor bonus*, § 41. St. Alphonsus, 1131 seqq.; E. M.

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1039. **Note:** 1. In the case of a doubtful dispensation, it is to be considered valid; because in doubt one must stand for the validity of the act. St. Alphonsus, 1133.

1040. If the motive cause of the dispensation ceases, for example, if the offspring to be legitimated has died before the dispensation is dispatched, or before it is made by the bishop or by another to whom it was committed by the Pontiff, the dispensation is invalid. St. Alphonsus, 1132.

1041. If the motive cause ceases after the dispensation has already been dispatched and communicated to the petitioners by the delegate, the dispensation is valid, even if that cause ceases before the celebration of marriage, because through the dispensation the impediment has already been removed. St. Alphonsus, ibid.

1042. **Does one who, after obtaining a dispensation from the impediment of affinity from illicit intercourse, for example, with a blood relative of the bride, again sins with the same woman before marriage need a new dispensation?** Reply: Negatively, if the dispensation has not yet been put into execution by the delegate, because such dispensations do not take effect from the day of dispatch, but from the time of execution.

Indeed negatively also even if the dispensation has been put into execution. The reason is that the impediment of affinity has already been removed by the dispensation as regards the effect of contracting marriage.

But if, after marriage has been contracted, he again sins with the same blood relative of his wife, he is deprived of the right of petitioning for the debt, because the dispensation, according to the style of the Curia, was granted for the effect of contracting marriage, not for sinning more freely.

But he would need a new dispensation if he sinned with another blood relative of the bride before marriage, even after the dispensation had been dispatched, because a new affinity would be contracted. St. Alphonsus, 1140; E. M.

1041. **From whom must dispensation from diriment impediments be sought?** It must per se be sought from the Roman Pontiff alone, since this faculty properly belongs to him alone. The Supreme Pontiff dispenses through the Apostolic Dataria especially as regards the external forum, and therefore from impediments public by their nature, for example, of consanguinity, affinity from marriage, spiritual relationship, etc. But he dispenses through the Sacred Penitentiary in the internal forum, and in occult impediments as regards marriages to be entered and entered already, and likewise also as regards the external forum, in public impediments, for any reasonable cause as regards the poor. Finally he dispenses through the Holy Office in impediments from public delict, disparity of cult, and mixed religion; and through the S. C. de P. F. for places subject to that Congregation. Trent, sess. 24, c. 3; Innocent XII, C. *Romanus Pontifex*, April 3, 1692; Benedict XIV, C. *Pastor bonus*, April 13, 1744; A. S. S., vol. 7, p. 423 seqq.; St. Alphonsus, 1118, 1144.

A dispensation from the Dataria must always be sought through the bishop. But a dispensation from the Penitentiary can be sought immediately by the petitioner, or by another in his place. Yet more safely and easily this also is requested through the bishop, with the name of the petitioner kept silent. No determined formula is necessarily to be used.

It is prohibited under penalty of nullity, after one Congregation has been approached to obtain a dispensation, to approach another; and, after a dispensation has been denied by the Apostolic See, to seek it from the Ordinary on the same cause alleged. Zitelli, *De dispensationibus matrimonialibus*, Rome, 1887, p. 70.

From S. O., August 11, 1887, all matrimonial dispensations for the external forum are committed either to the Ordinary of the petitioners or to the Ordinary of the place. For the forum of conscience, the letters are directed to a confessor from among those approved by the Ordinary, to be chosen or designated by the petitioners. Zitelli, *De dispensationibus matrimonialibus*, p. 100; E. M.

1042. **Note:** The Dataria dispenses either in the common form, namely by requiring the established tax, which is usually called the composition, because it is variously defined according to the various impediments and petitioners; or in forma pauperum, namely when it dispenses gratis. But the Sacred Penitentiary now dispenses with only a modest tax imposed, now entirely gratis.

"The truly poor are considered none other than those who are so miserable that they live only by the labor of their hands and by industry ... Those also can rightly be called poor who ... possess goods in capital value of 300 scudi of Roman money, if they dwell on this side of the mountains; or, if beyond the mountains, of the value of 300 gold ducats of the Camera, reaching the sum of 525 scudi of the said money. But if they have goods up to the quantity of 1000 scudi, or respectively 1000 gold ducats of the Camera, the dispensation is nevertheless granted in forma pauperum, with an alms of four scudi paid for each hundred." S. C. de P. F., June 7, 1869.

But in order that a dispensation be obtained in forma pauperum, it is necessary that the poverty be established by the testimony of the Ordinary. Instruction of Urban VIII, October 6, 1671; Collectan. S. C. de P. F., n. 1477; Reiffenstuel, l. 4, t. 21, appendix, nn. 398, 402; Schmalzgrueber, t. 16, n. 232 seqq.; A. S. S., vol. 1, pp. 383, 446.

1043. **Is a dispensation in forma pauperum valid when the petitioners are not poor?** It is certainly illicit, and gravely so, as is clear of itself; nevertheless it is valid if obtained from the Dataria, because, since poverty is not the motive cause of the dispensation, it labors under neither the vice of obreption nor of subreption. But the petitioners are still bound to pay it to the Apostolic Dataria, unless remission is obtained. Sacred Penitentiary, December 1, 1852.

But if it is obtained from the Sacred Penitentiary, the matter is controverted, and although it has been proposed several times to the Sacred Congregation of the Council, it has not yet been defined. Some affirm, because the Sacred Penitentiary dispenses in place of the Sacred Dataria, to which dispensations of this kind properly belong. Others deny, because the Sacred Penitentiary dispenses from a peculiar faculty granted by the Supreme Pontiff of dispensing in the external forum in all cases in which "true poverty of the petitioners concurs, to be proved by authentic attestation of the Ordinaries." Therefore it does not certainly have the intention of dispensing beyond the mandate received. A. S. S., vol. 7, p. 423; L. H. A., 87; E. M.

1044. **Can a dispensation from impediments also be sought from the bishop, at least sometimes?** It can be sought from the bishop if he has this faculty from a special indult and delegation of the Roman Pontiff. And then the bishop cannot exceed the limits of the mandate; otherwise he acts invalidly. S. C. C., April 26, 1873; A. S. S., vol. 7, p. 297. Cf. Lugo, *Responsa moralia*, l. 1, d. 43; Sanchez, l. 8, d. 2, nn. 27, 28; d. 23, n. 10; d. 24, n. 10.

Moreover bishops can dispense in several impediments by force of the quinquennial faculties. The same can also be done by approved confessors having a pagella of the Sacred Penitentiary. Cf. the respective formulae.

But if the spouses are of different dioceses, does the dispensation of one bishop suffice, or must it be obtained from both bishops, if each enjoys the special faculty of dispensing from an indult? This is controverted. Some affirm, and St. Alphonsus, 1142, calls this opinion probable, and the Sacred Penitentiary favors it, September 4, 1839; because if one of the spouses is made capable of contracting with the other, that other is at least indirectly made capable of contracting with the first. Others deny it, because the bishop of one does not have jurisdiction over the subject of another; and S. C. de P. F., June 21, 1828, favors this opinion as safer in practice.

It can likewise be sought from the bishop in occult impediments, in a most urgent case of necessity which does not admit delay in approaching the Roman Pontiff or his delegate, not even by letter: either in marriages to be contracted, if the celebration of marriage cannot be deferred without grave danger of infamy and scandal, cf. 955; or in marriages contracted already, if either separation cannot occur without grave harm, or dispensation cannot be deferred without danger of incontinence, provided that the marriage was not entered knowingly, that is, while at least one of the spouses was ignorant of the impediment, and the publications were not despised. C. *Ubi* 2, *De responsis impuberum*; Trent, sess. 24, c. 5, *De reformatione matrimonii*; St. Alphonsus, 611, 613, 1121 seqq.; Sanchez, l. 2, d. 40; De Iustis, l. 2, c. 2, n. 182 seqq.; Reiffenstuel, l. 4, t. 21, appendix, nn. 65, 509.

Indeed it can also be sought in public impediments as regards the sick constituted in the gravest danger of death, when there is not time to recur to the Holy See, according to the power given to local Ordinaries by Leo XIII through the decree of the Holy Office, February 20, 1888. Cf. 1015.

A dispensation can also be sought from the bishop in doubtful impediments, in which, although it is then not necessary where there is a doubt of law, because a doubtful law does not oblige, nevertheless the dispensation removes the impediment, if it truly exists. Therefore, if afterward it appears that there truly was an impediment, there is no need of a new dispensation; otherwise the dispensation would do nothing at all. Benedict XIV, *De synodo*, l. 9, c. 2; Corradus, l. 8, c. 4, n. 34 seqq.; St. Alphonsus, 613, 1103, 1121-1125, 1129, *De privilegiis*, 54 seqq.; E. M.

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1045. **How is a dispensation to be expedited?** A dispensation is usually granted in commissary form, namely, the dispensation is not given directly, but the power of dispensing is committed to the Ordinary, in the external forum, Trent, sess. 22, c. 5, *De reformatione*, or to a confessor approved by the bishop, in the internal forum.

As regards a dispensation of the Sacred Penitentiary, after absolution it should be done with these words, or similar ones: By apostolic authority I dispense with you over the impediment N., which you have incurred, so that you may be able to enter marriage (or perfect the marriage entered), and I render legitimate the offspring received (or to be received). In the name of the Father, etc. But if the dispensation is from a vow of chastity, it is said: Moreover, by dispensing I commute for you the vow of chastity which you emitted, so that you may be able to contract marriage and use it, into the works which I have prescribed to you. In the name, etc. No formula is prescribed under penalty of nullity, indeed not even under precept; for none is found in the Roman Ritual.

If the confessor had omitted to legitimate the offspring, he could repair this omission; for then he would continue the cause committed to himself and not yet completed.

If the impediment is known to both contracting parties and is common, each must be dispensed by his or her respective confessor. Sacred Penitentiary, November 15, 1748. The same rescript can serve two confessors, and it must be torn up by the one who later executes it with his penitent. But if the impediment is known to only one, one execution is required.

As regards a dispensation of the Dataria:

1. The delegate for dispensing must inquire into the truth of the causes; yet more probably this information is not required for validity. For from S. O., August 28, 1885, in the present place of the words, *if through information you find that the prayers rest on truth*, which formerly were put in the rescript, these words are put: *if the things set forth are true*. Cf. vol. 1, n. 285. It suffices that the parish priest or another be delegated for verification of the causes; but "the dispensation and legitimation of offspring can be effected only by the executor himself." Sacred Penitentiary, April 27, 1886.
2. He must declare before the parties and witnesses that the impediment of marriage is removed, and command that the attestation of this dispensation be written in the diocesan registers.
3. He must transmit the rescript of the Dataria to the parish priest of either party with permission that he may be able to assist at the marriage.

4. It is altogether expedient to give the dispensation in express words, *We dispense*, in writing, and by *Apostolic Authority*. If it has been given, and the spouses, having changed their plan, have entered another marriage, once they are widowed they can still use it.

5. Although no censure is foreseen to have been contracted by the petitioners, nevertheless the Ordinary or confessor who by force of an indult grants a matrimonial dispensation "laudably first gives absolution from censures." Sacred Penitentiary, July 2, 1891. But if the petitioners are bound by a censure, absolution must altogether be placed first for the validity of the dispensation. S. O., December 18, 1872; A. S. S., vol. 26, p. 517. De Iustis, l. 1, c. 6; St. Alphonsus, l. 1, n. 197, at end, 1131, 1146; Benedict XIV, *Instructio* 87, n. 34; E. M.

If the dispensation is granted in gracious form, that is, if the Supreme Pontiff directly dispenses and to the delegate there is committed the mere execution of communicating the dispensation, the delegate can execute the Apostolic Letters if meanwhile the Supreme Pontiff dies, because it is a favor already made. But if the dispensation is granted in commissary form, and meanwhile the Supreme Pontiff dies, the delegate can still execute the Apostolic Letters if he is a necessary executor, for it is also a favor already made. For then the Supreme Pontiff, assenting to the petition, gives the delegate a mandate of dispensing, or of executing the dispensation. For then he himself does not dispense, but after knowledge of certain conditions the delegate executes the dispensation of the Holy See, which before was conditioned and afterward, remaining the same, then becomes absolute.

But he cannot execute them if he is a voluntary executor, for it is a favor to be made. For then the Supreme Pontiff simply confers on him the power of dispensing; and therefore the dispensation is not really and directly had except from the delegate, to whom such power has been given, and when it is dispensed by the delegate. Cf. vol. 1, nn. 251, 255, 283.

1046. **What are the chief clauses which are usually added in dispensations?** First it must be noted that among the various clauses contained in an apostolic rescript, some contain true conditions pertaining to the validity of the dispensation, while others contain only precepts and admonitions pertaining only to the liceity of the dispensation.

The chief clauses, moreover, are the following:

1. *If it is so; if the prayers rest on truth.* This pertains only to those things which would render the dispensation subreptitious or obreptitious. But as regards the confessor, faith must be given to the penitent, unless he certainly knows the opposite from knowledge outside confession.

2. *After sacramental confession has first been heard.* This is required for validly dispensing, although the penitent may already have confessed earlier to another. It suffices that only one of the spouses has confessed, unless something else is clearly expressed, because an unfair condition must not be inflicted on one through the other. *De regulis iuris* in the Sixth. The confessor can execute a rescript of the Sacred Penitentiary for the internal forum only in the tribunal of penance, after the penitent's confession has been heard. But the execution is valid, even if the penitent confesses invalidly and sacrilegiously. The dispensation must be manifested before absolution, and can be granted even if absolution is deferred. Sacred Penitentiary, May 19, 1834. And the same Sacred Penitentiary, January 4, 1839, declared: "In executing rescripts of

the Sacred Penitentiary, care indeed must be taken that the penitent be disposed for absolution of sins; nevertheless absolutions from censures will be valid, provided that at least an accusation, or confession of sins, which is sacramental, has preceded."

3. *The occasion of sinning having first been removed*, namely the proximate and voluntary occasion; but if it is necessary, it suffices that it be removed in the mind, by rendering it remote from proximate through due means.

4. *Scandal having been removed, insofar as it is present*, especially through separation, if this can be done. "Separation is to be preferred to other modes of repairing scandal; if this cannot be done, scandal must be repaired, but the mode of repairing scandal is left to the prudent judgment and conscience of the Ordinary, according to the exigencies of each case." Sacred Penitentiary, April 12, 1889.

5. *Provided that the impediment is occult*, namely, if it is known in a town to only five or six persons, in a city to only seven or eight, and from the circumstances it is prudently conjectured that it will not be divulged. St. Alphonsus, l. 1, appendix 2, n. 33; l. 6, n. 593, 1111; l. 7, nn. 76, 78, 141; D'Annibale, ed. 3, p. 1, n. 242.

6. *With grave and lasting salutary penance; with grave salutary penance.* "In determining beforehand the quality, gravity, duration, etc. of the penance, which are left to the judgment of the one dispensing or of the delegate in conformity with law, the limits neither of severity nor of humanity are to be exceeded, and account must be taken of the condition, age, infirmity, office, sex, etc. of those on whom the penalty is ordered to be imposed." Sacred Penitentiary, April 8, 1890. Therefore a penance must be imposed, and it must be accepted and fulfilled under grave obligation. De Iustis, l. 1, c. 7, n. 137 seqq.; Reiffenstuel, l. 4, t. 21, n. 409.

7. *Some alms having been distributed, according to the judgment of the Ordinary.* "Non-observance of this clause, which is usually added in dispensations, does not bring with it the nullity of the dispensation." Sacred Penitentiary, June 10, 1876.

8. *The party having been informed about the nullity of the prior marriage*; yet in such a way that the delict of the petitioner must not be manifested. But this clause imports two things, namely: 1. that the other party renew consent; 2. that consequently the other party be informed of the nullity of the prior consent.

9. *And insofar as this notification cannot be made without grave danger, consent having been renewed according to the rules handed down by approved authors.* Various modes are handed down. These are the chief ones assigned by various authors:

10. If the spouse simply says: "Our marriage is null because of some impediment," or: "The confessor told me that it is null ... and therefore let us renew consent."

11. If the spouse says: "I did not have true consent when I contracted marriage; I now wish to give new consent; do you also wish to give it?" This mode is commonly admitted by authors, and can rightly be used without lying, since null consent is not true consent; and otherwise the spouse ignorant of the impediment thus sufficiently knows the nullity of the marriage.

12. If he says: "I am troubled by scruples about the validity of our marriage, and therefore let us renew consent." This mode can be admitted according to the more common opinion with St.

Alphonsus, 1117. For it suffices that the other party posit consent independent of the prior consent; but for this it is enough that he or she prudently doubt the validity of the first marriage.

13. Various other modes also are offered by several theologians, for example, if a spouse says to the coparty: "Tell me, please, if our marriage were null, would you not wish to contract again?" Or: "If you had not married me, would you not wish to marry now?" etc. But these modes are deservedly rejected, because thus it is uncertain whether the other party intends to repeat consent into the preceding marriage, or to consent into a new one. St. Alphonsus, 1117.

14. *The present letters having been torn up, under penalty of excommunication latae sententiae.* This tearing up must be done immediately, but understand morally, namely at least within three days after the dispensation has been executed. But if the clause of tearing up is not added in the letters, as it is not added when the marriage has not yet been contracted, then there is no obligation to tear them up; but a dispensation of this kind must be carefully noted by the parish priest in a book which cannot be inspected by anyone else, so that he, namely, may be able to provide proof of the dispensation obtained when needed. St. Alphonsus, 1143; Schmalzgrueber, l. 4, t. 16, n. 242 seqq.; Benedict XIV, *Notificatio* 87; A. S. S., vol. 28, p. 512; E. M.

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1047. **What is the revalidation of marriage?** It is to render valid what was invalid because of an essential defect, by removing the aforesaid defect. But this defect can come from consent, from form, or from the incapacity of the persons for contracting.

1048. **What about revalidation because of a defect of consent?** Consent remains habitually, and here also virtually, as long as, once rightly posited, it has not been revoked.

Therefore: 1. If one of the contracting parties did not give consent, he or she must altogether give it, even with the other party unaware, and this alone suffices; for otherwise there will never be a marriage, nor can consent be supplied by another way and mode. Consent of this kind is signified by cohabitation and other conjugal acts. And thus both things are had: interior consent and its exterior signification, which does not necessarily consist in words. Nor indeed is anything else per se desired in the case for the validity of marriage. Yet the one who renews consent must know that the prior consent was null and that there was no marriage, because otherwise he or she in reality does not consent, since nothing is willed unless first known. And thus consent must altogether be given if it was never present, or was only simulated, erroneous, or coerced, after error and fear have ceased. This is valid if the defect is occult, although the parish priest and witnesses were conscious of the impediment. The reason is that the assistance of parish priest and witnesses is required only so that they may testify to the celebration of marriage, so that it be prevented that the spouses contract another marriage; not so that they may testify to the validity of the marriage. But if the defect was public, then the marriage must again be contracted before parish priest and witnesses, where Trent flourishes; otherwise where it does not flourish. Nor is it per se necessary that the other contracting party also renew consent. St. Alphonsus, 1114; A. S. S., vol. 11, p. 346 seq.

2. If the consent of both contracting parties was lacking, it is necessary that both consent. But is it necessary to posit the consent mutually, or does it suffice that it be posited separately? This is controverted. Some hold that it suffices if it is posited separately, because once the consent of one has been posited, the consent of the other can accede to it. Others say it must be posited mutually, because otherwise the contract is lacking. "It is certain," says St. Alphonsus, 1114, "that in the contract of marriage physical simultaneity of the consents of the spouses is not required, but moral simultaneity suffices, namely if the consent of one morally perseveres while the consent of the other is posited." And it must indeed be renewed again before parish priest and witnesses if the aforesaid defect was public; otherwise, if occult, as in the preceding case.

3. But if the defect in each preceding case, although occult, is such that it must be dispensed in the external forum and can be proved, it is altogether necessary that the marriage be secretly revalidated before parish priest and witnesses; for otherwise, if perhaps the impediment became manifest, the spouses could institute divorce. C. *Insuper* 4, *Qui matrimonium accusare possunt*; C. *Proposuit* 1, *De eo qui duxit*; C. *Ad id* 21, *De sponsalibus*; Sanchez, l. 2, d. 32; St. Alphonsus, 1109-1114; St. Thomas, Suppl., q. 47, a. 4, ad 2.

4. **What about revalidation because of defect of form?** It is certain that a marriage invalid by reason of clandestinity must be entered before parish priest and witnesses according to the law of Trent, from which dispensation is rarely given.

If both spouses do not refuse to present themselves before the parish priest and witnesses, the marriage must be contracted publicly or secretly, according as its nullity is public or occult. The reason is that in the first case scandal must be removed; in the other it must be forestalled, and the reputation of the spouses kept intact.

If one party or both refuse to go to the Church, they are to be joined in their own house or another place chosen by them, provided that grave witnesses are present, by whose help the convalidation of this marriage can be made public, if this is necessary for taking away scandal, namely if the invalidity of the prior union is notorious.

If one refuses to contract before the parish priest, and the refusal arises from ignorance or some error against the laws or doctrine of the Church concerning impediments invalidating marriage, the one refusing should be instructed with due prudence and in charity. And insofar as he or she still refuses to convalidate the marriage in the face of the Church, then pains must be taken that he or she constitute a special proxy, who in that person's name may contract marriage in the customary manner; or at least that, with express consent de praesenti through a letter directed to the proper parish priest or to another priest having the permission of the Ordinary or parish priest, the marriage be renewed.

If the indisposed party does not wish to contract even through a proxy, one can have recourse to dispensation in the root of the marriage, or to the sanation of marriage in the root, so that at least the salvation of the soul of the innocent party, the legitimacy of offspring, and the tranquillity of families may be altogether provided for, and as soon as possible provision may also be made for the salvation of the soul of the one refusing. Instruction of Cardinal Caprara, Legate *a latere* in France.

1050. **What about revalidation because of the defect of incapacity of the person?** If a marriage must be revalidated because of incapacity of the person, by reason of some diriment impediment which is dispensed, dispensation must certainly be sought from the same impediment.

If each spouse is conscious of the impediment, each is bound to renew consent, once dispensation has been obtained for revalidating the marriage. The reason is that knowledge of the nullity of the marriage, because of the known diriment impediment, had easily excluded true consent in the preceding contract of marriage. Cf. 1033.

If only one party knew the impediment, that party is bound to renew his or her consent, at least alone and separately. This follows from what has just been said.

The party ignorant of the impediment would not necessarily have to renew consent for the validity of the marriage, if the impediment concerned only the other party. The reason is that that party's consent was valid from the beginning, and therefore perseveres; therefore renewal of consent by the incapable party would suffice. Hence, if a faithful man had married an unbaptized woman who was ignorant of the impediment, it would suffice, once unbelief has ceased or a dispensation has been obtained, that the faithful man renew consent; because the consent of the unbeliever was valid, since the Church could not impress personal incapacity upon her. St. Alphonsus, 1114; St. Thomas, Suppl., q. 47, a. 4, ad 2.

But must consent be renewed also by the party ignorant of the impediment, when the impediment touches both? There are two opinions.

The first opinion affirms. The reason is that the impediment removes the efficacy of consent from the beginning; therefore it remains inefficacious, and consequently can produce no effect, since it perseveres in the same way in which it was given. But a simple dispensation does not heal the vice which preceded, but only renders the parties capable of consenting in the future.

The second opinion denies. The reason is that the prior consent, although it lacked its effect because of an impediment added by positive law, nevertheless by natural law was valid, since it was given by a person capable by natural law toward a person capable by natural law of contracting. Therefore, once the impediment is removed, the prior consent suffices, which virtually perseveres in effect through conjugal intercourse, cohabitation, or through other external signs. Therefore, with the internal consent of the spouse conscious of the impediment acceding, expressed at least through similar external signs, the consent of both is united, and the marriage is convalidated.

But practically consent must altogether be renewed because of the clause which is contained in a simple dispensation: *the other party having been informed of the nullity of the prior consent*, which clause contains not an admonition, but more probably a condition. St. Alphonsus, 1115, 1116, 1117, 895, 1145; A. S. S., vol. 26, p. 421 seq.

But consent must be renewed publicly before parish priest and witnesses if the impediment is public; privately, however, if it is occult. The reason is that otherwise the marriage could not be sufficiently proved before the Church; and in the first case scandal must be removed, but in the other scandal and the defamation of the parties must be prevented. S. C. C., June 8, 1610; Sacred Penitentiary; Ferraris, v. *Matrimonium*, a. 8, n. 9; St. Alphonsus, 1899. Cf. 1048.

If there is danger that the other, knowing the nullity of the marriage, may be unwilling to renew consent; or, when both spouses are ignorant of the impediment, the same danger is present, and there would be other grave inconveniences of defamation, then the Apostolic See must be approached so that it may dispense from the aforesaid condition of renewing consent and grant the dispensation which is called in the root. Rising up to the origin, or root, of the marriage, it both renders the person capable of contracting and heals the very vice of the consent given at the beginning. For the root of marriage is consent, and the root which is healed is consent into marriage naturally valid; and therefore the marriage begins from now to be valid. Furthermore the marriage itself is healed, as regards effects and as regards legitimation of offspring, from then, that is, as though it had been valid from the beginning. Namely, in such a case that condition of renewing consent is relaxed; once that is removed, and the incapacity of the person is also removed through dispensation, that consent, valid by natural law, exerts its moral force, and the marriage is perfected.

But, as is clear, it is necessary that consent into marriage truly was present and perseveres, and that marriage truly was contracted, and in good faith by both or at least by one party, and that it had the appearance of marriage and still retains it. Therefore this dispensation is applied even when one or both parties are ignorant of it.

Dispensation in the root is to be executed in the same way as a simple dispensation, adding in the formula the words *in the root*. Thus, for example: "I, by apostolic authority granted to me, heal and consolidate in its root the marriage contracted by you with N., and declare legitimate the offspring received and to be received, in the name of the Father, and of the Son, and of the Holy Spirit." But no formula is found in the Roman Ritual. Sanchez, l. 2, dd. 35, 36, 37; l. 8, d. 7; Benedict XIV, C. *Etsi*, *Notificatio* 68, 80, 87; *De synodo*, l. 13, c. 21; St. Alphonsus, 1109, 1115 seqq.; E. M.

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1051. **Is the use of marriage licit and owed?** Reply: Affirmatively. And this is of faith from 1 Cor. 7:3: "Let the husband render the debt to the wife; and likewise the wife to the husband." The reason is clear from the very nature of the contract of marriage, which the Apostle himself then expresses in the same place. Owed, that is, owed mutually, if namely it is at least tacitly petitioned, because they are not per se necessarily bound to use their own right; but only sometimes per accidens, for example, to avert the danger of incontinence threatening the spouse. Owed, and therefore after the two-month period, and if the coparty has not lost the right of petitioning through adultery or through incest. St. Alphonsus, 900, 938; St. Thomas, Suppl., q. 44, aa. 5, 6.

1052. **You will resolve:** 1. Spouses are bound to cohabitation, nor can one be absent for a longer time without the consent of the other or without necessity; for this obligation follows from the very obligation of rendering the debt. Just causes of going away for a long time are the public good, the family to be supported or protected, harm from enemies to be avoided, etc. Then a husband who must remain elsewhere for a long time ought to lead his wife there, if he conveniently can, so that she may cohabit with him. C. *Pervenit*, *De conversione leprosorum*; St. Thomas, Suppl., q. 64, a. 6, ad 1; Quodl. 4, a. 11. Cf. vol. 1, n. 675.

1053. A spouse gravely sins by denying the debt whenever there is danger of incontinence or grave distress in the other party. Likewise, if he or she denies it to the other seriously petitioning. But it is otherwise if the coparty kindly remits it, or petitions weakly, or immoderately, for example, after the third or fourth time on the same night; nor if he or she defers it for a short time, namely until night, or if from night defers it to the morning time, with the danger of incontinence always excluded.

1054. Likewise a man or woman sins gravely if, against the will of the coparty, he or she renders himself or herself impotent, even by means otherwise licit. St. Thomas, Suppl., q. 64, a. 1, ad 3; a. 6, ad 4.

1055. Spouses indeed can for a grave cause do something from which the pouring out of seed follows per accidens; nevertheless they sin if in the use of marriage they do something by which, per se, either the seed is poured outside the vessel, or, once received, is rejected. Hence artificial fecundation of the woman is illicit. Holy Office, March 24, 1897. Artificial fecundation, namely, by which art is substituted for nature, not by which nature is merely aided by art. Likewise they sin if they do something by which generation is per se impeded.

1056. "It is certain that it is illicit to have intercourse for pleasure alone, as is clear from the ninth proposition condemned by Innocent XI ... Yet it is common among all that this is not mortal, but nevertheless a venial sin ... But there will be no sin if a spouse principally intends procreation of offspring and uses pleasure, moderately intending it, so that he or she may excite himself or herself to intercourse; just as likewise one by no means sins who intends moderate delight in eating, for providing suitable nourishment of the body." St. Alphonsus, 912, 938, 940, 942, 954; Sanchez, l. 9, d. 11; E. M.

1057. **Is it licit for spouses to have intercourse if because of old age, or another disposition, it commonly happens that the seed is poured out outside the vessel?** "Bossius, etc., probably affirm, provided there is probable hope of sowing within the vessel, because whenever such hope is present, they have the right to intercourse; and if the seed is poured out, this happens per accidens." St. Alphonsus, 954.

1058. **Is the use of marriage licit for sterile persons?** Reply: Affirmatively, both because no positive law is present prohibiting it, and because sterile persons are per se suitable for completing the conjugal act. But if no generation follows from it, this is per accidens and is from nature, wholly independent of that act rightly completed, as it is from the spouses. Besides generation, there are also other honorable ends of the conjugal act. E. M.

1059. **Is the husband ever bound to petition?** "Speaking per se, he is not bound to petition; but he is bound per accidens, namely if the wife tacitly demands, for instance if she shows some indication by which she signifies a tacit petition; because in women, also because of innate modesty, such signs are held as a true petition. Thus commonly ... from St. Thomas, Suppl., q. 64, a. 5, ad 2. Conversely Sanchez rightly says, etc., from the same St. Thomas, 4, d. 32, q. un., a. 3, ad 2, that the woman is not bound to render to the husband unless he expressly petitions; for since men are not ashamed to demand expressly, wives can well presume that husbands who do not petition expressly do not wish to oblige them to petition." St. Alphonsus, 928. This

certainly is likewise valid speaking per se and ordinarily. St. Alphonsus, ibid.; St. Thomas, Suppl., q. 64, a. 5, ad 2; a. 6, ad 3.

1060. **Is the wife ever bound to petition the debt?** "It is certain, 1. that ordinarily she is not bound ... because this is notably immodest for women. It is certain, 2. in danger of incontinence, that, when the other spouse is in danger of incontinence, both husband and wife are bound to petition in order to free the other from danger ... 3. But a doubt is made whether the wife is then bound to petition from charity or from justice. The first opinion ... says that she is bound from justice. The reason is that then it is rather a rendering than a petition of the debt ... And St. Thomas seems to adhere to this opinion, Suppl., q. 49, a. 5, ad 2 ... The second opinion, which seems more probable ... says that she is bound only from charity. The reason is that where there is no express or tacit petition of the other spouse, there is no obligation of justice to render ... Therefore this kind of petition is not called absolutely a rendering by St. Thomas, but a certain rendering of the debt ... From this opinion it is inferred that a spouse, since in that case he or she is bound to petition not from justice but only from charity, is not bound to petition with great inconvenience; hence probably the wife is then excused from petitioning if in this she would have to undergo great shame." St. Alphonsus, 929. Cf. St. Thomas, Suppl., q. 64, a. 5, ad 2; a. 6, ad 3.

1061. **If the husband withdraws after his own emission, but before the emission of the woman, can she immediately excite herself by touches so that she may emit?** "The author added to Wigandt, etc., deny it. The reason is that the seed of the woman is not necessary for generation; likewise because that effusion of the woman, as separated, does not become one flesh with the husband. But more commonly Wigandt, Lessius, etc., affirm it. The reason is both because the emission of the woman pertains to completing the conjugal act, which consists in the emission of each spouse; hence just as a wife can prepare herself for intercourse by touches, so also she can perfect the act of intercourse ... and because, as several think, the emission of the woman is necessary, or at least contributes much to generation, for nothing is done by nature in vain. But all concede to wives who are of a colder nature that they can excite themselves by touches before intercourse, so that they may emit in the marital congress to be had immediately." St. Alphonsus, 919. "It is not necessary," says Sanchez, l. 9, d. 17, n. 9, "that both spouses emit at the same time."

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1058. **Do spouses sin mortally if, once intercourse has begun, they restrain emission?** "If both spouses consent in this, and there is no danger of emitting outside the vessel, this, speaking per se, is not mortal; for that penetration of the female vessel is then regarded as a kind of touching of the shameful parts, which is permitted between spouses, or at least is not mortal, with danger of pollution excluded. Thus commonly ... If both consent: for if one withdraws without the other's consent, he certainly sins gravely ... Speaking per se: for Sanchez wisely warns that this is ordinarily mortal, because ordinarily from such withdrawal there is danger of pouring out seed, unless the spouses have experienced the opposite; in which case, nevertheless, I think they can in no way be excused at least from venial sin ...

But if the woman has already emitted, or is in probable danger of emitting, the man indeed cannot deliberately withdraw from emission without grave fault, because then he himself is the cause that the seed of the wife is wasted ... But if the man has already emitted, a doubt is made whether the woman sins mortally if she withdraws from emission. The first opinion affirms ... The reason is that, as they say, the seed of the woman also actively concurs toward generation ... at least according to all, the seed of the woman greatly contributes to the making of offspring, since at least for this it was instituted by nature. The second and more common opinion denies ... These rely on the contrary foundation, namely that the seed of the woman is not necessary for generation ... Nor does it stand in the way ... that the seed of the woman contributes to the perfection of offspring; for they respond that spouses are not bound to the more fitting mode of generating, but it is enough if they do not obstruct generation." St. Alphonsus, 918, 954; E. M.

1059. **Does a man sin mortally by beginning intercourse in the preposterous vessel, so that afterward he may consummate it in the due vessel?** "Commonly and more truly they affirm ... The reason is that intercourse of this kind, even without emission, is true sodomy, although not consummated; just as intercourse itself in the natural vessel of another woman is true fornication although emission is not present." St. Alphonsus, 916. The same holy Doctor affirms in the same place concerning a simple touch, "because at least such a touch cannot morally be done without sodomitical affection."

1060. **Is it licit in the conjugal act to think of another person and take delight concerning that person?** "Sanchez and Sporer excuse from mortal sin the spouse who would excite himself or herself to intercourse by delighting in the beauty of another person, but without base affection; yet they deservedly say that this is very dangerous and not to be permitted. Nor do I think it is to be permitted to excite oneself to intercourse by looking at images of the other sex; especially if they were sacred, which La-Croix and Sporer rightly say is mortal because of grave irreverence.

But is it licit for a husband to take delight in another's intercourse, namely had by others, thought of, so that he may excite himself to intercourse with his wife? On the one hand it seems it must be denied, since the object in which he takes delight is per se base. On the other it does not seem that such a spouse is to be condemned ... But that ... he, the husband, should take delight in intercourse thought of between himself and another woman, I say must altogether be rejected, since such delight is concerning an intrinsically evil object and wholly forbidden to the spouse himself." St. Alphonsus, 913, 914.

1061. **Is it licit to petition with danger to health, namely if either spouse labors under leprosy, venereal disease, phthisis, or another contagious disease?** "Speaking per se, it is not licit, since no one is master of his own life or health. Nevertheless Busembaum, etc., probably say that if the disease were long-lasting and not proximately tending to death, namely if it is not accustomed in a short time and easily to bring death ... then it will not be illicit for the healthy person to petition, if a just cause is present ... because otherwise it would be very burdensome to abstain so long from the use of marriage, which scarcely could exist without danger of incontinence.

Yet it must be noted that a spouse infected with venereal disease, or a similar contagious disease, will not be able to petition from the other who is unaware, unless he manifests his vice to the other, and by manifesting it the other can meet the disease by remedies; indeed neither will he be able to render, unless the healthy one has been informed ... But for the rest he is not bound to manifest, because he is not bound to provide the conjugal debt with so great detriment to his reputation. For in all contracts a most grave inconvenience in payment excuses from rendering the debt." St. Alphonsus, 909, 910, 950.

"This is the natural order, that something first be perfected in itself, and afterward communicate to another from its perfection; and this is also the order of charity, which perfects nature. And therefore since the wife does not have power over the husband except as to the generative power, but not as to those things which are ordered to the preservation of the individual, the husband is bound to render the debt to the wife in those things which pertain to generation of offspring, yet with the safety of the person first preserved." St. Thomas, Suppl., q. 64, a. 1. C. *Quoniam*, *De coniugio leprosorum*.

1062. **You will resolve:** 1. "It is common that the wife is not bound to render the debt if she has experienced that she cannot give birth without probable danger of death, because payment of the debt does not oblige with so great a detriment." St. Alphonsus, 953.

1063. Nor is a spouse bound to render if he or she can reasonably fear harm or grave danger to health, because spouses are not considered to have obliged themselves to render the debt with so great an inconvenience. St. Thomas, Suppl., q. 64, a. 6, ad 4. The conjugal act in time of sickness, at least for the most part, is illicit neither under grave nor under light fault, because frequently no harm comes from it to the spouses; but the exertion which accompanies the act, speaking at least commonly, can scarcely influence the sickness much. Yet because of notable weakness of the body those laboring under a strong fever or another grave illness are excused from rendering the debt.

1064. The wife is not excused from rendering the debt because of ordinary inconveniences of childbirth, pregnancy, or nursing, nor even because of grave pains but short in time, nor because of long-lasting but moderate pains, for example of the head for several months after childbirth, nor because of health weakened somewhat; because all these are annexed to the matrimonial condition. It is otherwise, however, if danger of life or of a grave disease from the judgment of a truly prudent physician should have to be feared. St. Alphonsus, 952.

1065. **Can and must a spouse render when harm to offspring to be born is feared?** Commonly and more truly they affirm with St. Thomas, 4, d. 32, q. un., a. 1, ad 4. The reason is assigned by St. Thomas: "The wife is bound to render the debt to a leprous husband, and although the offspring would be generated infirm, nevertheless it is better for it to be so than not to be at all." St. Alphonsus, 951.

What if the mother has experienced giving birth to dead children? In this case Laymann says that the wife will well be able to render and even to petition, because that death of the fetus happens per accidens. Yet Bossius and others hold that she can neither render nor petition, because from the death of the offspring the mother is exposed to great danger of life. Therefore, with danger of this kind excluded, it does not appear per se illicit to render and petition, although a spouse could be excused from rendering by this reason. And if danger of incontinence were present, as in fact it is

present, they almost commonly agree that then it is licit to render and petition, and St. Alphonsus himself seems wholly to agree. St. Alphonsus, 952, 953.

1064. **Is it a just cause for denying the debt if more children are born than the spouses can support?** "The first opinion denies ... The reason is both because procreation of offspring pertains to the principal end of marriage ... and because it would expose the other to danger of incontinence ... But the second opinion affirms ... The reason is both because the multiplicity of future offspring would yield harm to the children already begotten, and because in all debts great difficulty excuses from payment." St. Alphonsus, 941. The first opinion is more pleasing to the holy Doctor because of the danger of incontinence, which in reality will scarcely not be present.

1065. **Is it licit to render to one illicitly petitioning with mortal sin?** Reply: Negatively, if the fault holds itself on the part of the act, for example, if the other petitions in a sacred or public place. For the act itself is then illicit both to the one petitioning and to the one rendering.

Affirmatively, if the fault holds itself only on the part of the person, for example, if the person petitions from a depraved end, because the act remains honorable in itself, and the other does not therefore lose the right to the act. Therefore, speaking per se, the spouse then both can and ought to render. Speaking per se: for if he or she can easily impede the other's sin, he or she is bound from charity to do this, or at least ought to admonish the other, if nevertheless he or she can do this without grave inconvenience, which they say for the most part is present. But if the coparty has lost the right through incest, then the other spouse can indeed per se render, but is not bound. St. Alphonsus, 944-946; l. 2, n. 61; St. Thomas, Suppl., q. 64, a. 6.

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1066. **Is it licit for a wife to render the debt or petition from a husband who wishes to emit outside the vessel after intercourse has begun?** "The first opinion affirms ... because when the woman renders or petitions she applies herself to a licit thing, nor ought she because of the malice of the husband be deprived of her right. The second opinion says that the wife can neither petition nor render unless there is a grave cause which excuses her in permitting the sin of the husband and in cooperating materially with that sin; otherwise she is bound from charity, since she can without grave inconvenience, to impede the sin of the husband.

Yet I think a distinction must be made. If it is a matter of rendering the debt, I say that the wife probably can and is bound to deny the debt if she can without grave inconvenience, because one who is going to abuse a thing owed to him does not have the right to claim that thing for himself. But it seems more probable that the wife not only can render but is even bound. The reason is that when the fault holds itself on the part of the person petitioning, since he himself has the right to intercourse, the other cannot without injustice deny the debt if she cannot by admonishing him turn him away from such fault; and then it is clear that the one rendering does not even materially cooperate with emission outside the vessel, but only with intercourse begun, which per se is altogether licit for each.

But if it is a matter of petitioning the debt, I say that the wife cannot petition unless there is a just and grave cause. For then she is truly bound from charity to impede the sin of the husband. But she will have a just cause of petitioning if she herself were in danger of incontinence, or if otherwise she would have to be deprived of her right of petitioning more than once or twice, with continual scruple whether there is grave inconvenience for her, or lest she then have to contain herself." St. Alphonsus, 947. Cf. l. 2, n. 53, par. *Si vero*; Sacred Penitentiary, November 16, 1816; February 1, 1823; June 8, 1842; E. M.

1067. **You will resolve:** 1. The sin of the husband in the preceding case is commonly called onanism. It takes its name from Onan, the second son of the patriarch Judah, who after his brother Her had died was compelled according to custom to marry his widow Tamar, so that he might raise up seed for his brother; but going in to the wife of his brother, he poured out his seed upon the ground, lest children be born in his brother's name. And therefore the Lord struck him, because he did a detestable thing. Gen. 38:9-10. Voluntary onanism is always a mortal sin, as being against nature; and therefore it can never be licit for spouses.

1068. A wife can be excused from sin if for a grave cause she renders the debt to an onanist husband, provided she does not inwardly assent to his sin, and outwardly shows her repugnance by serious admonitions or by other signs of displeasure.

1069. The wife does not sin by giving internal consent to the pleasure when she can permit the conjugal act to an onanist husband, provided she does not give assent to the sin of the husband. The reason is that since she by no means sins by permitting an act of this kind, neither does she sin by admitting the pleasure coming from it, although she foreknows that the husband will not perfect the intercourse; for that act is in itself honorable and licit for the woman, and it does not stand through her that it is not perfected in the due way.

1070. **Can a spouse prohibited from petitioning by reason of a vow, or of affinity, or of spiritual relationship contracted after marriage, sometimes licitly demand the debt?** "The doctors commonly admit this if there is danger of incontinence in the other spouse. Indeed they say that then he or she is bound to petition, because this obligation arises from the very institution of marriage. Likewise St. Thomas, 4, d. 38, q. 1, a. 3, q. 2, ad 4, etc., also commonly admit that the impeded spouse can petition if the other interpretatively petitions, namely when the woman, as St. Thomas says, is modest, and the man senses her will concerning the rendering of the debt. For then the impeded spouse can offer himself, because then it is rather rendering than petitioning." St. Alphonsus, 930.

Yet as regards a spouse who, beyond necessity, baptized his own offspring, the opinion which denies that he is prohibited from petitioning the debt is sufficiently probable, and several and grave doctors hold it, as the same holy Doctor says, 150. But as regards a vow, it can be directly or indirectly irritated by the spouse; indeed after marriage has been made, without the consent of the spouse whose liberty of petitioning is restricted, it is considered illicit.

1069. **Is it licit for an impeded spouse to petition if he himself is in danger of incontinence?** "Viguerius, etc., affirm, especially if he were impeded by reason of affinity or spiritual relationship, and a dispensation could not conveniently be had, and there would be danger in

delay, because ecclesiastical law does not oblige in so great a crisis. But Sanchez, etc., deny, because danger of incontinence is a just cause of dispensing, but not of having intercourse. But the first opinion, with respect to an impediment imposed by the Church, does not seem improbable to me, if truly dispensation cannot be obtained shortly and there is great danger in delay." St. Alphonsus, 930. On relationship, cf. 1068.

1070. **Is it licit for an excommunicated spouse, even one to be avoided, to petition the debt, and to petition from an excommunicated person, even one to be avoided?** "That it is licit for a spouse to petition from an excommunicated person is certain from C. *Quoniam multos* 103, cause 11, q. 3. But is it also licit for the excommunicated person to petition? ... Commonly and more truly they affirm ... The reason is that ecclesiastical law does not oblige with so great a danger, in which the excommunicated person certainly would be if he could not be separated from the other spouse, as in reality he cannot, and could not petition." St. Alphonsus, 931; C. *Inter alia, De sententia excommunicationis*.

1071. **Is a spouse bound to render the debt to one insane or drunk?** "Busembaum, etc., very commonly and more probably deny. The reason is that although such persons retain dominion, nevertheless they are incapable of the use of dominion ... But although there is no obligation of rendering to an insane or drunk spouse, nevertheless it is licit to render to such a spouse, as they commonly say, since the use of marriage is licit per se and offspring can be educated by the spouse of sound mind, provided there is no danger of scandal or abortion. Hence it is not licit to have intercourse with an insane and furious wife, unless she has experienced herself to be sterile." St. Alphonsus, 948.

1072. **Whether and how do spouses sin by having intercourse in an unnatural position?** "The natural position is that the woman is beneath and the man above; for this mode is more apt for the pouring out of the male seed and for reception into the female vessel for procreating offspring. But the unnatural position is if intercourse occurs otherwise, namely sitting, standing, from the side, or preposterously in the manner of beasts, or if the man is beneath and the woman above ... They commonly say that all these modes do not exceed venial fault. The reason is that, although some disorder is present ... change of position does not impede generation." St. Alphonsus, 917; St. Thomas, 4, d. 31, at the end in exposition of the letter. And, as the same St. Alphonsus and St. Thomas hold in the cited places, this is even done without any sin if it is done from a just cause; and on the contrary it is grave sin if it were established by experience that, with the natural position changed, the woman retained none of the seed.

1073. **Note:** The prudent confessor must beware lest he make questions about the various modes of coming together, which are not only useless, but also full of scandal. Hence, if the penitent raises a doubt about these things, it will be enough for the confessor to know whether completed pollution occurred outside the due vessel. If the penitent raises a doubt, or also furnishes occasion for doubting; for no one fails to see that questions of this kind, in so slippery a matter, unless manifest necessity is present, must never be made. St. Alphonsus, 917.

V. On the Use of Marriage

1074. **Is it licit for spouses to have intercourse during pregnancy?** "It is common that this is not mortal, unless there is danger of abortion ... St. Thomas, 4, d. 31, at the end in exposition of the letter ... Commonly such danger is not present ... And therefore spouses are not to be harassed with importunate questions ... But whether, with danger of abortion excluded, there is venial fault? St. Antoninus, etc., affirm. But Sanchez, etc., deny, because nowhere is this held to be per se forbidden ... In order that intercourse be licit in marriage, it suffices that the act per se be suitable for generation; but that generation itself does not occur has itself per accidens. For the rest, the opinion pleases me which Pontius, etc., hold, namely that intercourse with a pregnant woman cannot be excused from venial fault unless danger of incontinence or another honorable cause is present." St. Alphonsus, 924. Therefore the matter is at least of an uncertain obligation. But an honorable cause can scarcely ever be absent.

1075. **Is it illicit to have intercourse during the purification after childbirth?** "There are three opinions. The first says it is mortal from C. final, distinction 5. The second opinion says there is no sin ... Because, as they say, uncleanness of this kind is only material, not moral. The third opinion, more probable and more common ... says that it is venial, but not per se mortal. It is venial, because such intercourse contains some indecency. Hence, unless an honorable cause excuses, namely danger of incontinence or of discord, or another similar cause, it cannot be excused from all fault. But it is not mortal speaking per se, because such indecency does not seem so great that it would introduce mortal fault ... Per se: for sometimes it could be mortal, if from intercourse a grave disease or notable aggravation of disease threatened." St. Alphonsus, 926. But the disposition of C. final cited has either become obsolete, or is about fittingness, not precept. But even light fault is only an opinion. Yet this must be noted, that in the first two weeks it can repeatedly harm the woman, not lightly. Therefore account must be taken of probable harm.

1076. **Is it licit to petition the debt during lactation?** "They most commonly affirm ... The reason is that no prohibiting law exists." St. Alphonsus, 911.

1077. **Is it licit for spouses to have intercourse during menstruation?** "During an extraordinary flow it is certain that it is licit both to render and to petition ... from St. Thomas, 4, d. 32, q. un., a. 2, q. 2. But during the natural flow there are three opinions. The first condemns it as mortal, and the same St. Thomas holds this in the cited place, q. 3, ad 1 ... The second opinion says that it is free from all fault ... The reason is that today this is prohibited by no law ... Although there is easily danger at that time of frustrating the seed, nevertheless for rendering intercourse honorable it is not required that generation follow from it, but it suffices that that intercourse be per se apt for generation, even if per accidens the seed is dispersed, as happens in approach to a pregnant or sterile woman ...

The third, most common and more probable opinion says that intercourse during menstruation is not mortal, but is not excused from venial fault. That it is not mortal is proved by the reason adduced for the second opinion. But that it is venial is proved because such intercourse involves a certain baseness and disorder, since ... intercourse then is less fitting to the end of generation. But Navarrus, Paludanus, etc., agree that there is no sin in having intercourse at such a time if there is some cause

rendering that baseness honorable, namely for avoiding discord or incontinence in oneself or in the other, or other similar things ...

But in the case in which no cause is present, can and must the menstruating wife render the debt if the husband, after being warned, does not desist? Paludanus, etc., affirm. But more probably it must be denied ... The reason is that since fault, even venial fault, holds itself on the part of the act, more probably the spouse is not bound and cannot licitly render the debt." St. Alphonsus, 925.

But in practice, when the husband petitions, for the wife a cause by which she can render is scarcely, or not even scarcely, absent. And St. Thomas himself, Suppl., q. 44, a. 4, says: "If the husband does not desist from the petition, she, the wife, ought to render the debt to the one asking." But the reason brought forward by the holy Doctor for the third opinion is contradicted by more recent teachings of physiological science, since in the time of menstruation the woman is more apt for generation. That which the holy Doctor asserts about the time of menstruation should rather be said about the time following. For generation is more difficult from the fourteenth day after menstruation has begun up to the next recurrence of menstruation. But in the last days, three or four, before the next menstruation, according to several doctors, the probability of pregnancy is increased. E. M.

V. On the Use of Marriage

1078. **Is the conjugal act illicit on feast days or days of fasting or Rogations?** "It is common that rendering the debt is not then forbidden, with St. Thomas, Suppl., q. 64, a. 9. But is it forbidden to petition? The first opinion affirms, and St. Thomas, loc. cit., a. 7, etc., hold this. Yet this is under venial fault, as St. Thomas says in the same place, a. 8, with others, not under mortal fault, as some improbably hold ... But the second and more common opinion denies that it is illicit ... The reason is that this is not held to be forbidden by any law." St. Alphonsus, 923. Hence it is also deduced that there is no reason why use of this kind should be prohibited during Advent or Lent. Cf. 608.

1079. **Are base touches and looks between spouses for pleasure alone, without order to intercourse, mortal?** "The common and truer opinion denies it ... The reason is that the conjugal state, just as it renders intercourse honorable, so also renders touches and looks of this kind honorable ... But just as delight sought in intercourse does not exceed venial fault, so also in these touches and looks." St. Alphonsus, 933.

Indeed, since incomplete acts of this kind are of themselves referable to the completed and perfect act, and since this is licit for spouses, the former cannot be per se illicit for the same persons. St. Alphonsus, 932, 983. A fortiori acts of this kind, whether they are less honorable or simply dishonorable, are per se free from fault if they are immediately referred to intercourse. For then they are a certain preparation for and beginning of intercourse. Therefore, with the crime of voluntary pollution outside the vessel or of sodomy excluded, nothing is done against the good of marriage. But the light fault which can be present in acts of this kind is easily excused because of ends intrinsic to marriage itself or other extrinsic ends, for example, because they are suitable for fostering affection or quieting concupiscence.

1080. **What if spouses foresee from these base acts that pollution will follow in themselves or in the other?** The resolution depends on the intrinsic nature of the act, on the mode in which it is exercised, on the cause, and on other circumstances. For it is a matter of the voluntary in cause; therefore if the act is such, or at least is exercised in such a mode, that per se it proximately influences pollution, and no just cause is present, there is certainly grave sin. But it is otherwise if the act is such, and is exercised in such a mode, with due caution used to impede pollution, that pollution, if it follows, follows only per accidens, and a just cause is present. Sanchez, l. 9, d. 45; St. Alphonsus, 934; l. 3, nn. 483, 484.

1081. **Is it always mortal if a husband puts his shameful parts into the mouth of his wife?** "Sporer, etc., more truly affirm, both because in this act ... there is proximate danger of pollution, and because this per se seems a new species of lust against nature, called by some irrumation. For whenever another vessel besides the natural vessel instituted for intercourse is sought by the man, there seems to be a new species of lust." St. Alphonsus, 935.

1082. **Are the base touches which a spouse has with himself, with the other absent, and with danger of pollution excluded, mortal?** "The first opinion denies it ... The reason is that touches of this kind are rendered honorable by the conjugal state itself, since by their nature they are ordered to intercourse; and therefore, with danger of pollution excluded, they cannot be gravely illicit in a spouse, even if he himself could not consummate intercourse at present. But the second opinion, more probable and altogether to be advised in practice, affirms it ... The reason is both because the spouse does not have a right per se over his own body, but only per accidens, namely only so that he may dispose himself for intercourse ... and because touches of the shameful parts, when they are done morosely and with commotion of the spirits, per se tend toward pollution, and are proximately connected with danger of it." St. Alphonsus, 936. And from the very reason of the second opinion the first opinion certainly appears rather more probable.

1083. **Is morose delight in a spouse concerning intercourse had or to be had, which nevertheless could not be had at present, mortal?** "The first opinion affirms ... The reason is that such delight is, as it were, begun pollution ... But the second and more common opinion ... says that such delight is not mortal, if danger of pollution is absent, but only venial. It is venial because it lacks the due end, since it cannot be ordered to present intercourse. But it is not mortal, because delight takes its goodness or malice from the object; and since intercourse is licit for married persons, delight in it cannot be gravely illicit. And St. Thomas expressly favors this, *De malo*, q. 12, a. 2, ad 17. And Sporer admits this even if there is venereal delight, arisen from commotion of the spirits. Finally the third opinion ... distinguishes and says that if the delight is without commotion of the spirits it will not be mortal; otherwise, if with commotion and titillation of the parts." St. Alphonsus, 937.

Certainly it is grave sin if that delight is proximately joined with danger of pollution; otherwise, however, if the danger of pollution is not proximately joined to that delight. But this proximate danger of pollution, speaking per se, is not had according to the holy Doctor from any commotion of the spirits and alteration of the parts whatever, but from vehement and graver commotion of the spirits.

But St. Thomas, in the place cited by St. Alphonsus, says: "Delights follow delightable operations in goodness and malice; and therefore, just as carnal commingling is not mortal sin for the married person, but is mortal sin for the unmarried person, so also there is a similar difference concerning delight and consent to delight. For consent to delight cannot be a graver sin than consent to the act, as is clear through Augustine." But truly this argument proves not only that consent to delight, for this is what morose delight means, is not mortal, but that it is not even venial sin. Namely, it cannot be illicit to take delight in a licit thing, that is, to take delight with rational delight; and likewise neither desire concerning future intercourse, nor approval concerning past intercourse, are per se illicit, because approval and desire of a licit thing cannot be illicit. St. Alphonsus, l. 5, nn. 23, 24, 25.

On Censures

I. On the Nature of Censure

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1084. **What is a censure?** It is a medicinal spiritual penalty by which a baptized, delinquent, and contumacious man is deprived, through ecclesiastical power, of the use of certain spiritual goods.

Penalty; that is, especially of the external forum. Therefore only those can impose a censure who have jurisdiction in the external forum.

Spiritual; because it consists in a certain withdrawal of spiritual goods; it is from a spiritual or ecclesiastical power; for a spiritual good; and obliging in conscience.

Medicinal; for it is imposed properly for this end, as a medicine for preventing sins not yet admitted, and for curing them once admitted, namely so that someone not sin, and, if he has sinned, return to better fruit. C. *Cum medicinalis* 1, *De sententia excommunicationis* in the Sixth. Hence, in order that a censure truly be imposed by way of censure, and not generally by way of penalty, it is necessary that it not be imposed perpetually, nor for a determined time, nor at the discretion of the one imposing it; but it must be imposed simply, so that as soon as the guilty person has amended himself, he can be absolved; for when the disease ceases, the medicine ceases.

A baptized man; for one who has not been baptized is not subject to the power of the Church. But he must be capable of reason and a subject; for one who is incapable of fault is not liable to penalty, and the power of jurisdiction, of which censure is an act, is exercised only over subjects. He must also be a certain determinate person, and not a moral person, which can indeed be deprived of rights it enjoys, but cannot be struck with penalties and censures so that it may repent, since it has only moral existence. Yet the individual persons of a moral body can be punished with censures. Cf. Schmalzgrueber, nn. 44-46. But Cardinals and bishops are not liable to censures imposed by law itself, unless they are expressly comprehended, excepting excommunication; and likewise those below puberty, except in the case of violation of the enclosure of nuns. C. *Apostolicae Sedis*. But by a

special privilege, legitimately introduced in the course of time, kings and queens cannot be bound by censure except by the Pope.

Through ecclesiastical power; for a penalty cannot be imposed except by one having power, and spiritual penalty belongs to spiritual power.

Of the use of certain spiritual goods; therefore censures take away from the guilty person not the goods themselves, nor the power or rights to them, but only their use, until he has returned to better fruit. C. *Ex litteris* 11, *De constitutionibus*. But it deprives him of the use of those goods which are in the power of the Church, such as public prayers, administration of the sacraments, offering of the sacrifice, ecclesiastical burial, etc. Therefore it does not deprive him of merely internal goods, for example, the sacramental character, power of order, nor of proper and private goods, for example, faith, hope, charity, etc. And if sometimes it deprives him of human society, this occurs only secondarily. E. M.

1085. **What is the division of censures?** According to the various goods of whose use a censure deprives, it is threefold, namely excommunication, suspension, and interdict.
Excommunication and interdict touch everyone; suspension touches only clerics.
Excommunication has the force only of censure, or medicinal penalty. Therefore it cannot be imposed on a moral person. C. *Romana* 5, *De sententia excommunicationis* in the Sixth; Suarez, d. 18, s. 2, n. 3.

But suspension and interdict can also be imposed by way of mere penalty, or in vindication of fault, and by way of mere privation, which holds even without fault, and therefore both the guilty and the innocent. Hence suspension and interdict can be imposed because of a merely past delict which has no successive course, without any prior threat or warning, with no cause expressed, perpetually, or for a determined time, or at the good pleasure of the one who inflicted it. Likewise they can be imposed on moral persons, for example, a chapter, city, etc.; and as regards the innocent, they have the nature of mere privation. Violation of a censure imposed by way of censure brings irregularity if a cleric violates it by exercising order; not likewise one imposed by way of penalty, unless something else is specially provided by law.

Some censures are imposed by law, others by man. The former are imposed by way of law; the latter by way of mandate or sentence. An example of the former kind are censures contained in C. *Apostolicae Sedis*, and censures contained in episcopal statutes. An example of the latter is if a bishop by mandate or a judge by sentence acts against an abductor, that he restore the abducted woman to liberty within three days, otherwise he fall into excommunication. Suarez, d. 3, s. 1, n. 2. A censure imposed by law, after the author has died, still perseveres; not likewise one imposed by man. Yet one who incurs this is held by it everywhere until he is absolved from it. Episcopal censures imposed in synod are held as censures by way of law and, after the bishop has died, endure; but those imposed outside synod are held as censures by way of a simple statute and, after the bishop has died, cease. St. Alphonsus, 6.

Likewise some censures are latae sententiae; others ferendae sententiae. They are latae sententiae if they are established to be incurred by the very fact by which someone acts against the law. They are ferendae sententiae if they are to be inflicted by the sentence of a judge. Therefore censures are ferendae sententiae if the words of the law require the ministry of a judge, or the action of another,

for incurring the censure, for example, if it is said: it is commanded under penalty of excommunication, he will be excommunicated, etc. But they are latae sententiae if the words of the law do not include a condemnatory sentence, or at least a sentence declaratory of the crime, for example: one doing such things is excommunicated by the fact itself, by the law itself.

1086. **What is required on the part of sin for censures to be incurred?** It is required that it be mortal, for censure is a most grave penalty, which consequently presupposes mortal fault. Hence they are to be imposed soberly and with great circumspection. Trent, sess. 25, c. 3, *De reformatione*; Benedict XIV, *De synodo*, l. 10, c. 2. Therefore, unless it is a matter of a certain light censure, or at least one for a short time, which is imposed because of light fault, censures of excommunication, suspension, and interdict, as they are ordinarily imposed, can in no way be imposed for light faults. St. Alphonsus, 30; Schmalzgrueber, l. 5, t. 39, n. 59; Suarez, d. 4, s. 6, n. 12; Lugo, *De iustitia et iure*, d. 16, n. 61; Lessius, l. 2, c. 12, n. 54; Sanchez, *in Decalogum*, l. 7, c. 21, nn. 28, 29.

The sin must be external; for the Church judges in the external forum, to which censures pertain, not in the internal forum. Not only must the sin be exterior, but also grave in the nature of an external act. Therefore one who is excused from grave fault, whether as to the internal act, or at least as to the external act, is also excused from censure.

It must be a sin consummated by deed, because penal laws are of strict interpretation. Namely the sin must be complete in its own genus according to the propriety of the words contained in the precept or law. Schmalzgrueber, loc. cit., n. 64.

It is required that the sin not be merely past, because censure is a medicinal penalty, which therefore cannot be imposed on those who have already returned themselves to better fruit. Merely past: for if a past delict, such as theft, detraction, etc., has a successive course, a censure can be imposed because of it, after it has first been denounced to the guilty person, unless he obeys the mandate to restore what was taken within a definite time, repair reputation, etc. Merely past: namely if the censure is truly imposed by way of censure, or medicinal penalty, and not by way of a merely vindictive penalty. Therefore a superior who wishes to punish some sin with censure must first threaten it. St. Alphonsus, 54.

Finally contumacy is required. For through censures contumacy against the law of the Church is punished, and indeed against the Church threatening censure to the contumacious. C. *Pia* 1, *De exceptionibus* in the Sixth; C. *Statuimus* 3, *De sententia excommunicationis* in the Sixth. Contumacy is from contemning; hence it is contempt of censure. Therefore, for a censure to be incurred, it is necessary that the censure first has already been imposed, either by way of general law, or by a particular precept at least denounced as to be incurred unless the precept is obeyed. Hence, if someone withdraws from contumacy before he in reality incurs the censure to be incurred once the effect follows, afterward, once the effect has followed, he by no means incurs it. Withdraws from contumacy: namely by confession, or sorrow, or retraction of the will, and in the way he can he tries to impede the effect, although the revocation cannot become known to the one to whom perhaps he gave a mandate or counsel. St. Alphonsus, 31, 39, 40; l. 7, nn. 368, 373.

1087. **Is warning prerequired for incurring censure?** Reply: Affirmatively. The reason is that censure is imposed because of contumacy and actual disobedience. But one who has not been warned by the one imposing censure is not rebellious and disobedient to him. Therefore. Hence it is commonly received among the doctors that a censure, with no warning at all having been sent ahead, is regularly null.

Now then, as regards a censure imposed by law by way of law, or imposed by man by way of mandate, the law itself and the mandate itself warn. But if the censure is not comprehended by law or mandate, then there is need to threaten it, or it is necessary to warn the guilty person; and indeed there is need of a triple warning, although this does not pertain to validity, or of one warning for three, with the space of at least two days preserved between them, or a space of at least six days between this and the sentence. But the warning must be made to the guilty person before witnesses, and is usually made in writing, but it is valid orally. Although a censure imposed without writings is valid, nevertheless because this is grave, if it was imposed orally, it is presumed more a penalty than a censure. If the censure has already been threatened by law, and it is a matter of a censure ferendae sententiae, whether there is need of a new warning is disputed. Some affirm, and it is more equitable, because censures of this kind are often unknown. Others deny, and it is more probable, because the law itself warns sufficiently. St. Alphonsus, 22, 51, 65, 317; St. Thomas, Suppl., q. 21, a. 3.

I. On the Nature of Censure

1088. **Who can impose censures?** By ordinary law every and only ecclesiastical superior having ecclesiastical jurisdiction in the external or contentious forum can impose censure, whether ordinary or delegated: namely, the Pope and a General Council with respect to all the faithful; Cardinals in the Churches of their Title; primates and archbishops, both in their own dioceses and in the dioceses of suffragans during visitation, and also when the matter concerns a cause brought to their tribunal, because then they are strong in jurisdiction over the suffragans; bishops in their dioceses, provided they have been elected and confirmed, even if not consecrated; legates of the Apostolic See in the provinces of their legation; vicars general of bishops, for with the bishops themselves they constitute one tribunal; the chapter, the see being vacant and before election of the capitular vicar, who afterward enjoys such power exclusively; abbots, generals, provincials, rectors, conventual priors, guardians, etc., of religious orders with respect to religious subject to them; and all those to whom this power is specially committed by delegation by the aforesaid.

Therefore from this power, both ordinary and delegated, by common law both laymen and all women, even abbesses, are excluded. Likewise parish priests, since they do not have ordinary jurisdiction in the external forum, but only administration for the right order of the parish, do not have this faculty.

As regards delegated power, this ceases with the death of the one delegating, since it is a matter of a cause of justice, unless the cause has already been begun by the delegate at least through citation. But one delegated to impose censures cannot subdelegate another unless he has express permission from the one delegating, or unless at least he is delegated for any causes whatever, or by the Roman Pontiff. Cc. *Perniciosa* 1; *Cum ab Ecclesiarum* 3; *Pastoralis* 11, § *Praeterea*; *Conquerente* 16; *Grave gerimus* 19, *De officio iudicis ordinarii*; C. *Cum episcopus* 7, same title, in the Sixth; C. *Transmissam* 15, *De electione*; C.

Si pro debilitate, *De officio delegati*; Cc. *Cum in Ecclesiis* 10; *His quae* 11, *De maioritate et obedientia*; C. *Ea quae* final, *De statu monachorum*; C. *Quaerenti* 20, *De verborum significatione*; C. *Cum medicinalis* 1, *De sententia excommunicationis* in the Sixth; St. Thomas, Suppl., q. 22, aa. 1, 2; Schmalzgrueber, nn. 3, 12-21, 40; Engel, nn. 12-15; Pichler, *Ius canonicum*, l. 5, t. 39, nn. 4, 5; E. M.

1089. **What is required so that an ecclesiastical superior can impose censures?** It is required:

1090. That he be of sound reason, indeed that he have the intention of binding the one against whom he imposes the censure. The reason is that imposing censure is an act of jurisdiction, which has all its force from the interior will.

1091. That he have jurisdiction unimpeded as regards use. Hence an excommunicated, suspended, heretical, or schismatic bishop cannot impose censures; the same should be said of his vicar. Yet an occult heretic or excommunicated person validly, although illicitly, imposes censures, because for the public good, unless he is one to be avoided, the Church preserves jurisdiction for him. Indeed there are not lacking, and today it seems to be the common opinion, those who hold that even "one publicly excommunicated validly imposes censures if he has not been denounced by name, or is not a public striker of a cleric, from the Extravagant *Ad evitanda* of Martin V, where it is established that a tolerated excommunicated person in those things which pertain to public office is not to be avoided, not even by those who know it." St. Alphonsus, 12; St. Thomas, Suppl., q. 22, a. 3.

1092. That the one imposing censure act freely, not under compulsion. But whether a censure imposed from grave fear is valid, some deny, others more truly affirm, because an act done from grave fear is of itself valid, unless it is invalidated by special positive law. But censure imposed from fear is not invalidated by positive law. Therefore. Schmalzgrueber, n. 23; St. Alphonsus, 12; E. M.

1093. **Can a bishop impose censures if he is outside the diocese?** Reply: Negatively. For no one can exercise contentious jurisdiction in another's territory. Nevertheless the following cases are excepted:

1094. If the censure is imposed not by way of sentence, but by way of precept or statute, for preventing future crimes.

1095. If the censure is imposed by way of sentence, which nevertheless does not need knowledge of the cause and judicial noise, either because the contumacy is manifest, or because the cause has already been known in his own territory. If it needs judicial noise, it is necessary that permission be given by the Ordinary of the place, and that the parties consent; for no one unwilling can be drawn outside his own territory.

1096. If the bishop has been unjustly expelled from his own territory, for then permission sought from the Ordinary of the place suffices, although not obtained. C. *Novit* 7, *De officio legati*; Clementina un., *De foro competenti*.

1097. **Can a bishop existing in his own diocese impose censure on a subject existing outside the diocese?** A bishop existing in his own diocese can bind by censures through sentence a subject existing in another diocese, both for a crime committed in his own diocese and also, if the subject commits a delict outside the diocese, but the matter concerns a thing which is in

that diocese, as if clerics are excommunicated who do not come to the synod. Nor does it stand in the way that citation cannot be made outside the territory; for then it suffices that the accused be cited in his own house, or in a public place. Likewise if the bishop by special precept has prohibited a delict to someone under censure, the absent person incurs it. For the precept is personal. Therefore, since a subject outside the territory is bound by the precept, he is also bound by the censure.

Thus St. Alphonsus, n. 23, who says the negative opinion is probable when someone commits a delict outside the territory of the one declaring the law, and adds: But it is certain from C. *Ut animarum* 2, *De constitutionibus* in the Sixth, that if a bishop has not previously given any precept to a subject under penalty of censure, he cannot punish him by censure if he commits a delict in another diocese. And the same must be said if he commits a delict in an exempt place, because in it he remains as if he were in a place outside the diocese, from C. *Cum episcopus* 7, *De officio ordinarii* in the Sixth; C. *Volentes* 1, *De privilegiis* in the same; Clementina *Archiepiscopo* 2, same title.

Through sentence or special precept: for if the prohibition has been made by territorial statute, a censure imposed on delinquents does not affect one existing outside the territory of the one establishing the censure, as is expressly decided in C. *Ut animarum* 2, *De constitutionibus* in the Sixth. But regular prelates can bind their subjects with censures wherever they are existing, because their jurisdiction is more personal than territorial. St. Alphonsus, 20; Engel, n. 31. La-Croix, l. 7, n. 28; Pichler, *Ius canonicum*, l. 7, t. 39, n. 6.

1092. **Can a bishop bind by censure another's subject committing a delict in his diocese?** Travelers and newcomers probably, according to Lugo and others, do not incur censures imposed by the special law of some place; for they are exempted from the very obligation of observing the laws of that place. But if the discussion is about censures imposed by man through sentence, they can indeed be bound by censures by the bishop of the place after they have committed a delict in that place by violating common law, and not only the law of that diocese, and after the bishop has cited them; if nevertheless that common law commands or prohibits something under excommunication and other penalties to be inflicted by an ecclesiastical judge. For then by reason of the delict the traveler obtains the forum of the bishop of that place in which he committed the delict.

But if the bishop himself by his own authority threatens excommunication to one violating common law, for example, stealing, not restoring, etc., the excommunication is null. For the immediate delict because of which excommunication is imposed is the contumacy and disobedience of a subject disobeying the bishop who prohibits theft or commands restitution. But the bishop can neither command a traveler who is not a subject, nor consequently impose a special sentence on him as one not a subject. Yet others with Engel and La-Croix contradict this opinion, because just as laws can be imposed by which travelers are obliged, for example, concerning not carrying arms, so a censure can be added to those laws, and such a traveler by reason of the delict becomes subject to such a bishop. C. final, *De foro competenti*. La-Croix, l. 7, n. 32; Engel, nn. 35, 112; Schmalzgrueber, nn. 47, 48; St. Alphonsus, 19, 26, 27; l. 6, n. 591; Lugo, *Responsa moralia*, l. 6, d. 22; Laymann, c. 4, nn. 5, 6.

1093. **Can bishops impose censures on regulars?** Reply: Affirmatively, if they are not exempt; for then they are subject to episcopal laws and censures in exactly the same way as other clerics. Moreover, if they have the bishop as their proper prelate, they will be able to be bound by censures by him just as other regulars by their own superiors. Sanchez, *in Decalogum*, l. 6, c. 1, n. 11; Schmalzgrueber, l. 3, t. 35, nn. 61, 62.

Affirmatively, if they are exempt and commit delicts concerning those things in which by force of the canons and Constitutions they are subject to the jurisdiction of bishops. And in such a case bishops proceed not by ordinary but by delegated power. S. C. C., February 17, 1632; Benedict XIV, *De synodo*, l. 9, c. 16, n. 5; l. 7, c. 41, n. 5; Barbosa, *De officio et potestate episcopi*, p. 3, alleg. 105, n. 14 seq.

Negatively, if the discussion is about those regulars who in this matter enjoy special exemption. For a twofold exemption of regulars must be distinguished, or immunity from censures of bishops. The first comes from this, that regulars in certain things are exempt from the jurisdiction of Ordinaries, and therefore as regards these things they cannot be punished by censures or by other penalties. Yet since in other things they are subject to bishops, those committing delicts in these matters can be punished by them, even with censures. But the other comes from this, that certain regulars enjoy a special privilege, namely Mendicants and Religious of the Society of Jesus, so that they cannot be punished by bishops with censures, although they can be punished by other penalties if they commit delicts in those very things in which they are subject to the Ordinaries of places.

The case from C. *Inscrutabili* of Gregory XV is excepted, namely, "if in churches of others, which are not of their own orders, they have presumed to preach without the bishop's permission; and in their own churches or those of their orders, without his blessing having been sought, or with him contradicting." Innocent X, brief *Cum sicut accepimus*, May 14, 1653, by declaring the cited constitution *Inscrutabili* of Gregory XV, added another case, namely that of hearing confessions. A third case must also be added concerning the form and habit of sacred images from the constitution *Sacrosancta* of Urban VIII, March 15, 1642.

I. On the Nature of Censure

1094. **Does ignorance excuse from incurring censure?** Invincible ignorance, whether of fact, of law, or of penalty, that is, of the censure added, excuses from incurring it. For contumacy is lacking. Here forgetfulness and inadvertence operate the same as ignorance.

Vincible ignorance lightly culpable, or even gravely culpable, if it is not crass or supine, also excuses from incurring censure; otherwise if it is crass and supine, from C. final, *De constitutionibus* in the Sixth, where it is said, "we do not will the ignorant to be bound, provided nevertheless their ignorance was not crass or supine." But whether there is truly given gravely culpable ignorance which nevertheless is not crass or supine is disputed. Commonly they deny it; yet several affirm, because for crass ignorance a certain supreme negligence is required, and there can be negligence gravely culpable although it is not supreme. A fortiori affected ignorance, whether of fact, law, or penalty, does not excuse from incurring censure.

Vincible ignorance gravely culpable, whether crass or supine, or, probably, even affected, excuses from incurring censure if in the decree the clause is: whoever has done this knowingly, with

deliberation, rashly, whoever has presumed to do this, etc. For one who acts with ignorance of any kind certainly does not act knowingly. And indeed from S. O., January 12, 1870, by these words, *with rash daring*, or *from presumption*, etc., it is signified that someone committed the delict not compelled or ignorant, but prudently and knowingly; and it ought not to be a wonder that one wholly without excuse should be subject to censure. St. Alphonsus, 43-45, 48.

1095. **Does grave fear excuse from censure?** Reply: Affirmatively, unless nevertheless observance of the law is necessary for preserving the public good, or its violation yields to contempt of the faith, or of the law, or of ecclesiastical power. The reason for the response is that one committing a delict from fear sins from the infirmity of nature rather than from contumacy. The reason for the exception is that in the aforesaid cases the obligation even of human law does not cease.

1096. **Does an appeal legitimately interposed excuse from censure?** Reply: Affirmatively, if namely it was interposed before the sentence, or indeed after it was imposed, but while the day from which, or the condition under which, it was imposed, is pending. Likewise it ceases if, while the day or condition is pending, one ceases to be superior or the other ceases to be subject. But if the censure has already been imposed absolutely, appeal does not suspend it; hence canonists say that appeal is in the devolutive, not in the suspensive. But recourse to the Holy See against its injustice is always given. St. Alphonsus, 63-65; Suarez, d. 3, s. 4, n. 10 seqq.; s. 5, n. 2; s. 15, n. 18 seqq.

1097. **Must one be judged to have incurred censure who doubts whether he has incurred it?** In doubt of fact, and in doubt of the existence of law, someone is excused from incurring censure; not likewise in doubt of the justice of the law, namely whether the censure is just. The first reason is that in doubt the condition of the possessor is better. But one who doubts whether by his own deed he has incurred censure possesses the right of using spiritual goods. Therefore he is not to be deprived of his own right. Therefore. The second reason is that favors are to be enlarged, and odious things restricted. Therefore a law introducing a doubtful penalty must be taken in the more benign part, for penalty is odious. Therefore. The third reason is that in doubt of justice the presumption favors the superior.

When someone doubts whether he has been absolved from a censure which he incurred, in the external forum one must judge in favor of the censure, or bond, from C. *Sicut* 39, *De sententia excommunicationis*, and therefore absolution must be sought. Likewise in the internal forum absolution must be sought, lest perhaps someone become without share in the goods of the Church. Sanchez, *in Decalogum*, l. 1, c. 10, nn. 55, 56; St. Thomas, Quodl. 4, a. 14; St. Alphonsus, 32, 39, 67, 68.

1098. **Is one bound by a censure which he knows to be manifestly unjust?** One is not bound by a censure which he certainly knows to be unjust, whether because of false presumption of fact, or because legal forms were omitted, or because the limits of jurisdiction were exceeded. Therefore he is not bound to observe it publicly, except by reason of scandal, if this is present. St. Alphonsus, 68; St. Thomas, Suppl., q. 21, a. 4; Laymann, c. 6, nn. 2-4; Schmalzgrueber, nn. 80-84; Engel, nn. 103-113; Lugo, *De iustitia et iure*, d. 37, n. 188.

1099. **Can someone be bound by several censures at once?** Because of one and the same delict only one censure is incurred from several perhaps imposed by one and the same legislator, namely that one in which the others are eminently comprehended. Thus, for example, those usurping goods pertaining to ecclesiastical persons by reason of their churches are bound only by the excommunication reserved to the Roman Pontiff, and not also by the Tridentine excommunication.

Because of one and the same delict someone can indeed incur several censures imposed by different legislators, by the bishop of the benefice and by the bishop of domicile, by the Roman Pontiff and by the Ordinary of the place; for example, if clerics violating the enclosure of nuns are punished by suspension in an episcopal statute, who also would be liable to excommunication simply reserved to the Roman Pontiff by C. *Apostolicae Sedis*. Because of the same delict repeated, because of diverse delicts, someone can incur several censures, namely the same one several times, and several diverse ones, of the same or diverse nature. And here it must be noted that if the censure is reserved to the Pontiff, by this reservation the faculty of reserving the same censure to themselves then seems to be subtracted from inferior prelates.

1100. **What about absolution from censures generally?** "Absolution signifies an act of justice in which some cause or judgment is terminated in favor of the guilty person ... But dispensation is an act of grace or mercy ... by which something is relaxed from the common law in favor of someone." Thesaurus, *De poenis*, p. 1, c. 20.

For loosing a censure, absolution imparted by the judge or legitimate superior is necessary, although satisfaction has already been provided, if it was owed, and amendment has followed, excepting censures imposed for a definite time; for when that time has ended, they cease, and those imposed at the good pleasure of the one inflicting them also cease when this one has died, or his right has been dissolved. This is clear from C. *Qua fronte* 25, *De appellationibus*; C. *Ex litteris* 11, *De constitutionibus*; C. *Cum desideres* 15, *De sententia excommunicationis*; C. *Relatum* 37, ibid.; from the forty-fourth proposition condemned by Alexander VII; St. Alphonsus, 122.

Absolution of this kind can be given by an ecclesiastical superior or by his delegate, even if he is not a priest. And although censures are penalties primarily of the external forum, nevertheless absolution from them can be given in the internal forum of conscience, as long as they have not been brought to the external forum, which is clear by common doctrine and practice.

Absolution from censures, as removing an obstacle, must be given first under grave obligation before absolution from sins; yet if it is given afterward, it is valid; and, if the penitent receiving this has not sinned gravely, absolution from sins also is valid. But when it is not established that the penitent is bound by censure, absolution is first given only for caution. And from these things it is clear that absolution from censures is wholly distinct from absolution from sins, and that one can stand without the other. St. Thomas, Suppl., q. 24, a. 2, ad 2; Laymann, c. 7, n. 1; Schmalzgrueber, nn. 107, 111; E. M. 942.

I. On the Nature of Censure

1101. **Who can absolve from various censures?** From a censure, whether imposed by man by way of precept, or by particular sentence, or reserved by law, only the following can absolve: 1. the one who imposed the censure; 2. his superior; 3. his successor; 4. another delegated by any one of these. The reason is that it belongs to the one to absolve to whom it belongs to bind. St. Alphonsus, 69; Laymann, c. 7; Schmalzgrueber, nn. 85-93, 97; St. Thomas, Suppl., q. 24, a. 1.

A censure imposed by man by way of precept or by particular sentence: for censures imposed by man, but by way of statute or general sentence, according to the more probable opinion are equated with censures imposed by law which are not reserved. St. Alphonsus, 73; Schmalzgrueber, n. 94; Engel, n. 124.

From censures which are less properly such, namely those imposed to a certain day, perpetually, or at the good pleasure of the superior, only he or another having a special faculty can absolve; since although they are not expressly reserved, nevertheless they are implicitly reserved from their very nature. Cf. Suarez, d. 29, s. 1, n. 16.

Any confessor can absolve from censures imposed by law and in no way reserved to the Pope or bishop, both for the internal forum and for the external forum. C. *Nuper* 29, *De sententia excommunicationis*; formula of absolution of the Roman Ritual; Struggl, n. 29; St. Thomas, Suppl., q. 24, a. 1; St. Alphonsus, 69-71, 126, 322, 339; l. 1, n. 191; Schmalzgrueber, nn. 95, 96.

"Yet in order that someone may be able to use the absolution publicly, it is necessary that it be publicly established ... But in order that it be considered publicly established, it is enough that it be publicly established that he confessed ... to one having power ... provided satisfaction, which was necessary, was also publicly exhibited." Suarez, d. 7, s. 5, n. 29. For this is required, although the censure was not juridically denounced, to forestall scandal, and so that it may be established that he has withdrawn from his contumacy and returned to obedience to the Church.

From Trent, sess. 24, c. *Liceat* 6, and from C. *Apostolicae Sedis*, par. *Firmam*, bishops can absolve from cases and censures reserved to the Supreme Pontiff, except those which are reserved in a special manner. The capitular vicar also enjoys this power, S. C. C., December 3, 1632. Bishops can also generally delegate this Tridentine faculty to some priest, provided they specify it expressly; for a special deputation is required by Trent. And they can absolve even travelers, since they become subjects by submitting themselves in the forum of conscience. St. Alphonsus, l. 1, appendix II, n. 29 seqq.

But from this faculty bishops cannot absolve from occult cases reserved by other bishops, S. C. C., January 24, 1711; November 20, 1712; Benedict XIV, C. *Pias Christi*, August 21, 1752; St. Alphonsus, loc. cit., n. 34; l. 6, n. 294. Those cases are considered occult which have not been proved in judgment and in some way can still be hidden in the neighborhood, as if they are known only to a few discreet persons, for example, five or six, or if the fact appears doubtful. Probably a crime public in one place can be absolved by the bishop in another place where it is occult, provided there is no fear that it will easily be made public where it is occult. Likewise a bishop can absolve an occult crime, whether it is occult materially, because the committed delict is publicly unknown, or occult

formally, namely because although the crime is known, nevertheless it is unknown that a censure is attached to it. St. Alphonsus, 76, 78.

It was declared in the Holy Office, March 22, 1881, Synod of the Diocese of Ostia and Velletri, Rome, 1892, p. 122, that regular prelates by force of their privileges: 1. cannot absolve their subjects from censures imposed by C. *Apostolicae Sedis*, whether reserved in a special manner or simply to the Roman Pontiff; 2. can absolve from censures reserved to bishops even if occult; 3. as to the faculty of those same prelates of absolving their subjects from censures reserved to the Roman Pontiff not contained in the aforesaid Constitution and pertaining to internal governance, nothing was changed by that same Constitution; 4. regulars prevented from going to Rome cannot be absolved by their regular superiors from censures contained in that Constitution and reserved to the Supreme Pontiff, but must recur to the Holy See for the necessary faculties.

Finally, who can absolve from papal cases and censures and how, in the article of death and in the case of impediment to going to Rome, cf. 773, 797, 799, 800.

1102. **What special circumstances of absolution from censures must be noted?** Various circumstances of absolution from censures which must be noted are declared in the following propositions.

One absent and unwilling can be absolved from censures. For absolution from censures is not sacramental, but a mere relaxation of a bond imposed by the Church, which can be pronounced even upon the absent and unwilling. But this is not licit without grave cause. St. Alphonsus, 117, 130; St. Thomas, Suppl., q. 24, a. 2.

One who is bound by several censures can be absolved from one while the others are left, because there is no necessary connection between them. C. *Cum pro causa* 27, *De sententia excommunicationis*; St. Alphonsus, 118, 131; St. Thomas, Suppl., q. 24, a. 3.

Absolution extorted by force or grave fear unjustly inflicted is not valid, from C. unica, *De his quae vi*, etc., in the Sixth; St. Alphonsus, 119. The same should be said if it is given through error concerning the motive cause. C. *Officii* 42, *De sententia excommunicationis*. Schmalzgrueber, nn. 99, 100, 102; Thesaurus, *De poenis*, p. 1, cc. 22-24.

1103. **Absolution cannot be given unless first, where there is need, the one to be absolved has repaired the scandal, has satisfied the injured party, or, if he cannot, has provided suitable caution, or unless he has sworn or promised that he will satisfy as soon as he can, and, if the crime is among the more atrocious or it is a matter of striking clerics, that he will never relapse into it.** But the oath and pledge-caution pertain to the external forum. As regards the internal forum, a simple and sincere promise about satisfying, standing by the mandates of the Church, etc., suffices. C. *Porro* 7, *De sententia excommunicationis*; C. *Per tuas* 40, 10, 11, ibid.; C. *Qua fronte* 25, *De appellationibus*; C. *Odoardus* 3, *De solutionibus*; C. *Ex parte* 23, *De verborum significatione*; Sacred Penitentiary, July 5, 1857.

But whether, when the Pontiff gives a faculty of absolving after the party has been satisfied, this clause is always added as a condition sine qua non, some probably affirm, others probably deny. St. Alphonsus, 121, 129; Schmalzgrueber, nn. 100, 101. Roman Ritual, *De absolutione ab excommunicatione*.

1104. **Absolution can be given both absolutely and conditionally.** Likewise absolution can be given unto reincidence, that is, so that the absolved person, unless he provides something, for instance unless after such a time he has restored, falls back into the same censure by the fact itself. Reincidence is either from law or from man. It is from man only when it is added by the express will of the superior; but it is from law when it is contained by clear law. For we are in odious matters. Moreover, the censure into which the absolved person is about to fall back is a new censure in number, although of the same species. Therefore reincidence cannot be added to absolution except by one who has the power of imposing censure, and it is not incurred without new fault and contumacy. St. Alphonsus, 86, 87, 123-125; Laymann, c. 7, n. 8; Lugo, *De poenitentia*, d. 20, nn. 213, 214.

1105. **For validly absolving from censures, no determined formula is prescribed in law.** Therefore the will of the superior manifested by a sensible sign suffices, so that it becomes known to the other. Schmalzgrueber, n. 98. And although it can be given by the fact itself, speaking per se, nevertheless from law it does not seem to be presumed to have been given so. Cf. Clementina *Si summus* 4, *De sententia excommunicationis*; C. *Si aliquando* 41, same title; C. *In praesentia* 46, ibid.; Schmalzgrueber, nn. 77, 389; St. Raymond of Penafort, *Summa*, l. 3, *De sententiis praecepti*, etc., § 36.

For licitly absolving in the sacramental forum, the formula must be used which is contained in the very formula of sacramental absolution, and the same is used in the internal forum of conscience outside the sacrament. But in the external forum the formula prescribed in the Roman Ritual and Pontifical, and in C. *A nobis* 28, *De sententia excommunicationis*, must be used.

For solemn and public absolution, as described in the Ritual, there is need of the mandate of the bishop, who is accustomed to command this only when scandal of the whole community was present; and the other solemnities of law must be observed. And thus, if the discussion is about an enormous crime, before absolution, the delinquent must swear, unless perhaps he is below puberty, that he will not relapse further into such a crime. C. *Ex tenore* 10; C. *De cetero* 11, *De sententia excommunicationis*; Roman Ritual, *De absolutione ab excommunicatione*.

One who has power of absolving in the forum of conscience from censure can do this even outside confession, except in a jubilee, in which it must be given in the sacramental forum. Benedict XIV, C. *Inter praeteritos*, § 63.

Absolution given in the external forum also profits in the internal forum; given in the internal forum it profits tolerated persons also in the external forum, but it does not prevent action from being able to be taken against them according to the norm of law; not likewise those to be avoided, when this is licit, as in Jubilee and in the article of death. Benedict XIV, C. *Inter praeteritos*, § 61. St. Alphonsus, 70, 116, 126-129; l. 6, n. 536; Laymann, p. 2, c. 6; Pichler, l. 5, t. 39, n. 13; Roman Ritual, *De absolutione ab excommunicatione*.

II. On Excommunication

II. On Excommunication

1106. **What is excommunication, and how many kinds are there?** Excommunication is a censure by which someone is deprived of the communion of the Church. "It is the gravest penalty which the Church can inflict, and by virtue it contains in itself the other censures of suspension and interdict, as being those which deprive not so fully, but only partially, of the goods of the Church, or of their use." Pichler, l. 4, t. 39, n. 23.

It is twofold: one minor, the other major. This major excommunication is twofold. For one is that by which someone is excommunicated tolerated, whom the faithful are not bound to avoid; the other is that by which someone is excommunicated not tolerated, whom they are bound to avoid.

1107. **What about an excommunicated tolerated person?** As regards an excommunicated tolerated person, by canon law it is forbidden to anyone, even one secretly excommunicated, to communicate with others both in divine things and in human things. But the faithful can communicate with him both in human things and in divine things, even without necessity, although they are not bound. Hence spiritual things, such as sacraments, can licitly be given to an excommunicated person, and likewise the sacraments can licitly be sought from an excommunicated person, even without necessity, precisely by force of the excommunication; for if he is in mortal sin, a just cause is required. Therefore indirectly it has also been granted to the excommunicated person that he may be able without sin to communicate with those by whom he is asked. The same should be said of one suspended and interdicted. C. of Martin V in the Council of Constance, *Ad evitanda*; Schmalzgrueber, nn. 121-125; St. Alphonsus, 135, 138-140, 160.

1108. **What about an excommunicated person to be avoided?** Only two kinds of excommunicated persons to be avoided are counted.

The first is anyone excommunicated by name who at the same time has been specially and publicly denounced. By name, that is, with the name expressed through words or undoubted signs, so that he cannot be confused with another. Hence we are not bound to avoid heretics, for example, even if it is publicly known that they are excommunicated by law. Specially denounced, that is, not generally denounced, but also denounced by name. Hence if it is said: We excommunicate Peter the incendiary, and his accomplices, only Peter is to be avoided, not the others, although they may be publicly known; for the sentence as regards them is only general, and not special against a certain person. Publicly denounced, that is, denunciation must be made in a public place, according to the usage of the region. But here it must be noted that although it suffices that one excommunicated by law be denounced only as such in order that he already be one to be avoided, nevertheless it does not suffice if by sentence the accused is declared only to have committed the crime to which excommunication is annexed; but the excommunication itself must be denounced by the judge.

The second is the notorious striker of a cleric. Notorious, that is, according to St. Alphonsus, not only by notoriety of law, but also by notoriety of fact, commonly or at least ordinarily speaking. By notoriety of law, namely that it be known either through the sentence of the judge, or through

confession of the guilty person in judgment, or through sufficient judicial deposition. By notoriety of fact, namely that it be actually known to several, so that the fact can no longer be hidden by any evasion. Otherwise the fact can always be excused by some support. Hence probably the striker of a cleric, notorious in one place, is not to be avoided in another where he is not notorious. And the same should be said of the former case, that is, of one excommunicated by name, publicly denounced already in some place, who is wholly unknown in another place. And "unless it is at least publicly established by the fact itself that the striker advertently willed, knew, and despised, to incur the censure, probably he is never to be avoided" before the sentence itself of the judge specially denouncing him. St. Alphonsus, 144. This is clear from C. of the Council of Constance, *Ad evitanda*. St. Alphonsus, 134, 146; Diana, t. 5, tr. 1, *De excommunicatione*, res. 50, nn. 4, 5; Lugo, *Responsa moralia*, l. 2, d. 5; Laymann, c. 4; Ferraris, *Bibliotheca*, v. *Excommunicatio*, art. 9, nn. 5, 7.

1109. **What about minor excommunication?** Minor excommunication per se deprives only of the passive use or reception of the sacraments, and consequently of passive election to benefices and dignities of the Church. C. *Si quem* 59, *De sententia excommunicationis*; C. *A nobis* 2, *De exceptionibus*; C. *Si celebrat* 10, *De clerico excommunicato minore*.

It was incurred because of only one cause, namely if someone communicated with an excommunicated person to be avoided, and it could be absolved by any confessor. C. *Nuper* 29, *De sententia excommunicationis*. Cf. St. Thomas, Suppl., q. 23, aa. 1, 2; St. Alphonsus, 147-156; Suarez, d. 24; Laymann, c. 3, nn. 4-6; Schmalzgrueber, nn. 198-211.

Minor excommunication today has been removed by C. *Apostolicae Sedis*. Thus the Holy Office, December 5, 1883, Leo XIII approving and fully confirming. This nevertheless does not prevent "the bishop, even at present, from being able, as a penalty for some crime, to forbid by name to someone the passive use of the sacraments, or at least of communion." St. Alphonsus, 148.

But because of communication with an excommunicated person, in certain peculiar cases major excommunication, suspension, or interdict is now incurred. C. *Apostolicae Sedis*, art. 16 and 17 of excommunications simply reserved to the Roman Pontiff, art. 1 of excommunications reserved to no one, art. 6 of suspensions, and art. 2 of interdicts. Synod of the Diocese of Albano, year 1886, appendix X, 10, § XI, n. 3; Pichler, nn. 34, 35; E. M.

1110. **What about major excommunication?** Major excommunication has the following effects: it deprives of the reception and passive use of the sacraments. C. *A nobis* 28, *De sententia excommunicationis*; C. *Cum illorum* 32, ibid.; C. *Sacris* 38, ibid.; C. *Si quem* 59, ibid.; C. final, *De clerico excommunicato ministrante*. Hence "no excommunicated person, whether tolerated or not, can licitly receive them under mortal sin, although he receives them validly, excepting penance, unless he approaches in good faith, unless invincible ignorance, fear of death, of infamy, of loss of goods, etc., excuses, because censure does not oblige with so much rigor." St. Alphonsus, 158. Schmalzgrueber, nn. 140-153; Pichler, n. 29; Coninck, dub. 5.

1111. **It deprives, at least those not tolerated, of the common suffrages and prayers of the Church, namely those which are made in the name of the Church by its ministers; and likewise it deprives of the fruit of indulgences.** Common suffrages and prayers: therefore it does not deprive of private suffrages and prayers, namely those which are made in one's own

name. "Hence not only any private person, but also a priest can pray for the excommunicated as a private person, even in public prayers and sacred action; indeed he can offer the action of sacrificing insofar as it depends on the private merit of the one acting, or remember him in particular in the Memento. This is certain with St. Thomas." St. Alphonsus, 162.

At least those not tolerated: because, as the same holy Doctor teaches, probably sacrifices, etc., can be offered for an excommunicated tolerated person, even in the name of the Church. "The reason is that favorable laws are to be understood with every breadth; therefore when it was granted to the faithful to communicate with tolerated persons, it was also granted to offer public prayers for them; for to communicate also imports this, etc." St. Alphonsus, 164. Cited canons; Schmalzgrueber, nn. 126, 134-139; Pichler, nn. 29, 33; Coninck, dub. 6; Engel, n. 38; Laymann, c. 1, n. 4; St. Thomas, 3 p., q. 82, a. 7, ad 3; Suppl., q. 21, a. 1, ad 2; a. 3. Cf. 610.

1112. **It deprives of active use or administration of the sacraments.** C. *Latores* 4, *De clerico excommunicato ministrante*; C. final, ibid. This administration is altogether illicit for one not tolerated, except in the case of extreme necessity or grave inconvenience; nevertheless he validly confers the sacraments, except penance, which requires jurisdiction, and which he lacks unless there is common error of fact, or it is a matter of the article of death. But for an excommunicated tolerated person it is sometimes licit, namely if he does not thrust himself in, but the faithful demand and petition; and thus he can celebrate, if he is a pastor whose subjects are bound to hear Mass and there is no other who may celebrate. For they are tolerated for the sake of the faithful, not in their own favor. Hence he also validly ministers penance, since he is not deprived of jurisdiction; for this is expedient for the utility of the faithful. St. Alphonsus, 165-170; St. Thomas, 3 p., q. 64, a. 9; Schmalzgrueber, nn. 144-146; Laymann, c. 2, n. 5; Ithur., cas. 42.

1113. **It deprives of the use of divine offices, so that an excommunicated person, whether to be avoided or tolerated, not only lacks their fruit, but also cannot under mortal sin celebrate them or be present at them for a notable part, so that he is morally considered to communicate with others, unless ignorance or the necessity of avoiding scandal excuses.** Although the same law is for those to be avoided and for tolerated persons, nevertheless as regards the latter, since today there is scarcely a confessor who would keep an excommunicated person away from divine offices, and there is no excommunicated person who thinks he must abstain from divine offices, the rigor of the law in this matter seems to some to have been tempered.

Similarly others sin who participate with an excommunicated person to be avoided by assisting with him at divine things, for example, at the same Mass; and although this sin from its kind is mortal, nevertheless from smallness of matter it is venial, as if a small part of Mass, for example, only up to the Gospel, is heard with him.

II. On Excommunication

1114. **Moreover by divine offices are understood the sacrifice of the Mass, public prayer, procession, chant of the hours, blessing of oil, water, candles, and the other things**

annexed to the clerical order by the institution of Christ or of the Church, which are done publicly and solemnly, with the proper ornaments, excepting a sermon. St. Alphonsus, n. 177. Hence an excommunicated person, whether tolerated or to be avoided, can even at a time when divine things are not celebrated enter the church to pray privately, and separately from others in a distinct chapel, and also in the same chapel where others pray, pray privately, because by praying privately he by no means communicates with others. Indeed, although from C. *Excommunicatos* 17, q. 3, c. 11, it is forbidden to an excommunicated person to communicate with others even in private prayer, nevertheless, with scandal and contempt excluded, it does not seem grave matter to use a companion for reciting the office privately, just as for saying the Rosary.

One obliged to the canonical hours is not free from reciting them. But in reciting them he ought not to say *Dominus vobiscum*, but *Domine, exaudi orationem meam*, because that formula imports a certain salutation to the people, whence otherwise he would sin venially. St. Alphonsus, 173-178; Schmalzgrueber, nn. 131-133, 178; Pichler, loc. cit.

1115. **Now indeed, if an excommunicated person assists at divine offices, and is one to be avoided, and after being warned does not wish to leave the Church, clerics are bound to expel him, if they can, or, if they cannot, or a graver inconvenience is feared, to cease from the office; otherwise they sin gravely.** If the sacrifice of the Mass is being celebrated, the celebrant, if the canon has not yet been begun, must break off the Mass; if he has begun, with the others leaving, he can continue or break off the sacred action, because of the probability of each opinion; if he has consecrated, he must continue up to and including communion, with only the minister remaining, and complete the rest in the sacristy or another decent place.

But the excommunicated person must be expelled by the work of laypersons, if they are present; but if they are absent, even clerics ought to expel him. As regards those assisting, however, others more probably say that they also sin gravely, unless some necessity or smallness of matter excuses; others not improbably say that this communication of those standing by does not exceed venial fault, because such communication seems too remote and accidental, unless they themselves are also the cause that the excommunicated person is present. But the common doctrine is that if those standing by hear another Mass different from that which the excommunicated person hears, then neither they nor the celebrant are bound to withdraw, because then there is no formal communication. C. *Veniens* 16; C. *Significavit* 18; C. *Nuper* 29; C. *Desponso* 43, *De sententia excommunicationis*; Clementina *Gravis* 2, same title; Laymann, c. 2, n. 6; Engel, nn. 57-59; Pichler, n. 33.

1116. **It deprives of the conferral of a benefice or ecclesiastical dignity having jurisdiction; and such conferral made to an excommunicated person, such as presentation, election, institution, confirmation, is null, even if the excommunication is unknown.** For although ignorance can excuse from fault, nevertheless it does not supply the defect of a condition required for the value of the act. For a benefice is given because of office. But an excommunicated person, whether to be avoided or tolerated, is incapable of exercising office; for he cannot communicate in office. C. *Postulastis* 7; C. ult., *De clerico excommunicato*. Hence he cannot make the fruits his own. But he is not deprived of another benefice already obtained,

nor before the sentence of the judge is he bound to restore the fruits, if by himself or through another he has fulfilled its duties and burdens. For penalties requiring action on the part of the delinquent always need the sentence of the judge, at least declaratory. St. Alphonsus, 179-183; l. 1, nn. 148, 149; Schmalzgrueber, nn. 147-162; Engel, nn. 60, 61.

It also deprives of Apostolic Rescripts. An excommunicated person is incapable by law itself of obtaining these rescripts, both of grace and of justice, which consequently will be null. C. *Dilectus* 26, *De rescriptis*; C. *Ipso iure* 1, same title, in the Sixth. Except unless they were granted knowingly, *motu proprio*, or with absolution from censures having first been given, as is customary; and this will also have to be understood of conferral of a benefice, if in the concession there is a clause of absolution from censures. Pichler, n. 29; Coninck, dub. 9, 10; St. Alphonsus, 180, 182; Laymann, c. 2, nn. 7-12.

1117. **It deprives of forensic communication, or of every act pertaining to judgment in both the ecclesiastical forum and also the civil forum.** C. *Decernimus* 8, *De sententia excommunicationis* in the Sixth. Hence an excommunicated person cannot be a judge, advocate, procurator, plaintiff, notary, witness, tutor, curator, or executor of a testament, etc. But one must distinguish between an excommunicated tolerated person and one to be avoided. An excommunicated tolerated person is deprived of no forensic communication by the fact itself; whence he acts validly if he uses it, and licitly also if he is required. But juridically he can be repelled by exception, both by adversaries and by the judge. But an excommunicated person to be avoided acts illicitly; nevertheless he can except, appeal, and defend himself. Besides this, the sentence of a judge to be avoided is not only illicit but invalid, since he lacks jurisdiction. C. *Ad probandum* 24, *De sententia et re iudicata*; C. *Cum inter* 5, *De exceptionibus*; C. *Pia consideratione* 1, ibid. Moreover he cannot licitly enter contracts or make a testament, although he does this validly, even when he establishes an excommunicated person as heir.

1118. **It deprives of ecclesiastical jurisdiction.** C. *Ad probandum* 24, *De sententia et re iudicata*; C. *Romana* 1, *De supplenda negligentia praelatorum* in the Sixth; C. *Romana* 1, *De officio vicarii* in the Sixth; C. *Si is cui* 10, *De officio delegati* in the Sixth. The reason is that the exercise of jurisdiction is the chief communication with the faithful. Hence an excommunicated person to be avoided would absolve, elect to benefices, etc., both illicitly and invalidly. But an excommunicated tolerated person, even a notorious one, validly exercises jurisdiction, but acts illicitly, unless either from grave cause, or when asked, he exercises acts of jurisdiction; in which cases he is excused from mortal sin even while ministering the sacraments. St. Alphonsus, 185; Ithur., cas. 42; Laymann, c. 2, n. 13; Schmalzgrueber, nn. 163-166; Pichler, loc. cit.; Coninck, dub. 10; Lugo, *De iustitia et iure*, d. 37, n. 6 seqq.

1119. **It deprives of ecclesiastical burial, namely that which is done in a sacred place destined for the burial of the faithful.** Hence an excommunicated person to be avoided and one tolerated cannot be buried in a sacred place, and if they have been buried in a sacred place, they must be extracted from there. But this distinction intervenes between one to be avoided and one tolerated: 1. if each when dying gave signs of penance, the tolerated person can be buried in a sacred place, although it is fitting first to absolve him from excommunication; but the one to be avoided cannot be buried in a sacred place unless he is first absolved. 2. If an excommunicated person to be avoided has been buried in a sacred place, that place is

considered polluted by such contact and must be expiated; but if an excommunicated tolerated person was buried in a sacred place, the sacred place is not considered polluted, and therefore does not need expiation. C. *Sacris* 12, *De sepulturis*; Pichler, n. 29; Coninck, dub. 8; St. Alphonsus, 186, 187.

1120. **It deprives of civil society, which involves five things: mouth, prayer, farewell, communion, table.** The privation of this civil intercourse is to be understood only for those to be avoided; for tolerated persons, from present custom, no longer sin by communicating in civil matters with the faithful, even if not required by them. Sacred Penitentiary, July 5, 1867. In civil matters: for in divine matters they can communicate only when required. Pichler, loc. cit.

1121. **Besides this there are grave causes in which sometimes it is licit to communicate even with one not tolerated.** C. *Si vere* 34, *De sententia excommunicationis*. These causes are:

1122. Useful, that is, utility whether spiritual or temporal, both of the excommunicated person himself and of another.

1123. Law, that is, matrimonial union, unless the spouses are separated by divorce; or the excommunication was imposed because of doubt about the validity of marriage; or also the other spouse is excommunicated because of heresy. But whether someone can communicate even in divine matters with an excommunicated spouse, there is a twofold opinion. The first affirms; the second and truer denies.

1124. Lowly, that is, the state of subjection. Hence children, even emancipated and adoptive, grandchildren, great-grandchildren, and relatives by affinity in the same genus, can communicate with the parent. Likewise male and female servants can communicate with the master, if they were in service before the excommunication; religious with a prelate; soldiers with an excommunicated leader. And conversely parents, husbands, masters, can communicate with excommunicated children, wives, and domestics. But this communication is not extended also into divine things, unless that communication is necessary for providing owed service. Hence domestics licitly accompany a master to Mass, and, when ordered, licitly minister to an excommunicated person celebrating, or recite the office with him, if they are bound to this by force of domestic service.

1125. The thing unknown, that is, ignorance whether of law or fact, both invincible and also, with sufficient probability, vincible and crass.

1126. Necessity, that is, grave necessity of soul, body, or temporal goods; whether of the one communicating, of the excommunicated person, or of others. For the laws of the Church of themselves do not oblige with grave inconvenience. C. *Responsio* 43, *De sententia excommunicationis*; C. *Inter alia* 31, ibid.; C. *Si vere* 35, ibid.; C. *Cum voluntate* 54, ibid.; C. *Quoniam multos* 103, c. 11, q. 3; Schmalzgrueber, nn. 183-194; Pichler, n. 32; St. Thomas, Suppl., q. 23, a. 1; Engel, nn. 47-52; St. Alphonsus, 200-206.

1127. **Now indeed, mouth means conversations, letters, and generally signs of benevolence, such as to send or accept gifts, etc.** But whether it is licit to exhibit signs of urbanity to an excommunicated person, the first opinion denies, and it is probable; the second opinion, also

probable, affirms, provided those signs, such as rising, uncovering the head, yielding place, are done so that a mark of incivility or the indignation of the excommunicated person may be avoided, and are not exhibited as signs of friendship or communication.

Prayer is any communication in divine things, for example, assisting at Mass or at the public offices of the Church, concerning which above.

Farewell comprehends all salutations exhibited by word or by another sign for the sake of honor, unless these are done to avoid harm and the indignation of the excommunicated person. Hence probably it is licit to return the greeting of an excommunicated person; for a return greeting is not an exhibition of honor, but rather payment of a debt and merely an act of urbanity. But it seems more probable that it is not licit to write back to an excommunicated person, according to St. Alphonsus, who cannot acquiesce in the opposite opinion, "because writing back seems true communication."

Communion comprehends every contract, which nevertheless is valid if made, and every society, and therefore cohabitation and cooperation.

Table comprehends banquets, but by way of society and commerce, such as certainly is not had if by chance you come into the same road, inn, table, indeed bed. St. Alphonsus, 188-195; St. Thomas, Suppl., q. 21, a. 1; Laymann, c. 2, 16, 17; Schmalzgrueber, n. 177; Pichler, loc. cit., n. 31; Coninck, dub. 12.

1123. **Is it grave to violate excommunication?** Communication in divine things is considered mortal, unless smallness of matter, or grave harm, or custom excuses, or they communicate only privately. Cf. 1114, 1120. Although they sin, nevertheless no penalty is incurred by an excommunicated person communicating with others, and by others communicating with him, except in the cases already indicated. Cf. 1109.

Communication in civil matters, with contempt excluded but without a just cause, is only venial. But this is understood, speaking per se and making abstraction from contrary custom, which excuses tolerated persons from all sin. But whether communicating frequently and continuously in civil matters is again, speaking per se, mortal, there are two probable opinions, one affirming, the other denying.

Finally, communication in a criminal crime, that is, in the same crime or contumacy because of which the excommunication was imposed, is mortal sin. It would be, for example, if after excommunication had been imposed because of theft, someone still communicated with the excommunicated person, so that he might supply him counsel or help lest he restore. But the penalty of excommunication because of this communication is incurred in the case indicated in C. *Apostolicae Sedis*, excommunications simply reserved to the Roman Pontiff, art. 17. C. *Significavit* 18, *De sententia excommunicationis*; St. Thomas, Suppl., q. 28, aa. 2, 3; Quodl. 11, a. 9; St. Alphonsus, 196-199, 207; Laymann, c. 3, nn. 1-3; Schmalzgrueber, nn. 178-182, 195-197; Pichler, n. 31; Coninck, dub. 14.

III. On Suspension

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1124. **What is suspension?** Suspension is a censure by which a cleric is deprived of the use of ecclesiastical power which he has by reason of order, office, or benefice. Therefore by it the cleric is not deprived of passive reception of the sacraments, nor of common suffrages, etc.

Since suspension is a most grave penalty, it cannot licitly be inflicted without warning, without writing, and without the other formalities of law. Therefore, if a prelate, either with no warning having been sent ahead, or with the cause not expressed, or orally says: I suspend you, unless it was imposed by way of precept, namely by commanding something, for instance to dismiss a female domestic within a certain time under penalty of suspension to be incurred by the fact itself, it will rather be either a mere penalty, or a simple prohibition of celebrating, and not a censure; for a prelate is not presumed to have wished to commit a delict by imposing censure without prior warning, or without declaring the cause, or orally. Cf. 1103. Hence one infringing it would be guilty of grave disobedience, yet would not for that reason become irregular. St. Alphonsus, 317, 318.

But imposed on a community as such, it indeed holds everyone as regards common offices or benefices; but by no means as regards particular benefices or duties, nor as a censure, but as a privation, and as a certain canonical penalty, and as particular incapacity of persons for those things. St. Alphonsus, 317; Lugo, *Responsa moralia*, l. 1, d. 18; Schmalzgrueber, n. 45.

Likewise it is not properly a censure if a bishop as a precaution keeps a cleric away from the exercise of sacred ministry, not because he is guilty of a crime, or already convicted of or confessed to a crime, but because it is not fitting that holy things be handled by one of whom public rumor speaks badly. Cardinal De Luca, *Opera*, tom. 14, *Annotationes ad S. Concilium Tridentinum*, disc. 43, nn. 3, 4; Bonacina, t. 3, *De censuris in particulari*, d. 3, q. 5, p. 1; Pichler, nn. 39, 41, 42.

1125. **What is suspension from an informed conscience?** Suspension can be imposed by the Ordinary from an informed conscience, namely from causes known to himself, and therefore extrajudicially, with no warning sent ahead and every appeal removed; nevertheless recourse to the Apostolic See will always be free. The constant practice now is that only temporary suspension of this kind is permitted, by no means perpetual. S. C. C., April 8, 1848.

But whether suspension of this kind can be imposed not only because of an occult crime, but also because of a public delict, is controverted. The affirmative opinion rests especially on C. Trent, sess. 14, c. 1, *De reformatione*, whence it is clear that a bishop can "forbid a cleric ascent to sacred orders from whatever cause, even because of an occult crime, in whatever way, even extrajudicially, or suspend him from his orders or degrees or ecclesiastical dignities." But the negative opinion is clear from the instruction of S. C. de P. F., October 20, 1884, n. 7; S. C. C., April 26, 1853.

This suspension is sustained even if given orally; nevertheless it is better that it be done in writing. S. C. C., April 8, 1843; September 14, 1782. It can also be imposed by the capitular vicar, and in inflicting it one must express that this is being done according to the faculty handed down by Trent. Since this kind of suspension is because of an occult or in any way past delict, or, if because of a

delict which depends on the future, warning and contumacy are lacking, it does not have the nature of censure. Therefore according to some, one violating this suspension does not incur irregularity. But according to others, and the more numerous, he incurs it. S. C. C., April 8, 1848, and the instruction of S. C. de P. F. cited, October 20, 1884, n. 11, embrace this opinion.

Likewise if suspension is imposed for a definite time, whether one violating it incurs irregularity, some deny, others affirm. More truly it must be affirmed from C. *Cum aeterni* 1, *De sententia et re iudicata* in the Sixth, if nevertheless it was imposed because of a delict not merely past, but at least in some way future, namely if the suspension was imposed by way of precept, statute, or law, because of a future crime, or also because of a past crime having a successive course. For then it is already for forestalling delicts, and not only for punishing past things. Therefore it then truly also has the nature of censure. St. Alphonsus, 314; Salmanticenses, t. 10, c. 5, n. 13; Benedict XIV, *De synodo*, l. 12, c. 8, nn. 3-5; Bouix, *De iudice*, vol. 2, Paris, 1885, p. 310 seqq.; A. S. S., vol. 7, vol. 14, p. 299 seqq.; E. M.

1126. **How does suspension cease?** Suspension imposed by way of censure ceases through absolution. But suspension imposed by way of a mere spiritual penalty ceases through dispensation or remission of the superior, or also by itself without another declaration of the superior, namely when the constituted time has elapsed or the imposed condition has been fulfilled. Suspension of this kind by way of penalty is suspension in perpetuity, or to a certain time, for example, to three years, or until the guilty person has satisfied or restored, or at the good pleasure of the See or of the superior; in this last case the suspension also ceases when the superior has died or been deposed, etc.

"Although suspensions which are imposed as pure penalties ought rather to be removed through dispensation, nevertheless some doctors, observing no distinction, say that every suspension imposed because of a delict, whether perpetually or for a certain time, is taken away by absolution; and this word of absolution is also customarily used in the formula of relaxation ... And for the same reason the privilege conceded by the Apostolic See to confessors of the Society of Jesus, that after hearing confessions of the faithful they can absolve them in the forum of conscience from whatever sentences, censures, and ecclesiastical penalties resulting from sins, extends itself to suspensions of law indistinctly, as Avila signifies." Laymann, c. 4, n. 4. St. Alphonsus, 322.

1127. **How many kinds of suspension are there?** One suspension is total, by which a cleric is kept from every ecclesiastical function, and at the same time is deprived of the fruits and administration of the benefice; another is partial, by which he is deprived only of one or the other, in whole, or even in part. This, if it is for a short time and imposed by man, can be inflicted for venial fault alone. St. Alphonsus, 78, 321.

One suspended from order simply is deprived of the solemn exercise, or exercise from office, namely in that mode in which it cannot be exercised by laypersons, of whatever order, whether major or minor. Nevertheless today laypersons also are accustomed to perform the functions of minor orders. Hence suspension does not seem to extend itself as far as minor orders. Nor indeed is one suspended from order deprived of voice in chapter, nor is he prohibited from reciting the hours in choir. Likewise he is by no means deprived of jurisdiction and benefice. Hence he can also validly absolve. Yet others deny this, because it is also an act of order. One suspended from a higher order is not for

that reason suspended also from a lower order. One suspended from a lower order is not also suspended from a higher, unless the exercise of the higher order is contained in the exercise of the lower order. St. Alphonsus, 314.

One suspended from jurisdiction simply is deprived of all jurisdiction, both internal and external, but by no means of the exercise of order. Suspension from order holds the suspended person everywhere. Suspension from jurisdiction more truly has no force outside the territory of the one imposing it.

One suspended from office simply is understood to be suspended from every office, whether it comes from order or from jurisdiction. For office here is every spiritual power. Hence he is deprived of the use both of jurisdiction and of order, or of whatever ecclesiastical ministry; but by no means is he also held by suspension from benefice. Therefore he will still be able to receive its fruits, if nevertheless, at least through others, he fulfills the offices and burdens of the benefice. This suspension is also called suspension from divine things. C. *Medicinalis* 1, C. *De sententia excommunicationis* in the Sixth; C. *Inter solicitudines* 10, *De purgatione canonica*; C. *Cum aeterni* 1, *De sententia et re iudicata* in the Sixth. Hence a parish priest suspended from office can neither celebrate Mass, nor preach, nor preside over offices, nor administer sacraments. A canon suspended from divine things, from S. C. EE. and RR., February 29, 1869, cannot receive choral distributions nor the remaining emoluments.

One suspended from benefice simply is deprived of the fruits and administration of the benefice, but by no means also of the functions of order or office. Yet he is still bound to provide the burdens and offices of the benefice, and then can retain the part of the fruits which he would have to give to a substitute, because it would be the stipend of labor.

Finally, one suspended from office and benefice at once, or simply suspended, unless some limitation is gathered from the circumstances, is considered totally suspended. Laymann, p. 3, c. 1; St. Alphonsus, 315, 316; Schmalzgrueber, nn. 266-269, 290-305; Engel, nn. 74-79.

1128. **How does one sin who violates suspension?** One who, being suspended, exercises an act forbidden to him through suspension sins gravely; for he violates a precept of the Church in a grave matter. Indeed one suspended from sacred order also incurs irregularity, which is incurred because of violation of suspension from order alone, and not also from jurisdiction and benefice, if he knowingly and solemnly exercises the office of that order, outside the case of necessity or grave inconvenience. C. *Is cui* 20, *De sententia excommunicationis* in the Sixth; C. *Cum aeterni*, *De sententia et re iudicata* in the Sixth. Cf. also Lugo, *Responsa moralia*, l. 2, d. 10, where he treats the question "whether an occult suspended person can celebrate without danger of irregularity to feed himself and his needy mother."

In this matter lightness of matter can also excuse both from grave sin and from irregularity, for example, if he were to exercise a light act of jurisdiction, or bless the table, exercise sacred order not solemnly, or a non-sacred order, which nevertheless today, as has already been said, since it is also exercised by laypersons, no longer seems to be comprehended by suspension. Moreover, if a tolerated suspended person does not thrust himself into functions by which he is prohibited through suspension, but is required by others, he by no means sins, nor incurs irregularity. The matter stands differently with a suspended person not tolerated, denounced; for outside a most urgent cause, even if he is requested by the faithful, he cannot exercise those offices from which he is suspended. But

others are not bound under mortal sin to avoid him, unless they are considered to cooperate in the act from which he is suspended; whence to hear his Mass will not be sin, if you do not serve, yet with scandal excluded.

1129. **Are the acts of one suspended valid?** An act provided by one suspended is null and void. "This penalty has place only in those things which depend on the Church, such as jurisdiction and benefice; in these things, therefore, one suspended, if he administers a benefice and exercises jurisdiction, makes an invalid act, provided he has been denounced as suspended; because, once denunciation has been made, he is deprived of all power of exercising those acts. Before denunciation he is only impeded from their exercise while he is not required by the faithful; but when he is required by the faithful, he validly and licitly exercises those acts, and therefore it is necessary that he retain jurisdiction." Schmalzgrueber, n. 309, 306-308; St. Alphonsus, 313.

Moreover "one suspended from benefice, if he thrusts himself into it and receives the fruits, is not indeed made irregular, yet according to the common opinion loses the benefice by law itself, C. *Cupientes* 16, § *Ceterum*, *De electione* in the Sixth," Engel, n. 77. "Therefore, since a beneficed person thus suspended cannot administer the benefice by himself, an economus is usually given to him, who collects the revenues and applies them by command of the bishop to pious causes, with necessary support reserved to the suspended person." Schmalzgrueber, n. 308; Pichler, n. 43.

1130. **What is suspension from Pontificals?** "If a bishop suspended from Pontificals solemnly celebrates Mass in pontifical apparatus, it is certain that he sins ... But whether he also incurs irregularity, Angelus, etc., affirm. But Laymann, etc., more probably deny. The reason is that a bishop in sacrificing does not exercise a substantial act of the episcopal order, but an act of the priestly order, from which he is not suspended; and that the celebration occurs with Pontificals has itself per accidens. But irregularity is not incurred except in the exercise of an act of a prohibited order." St. Alphonsus, 314.

1131. **What is understood by the name of Pontificals?** By the name of Pontificals is understood the authoritative use of Pontifical insignia, namely the mitre, pastoral staff, and pallium. Therefore one suspended from Pontificals is consequently repelled from acts of episcopal order which ought not to be done without the aforesaid insignia, such as conferring the sacrament of confirmation or orders, consecrating virgins, Churches, altars. Nevertheless he can celebrate Mass in the manner of other priests, hear confessions, baptize, indeed even impose censures, confer benefices, and exercise other acts of jurisdiction, since they by no means pertain to Pontificals. Laymann, c. 1, n. 6; Giraldi, *Expositio iuris pontificii*, p. 2, s. 21, note 2, p. 826.

1132. **What are deposition and degradation?** Deposition and degradation are usually subjected to suspension, because of the likeness which they have with it, since each is a removal from ecclesiastical order, jurisdiction, and benefice. Yet they differ far from it, since penalties of this kind proceed still further, and deprive not only of the use of ecclesiastical power, but, insofar as can be done, of the rooted right itself, and this perpetually; hence they are not censures, but vindictive penalties. Likewise privation of benefice is not a censure, but a mere penalty. Once suspension is removed, by law itself the suspended person is restored in his office and benefice; but one deposed needs a new title in order to be placed in it anew. If deposition casts

the cleric down from every office and benefice and clerical dignity, degradation is had; and it is verbal if by mere sentence of the judge he is cast down from clerical privileges; real if the solemn rite is added by which the insignia of orders are taken away from the cleric, and, after these have been taken away, he is handed over to the secular court. Since penalties of this kind are most grave, they are not incurred before the sentence of the judge. St. Alphonsus, 323, 327; Bouix, *De parocho*, Paris, 1855, p. 365 seqq.; Laymann, p. 1, c. 1, n. 3; p. 3, c. 5; Coninck, disp. 16; Schmalzgrueber, n. 7; Benedict XIV, *De synodo*, l. 9, c. 6, n. 3 seqq.; C. *Quam grave*, August 2, 1757.

IV. On Interdict

1133. **What is an interdict?** An interdict is a censure by which the use of all divine offices, of some sacraments, and of ecclesiastical burial is prohibited, precisely insofar as it is use. Therefore interdict does not take away jurisdiction. Precisely insofar as it is use: because excommunication deprives of the same use insofar as it is communication with the faithful; but suspension properly impedes not that use, but the exercise of ecclesiastical power. And thus by general interdict both clerics and laypersons are affected, and by it clerics are indeed prohibited from operating in sacred things, because these are prohibited during the time of interdict or in an interdicted place, but not as the exercise of sacred ministry. C. *Responso* 43, *De sententia excommunicationis*; C. *Permittimus* 57, ibid.; C. *Alma mater* 24, ibid., in the Sixth; C. *Si sententia* 16, ibid.; C. *Non est* 11, *De sponsalibus*; C. *Cum et plantare* 3, § 3, *Quod si de privilegiis*; C. *Episcoporum* 8, ibid., in the Sixth; C. *Quod in te* 11, *De poenitentia et remissionibus*; St. Alphonsus, 328; Schmalzgrueber, nn. 340-349, 398-401; Engel, n. 91; Pichler, n. 45.

1134. **What is required for observance of an interdict?** In order that an interdict oblige others, two things are required. The first is that the interdict has been denounced; otherwise, after the Extravagant *Ad evitanda*, we are bound neither to observe a local interdict nor to avoid one personally interdicted, although the personally interdicted person himself ought to abstain from divine things as soon as that censure binds, because no favor was made to such persons, just as to the excommunicated, through the cited Extravagant. The other is that a local interdict be everywhere observed by those in whose favor it was constituted. For if they themselves do not observe the interdict, the Church is considered to remit it. C. *Petistis* 20, *De privilegiis*; Schmalzgrueber, n. 389; Pichler, n. 52.

1135. **What about divine offices?** Divine offices which cannot be performed in an interdicted place, or by interdicted persons, and at which it is forbidden to be present, are those which are solemnly exercised by clerics alone in a designated place, excepting a sermon, such as public celebration of Mass, public celebration of the canonical hours in choir, public and solemn blessings, etc.

And in a general local interdict these are prohibited on individual days, except the days of the Nativity of the Lord, Easter, Pentecost, the Assumption of the Blessed Virgin, the day and Octave of Corpus Christi; to these must be added the feast of the Immaculate Conception for all Spain. For then divine offices are permitted to be celebrated solemnly, with even interdicted persons admitted;

these indeed are bound on those feasts to hear Mass, provided those who gave cause for the interdict do not approach the altar, nor the offertory, nor communion.

But on other days it is licit for religious and all clerics, in a general local interdict, to celebrate offices if they themselves are not interdicted, and if they celebrate with closed doors, in a subdued voice, and without the sound of bells, excommunicated and interdicted persons excluded, namely those who have been denounced as such, and in such a way that nothing can be heard or seen by those who are outside.

But if the interdict is general and personal of the people, nothing prevents divine things from being celebrated daily in churches, provided the conditions just related are observed. The reason is that by force of this interdict the churches are not interdicted, nor the clerics. Finally, when the interdict has been local and special, it will be licit only once a week to celebrate Mass for renewing the Eucharist for the sick.

Now indeed, although an interdict is like an excommunication, nevertheless it does not separate from the communion of the faithful. Hence if an interdicted person celebrates Mass, we can assist him; and if an interdicted person is present at divine offices, and after being ordered to leave does not wish to, one need not cease on that account, unless perhaps the place itself is interdicted, because there the law does not give the faculty of celebrating except with interdicted persons excluded. Likewise his burial does not pollute a cemetery or church. Indeed it is licit to offer sacrifices and pour out public prayers for him while living or after he has died. C. *Responsio* 43, *De sententia excommunicationis*; C. *Permittimus* 57, ibid.; C. *Alma* 24, ibid., in the Sixth; C. *Quod in te* 11, *De poenitentia et remissionibus*; Clementina *Ex frequentibus* 1, *De sententia excommunicationis*; Martin V, C. *Ineffabile sacramentum*; Eugene IV, C. *Excellentissimum*; Schmalzgrueber, nn. 361-368; Laymann, p. 4, c. 2, n. 2; St. Alphonsus, 333; Engel, nn. 83, 84, 92; Giraldi, *Expositio iuris pontificii*, p. 1, s. 811; Pichler, nn. 50, 51.

1136. **What about the sacraments?** The sacraments which it is not licit to minister or receive in an interdicted place, or by interdicted persons, are: the Eucharist, Extreme Unction, and sacred Order. C. *Quod in te* 11, *De poenitentia et remissionibus*; C. *Non est* 11, *De sponsalibus*; C. *Responso, De sententia excommunicationis*.

1137. **Therefore, first, Baptism is licit, which can be given even solemnly; but not by one specially interdicted, outside the case of necessity.** C. *Non est* 11, *De sponsalibus*; Schmalzgrueber, n. 351.

1138. **Second, Confirmation is licit, even solemnly; but again by no means if conferred by one specially interdicted, or in favor of one who has been specially interdicted, unless he first satisfies, or if he cannot, provides caution of satisfying, or, if he can do neither, swears that he will satisfy when he can.** C. *Responso* 43, *De sententia excommunicationis*; C. *Quoniam* 19, ibid., in the Sixth; C. *Alma* 24, ibid.; C. *Clerici* 3, *De clerico excommunicato minore*; C. *Latores* 4, ibid.; Schmalzgrueber, n. 352.

1139. **Third, Penance is licit, but not if conferred by one specially interdicted outside the case of necessity, nor in favor of those who are specially interdicted, unless they provide satisfaction, or, if they cannot, caution, or if they can do neither, swear that they will satisfy when they can.** C. *Quod in te* 11, *De poenitentia et remissionibus*; C. *Alma* 24, *De sententia*

excommunicationis in the Sixth. "Yet if it is administered by one interdicted, even specially denounced, more probably the sacrament will be valid, because interdict takes away not jurisdiction but the use of divine things." Schmalzgrueber, n. 353.

1140. **Fourth, Viaticum is licit in danger or in the article of death, but not in favor of one specially interdicted unless he first satisfies, or, if he cannot, provides caution, or, if he cannot even do this, swears that he will satisfy.** In this case the Most Holy Sacrament can and ought to be carried to the house of the sick person with the usual solemnity, clerics accompanying, candles lit, bells rung. Once the Sacrament has been carried, it is also licit for the priest to show it to the people for adoration, and with it to bless them; for these things are not prohibited by interdict except in the sacrifice of Mass. But in order that the Most Holy Eucharist can be ministered to those existing in the article of death, it was granted, as we have already said, that it may be renewed once in any week by celebrating the sacrifice of Mass. C. *Quod in te* 11, *De poenitentia et remissionibus*; C. *Permittimus* 57, *De sententia excommunicationis*; C. *Alma*, ibid., in the Sixth; Laymann, p. 4, c. 2, n. 1; Schmalzgrueber, n. 354.

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1141. **Fifth, Extreme Unction is licit, "if the sick person can receive no other sacrament; for then extreme unction can be ministered to him from the presumed will of the Church, because it is not to be believed that the Church wishes to deny to her faithful, and especially to the dying, the help of the sacraments, especially since, if the sacrament is not received, the eternal salvation of the sick person is not lightly endangered, and that danger is for the greatest part moderated by receiving the sacrament of extreme unction.**" Schmalzgrueber, n. 355. "But it is common," says St. Alphonsus, 334, "that religious during the time of interdict can receive communion and extreme unction."

1142. **Sixth, Order is licit for those only generally interdicted and in a place not interdicted.** The reason is that any reception and administration of the sacraments in an interdicted place, and to persons specially interdicted, is prohibited; but it is otherwise for those who are generally interdicted in a place not interdicted. Besides this, Order is licit if the case, which is altogether rare, should occur, that "in some province there is so great a scarcity of priests that the sacrament of penance and of the Eucharist could not conveniently be ministered to the sick ... The reason is that in C. *Alma* some sacraments are permitted to be administered and confected during the time of interdict; consequently, therefore, the ordination of ministers who were necessary for this must be permitted, otherwise that concession would be useless. Confirm by parity: from the fact that in time of interdict the ministration of baptism and confirmation is granted, the blessing of the font and the confection of chrism also are considered granted, without which those sacraments cannot be ministered. Therefore, since the sacrament of penance and the Eucharist cannot be ministered without ministers, from the concession of these the concession of their ordination is rightly inferred." Schmalzgrueber, n. 356.

1143. **Seventh, Marriage is licit.** Since it is held in law that this can be contracted at any time, it is not comprehended in an interdict. Hence it can be contracted in an interdicted place and by

persons generally interdicted. "Indeed even the specially interdicted, if they are penitent and contrite, are in no way excluded from contracting it, because they are not prohibited by force of an obstacle, which is removed through penance." Schmalzgrueber, n. 328. Nevertheless the solemn blessing cannot then be given to spouses. For this is contained under divine office. Therefore just as this is prohibited during the time of interdict, so also is that. C. *Non est* 11, *De sponsalibus*; Schmalzgrueber, nn. 357-360; La-Croix, n. 420; St. Alphonsus, 334; Laymann, c. 2, n. 1; Engel, n. 94; Pichler, n. 50.

1144. **What about ecclesiastical burial?** In a general local interdict, laypersons who have not been specially interdicted by their own fault, unless they are transferred to another sacred place not interdicted, from C. *Si sententia* 16, *De sententia excommunicationis* in the Sixth, are to be buried in a non-sacred place, even if it is a matter of infants and the insane. But if they have been buried in an interdicted sacred place, they need not be exhumed, because this is not held as established in law, although it is otherwise concerning the excommunicated. C. *Sacris* 12, *De sepultura*. But when the interdict ceases, all are to be replaced in a sacred place.

Clerics, if they are not interdicted by name and have observed the interdict, can be buried in an interdicted sacred place, but silently and without solemnity; indeed even in a Church also interdicted by a special interdict. If the interdict is local and special, no one doubts that ecclesiastical burial is prohibited to laypersons.

But in a personal interdict, whether general or particular, both clerics and laypersons can be buried in a Church not interdicted, if they have not been denounced. For with those with whom we communicate while living, we can also communicate when dead.

But an interdicted person denounced by name, if he dies without absolution and has given no sign of penance, or there is no probable opinion that such a sign was given by him, must be buried outside a sacred place. But if it is established that he gave such a sign, after indirect absolution from the interdict has been provided, he can be handed over to ecclesiastical burial. C. *Quod in te* 11, *De poenitentia et remissionibus*; C. *Episcoporum* 8, *De privilegiis* in the Sixth; Clementina *Eos qui* 1, *De sepultura*; Schmalzgrueber, nn. 369-378; Laymann, c. 2, n. 3; St. Alphonsus, 335; Engel, nn. 95-97; Salmanticenses, t. 10, c. 6, p. 6; Pichler, n. 50.

1145. **What about interdict from entrance into a Church?** Interdict from entrance into a Church is a certain special and partial interdict by which someone is prohibited from exercising sacred order in a Church, from being present at divine offices, and from ecclesiastical burial. Hence "it deprives only of participation in divine things in a Church ... so that one thus interdicted can neither celebrate in it, nor be buried, nor give or receive sacraments, nor exercise any sacred ministry, nor hear Mass or another divine office ... By Church is understood any temple deputed by the authority of the bishop for doing sacred things, whether it is blessed or not ... Therefore celebration or participation in divine things in such a Church is interdicted by this censure, not outside it ... Therefore outside the Church all other things which were otherwise licit for such a person are afterward licit, such as to make the sacred action in an approved private oratory, receive the sacrament of unction in his house, and any other sacraments outside the Church." Suarez, *De censuris*, d. 35, s. 4.

Likewise "by force of this interdict ecclesiastical burial is prohibited, even in a non-contiguous cemetery ... nevertheless someone is not deprived of entrance into a cemetery, even one contiguous with the Church, nor of celebration of divine offices in it." Suarez, loc. cit. By force of this interdict entrance into a Church is also not prohibited for pouring out only private prayers in it; indeed also, more probably, for receiving sacraments privately in it. Likewise it is not prohibited to hear a sermon in a Church. The reason is that these things are signified by no law. C. *Sacro* 48, *De sententia excommunicationis*; C. *Is cui* 20, ibid., in the Sixth; Schmalzgrueber, nn. 379-388; Salmanticenses, n. 89; Engel, nn. 98-99; Bonacina, *De interdicto*, d. 5, p. 6, nn. 11-12; Coninck, disp. 17, dub. 2.

1146. **How many kinds of interdict are there?** One interdict is local, which immediately affects a place; another personal, which immediately affects persons; another mixed, which immediately affects a place and a person. But any one of these can be general or particular, according as it affects a whole region or community, or some determined place, for example a given oratory, or some person in particular.

A special personal interdict is a true censure; but a local interdict and a general personal interdict are not censures, but a certain privation, and therefore they oblige all, even the innocent. For it can be imposed because of a very grave delict of the head or of the principal members, although the rest are free from fault. But it cannot be lifted except by one having jurisdiction in the external forum. For a place and a community are not subject to the penitential forum. The same must be said for the same reason about suspension imposed on a community.

When a city is interdicted, the suburbs, the cathedral church, and the exempt churches of regulars are also interdicted; and all are bound to observe it, even the bishop who imposed it, with the Pontiff alone excepted. But in this case it is licit to go elsewhere so that they may assist at divine offices. Indeed religious, when the interdict is observed by the cathedral or mother church, or parish church, are bound to observe it, even if it is null from whatever head.

But if the interdict is general and personal, the following are excepted: 1. bishops, who are also exempted from general suspension; 2. the innocent, if they place domicile elsewhere; 3. outsiders; 4. infants and the insane, incapable of deceit, who nevertheless are still deprived of ecclesiastical burial.

But all who have given cause to any local or general personal interdict remain interdicted by law itself according to the Decretals. But after C. *Apostolicae Sedis* this interdict, which is special personal, no longer flourishes. Moreover, when a people is interdicted, those are not understood to be interdicted who are not part of the people, such as clerics, students, and travelers. When the clergy is interdicted, laypersons are not interdicted, nor religious, indeed nor other clerics who have no office or benefice there, for these do not constitute one body with the clergy. C. *Praesenti* 10, 16, 24, *De sententia excommunicationis* in the Sixth; C. *Si sententia* 19, ibid.; C. *Si civitas* 17, ibid.; C. *Alma mater* 24, ibid.; C. *Auctoritate* 4, *De privilegiis* in the Sixth; C. *Licet* 11, ibid.; Clementina *Ex frequentibus* 1, *De sententia excommunicationis*; Schmalzgrueber, nn. 324-333; St. Alphonsus, 311, 322, 329-334, 338; Laymann, cc. 1, 4; Engel, nn. 83-88; Suarez, d. 33, s. 1, n. 6; Bonacina, d. 4, q. 1, p. 1; d. 2, q. 8, p. 14; Pichler, n. 48; Coninck, dub. 1.

IV. On Interdict

1147. **What about violation of interdict?** Both clerics and laypersons violating an interdict, whether personal or local, whether general or special, sin gravely when the matter concerns a grave thing.

If clerics specially interdicted exercise sacred order, or knowingly celebrate in a place placed under interdict, they incur irregularity.

Furthermore clerics violating an interdict incur suspension and interdict in the cases designated in C. *Apostolicae Sedis*, par. 6, suspensions, and par. 2, interdicts.

The same clerics violating an interdict do not enjoy the privilege by force of which they can be buried in a sacred place during the time of interdict.

A cleric or religious, even a nun, violating a local interdict is rendered incapable for both active and passive election. This penalty is extended by most doctors also to violators of personal interdict. C. *Cum medicinalis* 1, *De sententia excommunicationis* in the Sixth; C. *Is qui* 18, § *Is vero* 20, ibid.; C. *Is cui* 20, ibid.; Clementina *Gravis* 2, same title; C. *Quod in te* 11, *De poenitentia et remissionibus*; Trent, sess. 25, c. 12, *De regularibus*; Schmalzgrueber, nn. 390-397; Laymann, c. 3; Coninck, dub. 3, 4; St. Alphonsus, 336.

1148. **What is cessation from divine things?** Cessation from divine things is usually subjected to interdict; it is not a censure, nor properly a penalty, but a mere prohibition and privation. For it is a prohibition made primarily to clerics that they abstain from the sacrifice of Mass, from administration of the sacraments, and from divine offices to be celebrated in some sacred place. It is imposed because of a notorious and most grave delict perpetrated in the Church itself, if the guilty person has refused to satisfy, as a sign of the mourning of the Church, for repairing the injury inflicted on the Church.

Since it is akin to a local interdict, the sacraments and several other things which are licit in such an interdict are also licit in this cessation from divine things; nevertheless those violating it incur no irregularity. But since ecclesiastical burial during cessation from divine things is prohibited by no law, it is not to be asserted. Therefore not only clerics but also laypersons can be buried in a cemetery and church, yet without the solemnity of divine offices.

It can be imposed by the same persons who can impose censures. The cause because of which it is imposed must be expressed in a public instrument through a notary, or in other open letters furnished with an authentic seal, which must be handed to the one against whom the cessation is indicated. Besides this, the delinquent must first be warned whether he wishes to provide satisfaction and amendment, because it is not indicated except in contumacy.

Since the matter is most grave, it obliges under grave obligation, and even exempt religious are bound to observe it. Clementina *Ex frequentibus* 1, *De sententia excommunicationis*; C. *Dilectis* 55, *De appellationibus*; C. *Irrefragabili* 13, *De officio ordinarii*; C. *Si canonici* 2, ibid., in the Sixth; C. *Quamvis* 8, ibid.; C. *Non est vobis* 11, *De sponsalibus*; Schmalzgrueber, nn. 402-425; Pichler, n. 54; Engel, nn. 101, 102; Laymann, p. 4, c. 6; St. Alphonsus, 340; Coninck, dub. 7.

V. On Ecclesiastical Burial

1149. **What is ecclesiastical burial?** Ecclesiastical burial, of which mention was often made in the preceding paragraph, consists in two things: a sacred or blessed place, which by the bishop or by use has been assigned for burying the faithful who die piously in Christ, and a sacred rite in carrying out and burying the dead person. Roman Ritual, *De exsequiis*, *De benedictione coemeterii*; C. *Ad haec* 4, *De religiosis domibus*; Suarez, disp. 12, sect. 4, n. 6; Salmanticenses, tr. 10, c. 3, n. 75.

When a new cemetery is blessed, some outer part must be left without blessing for burying unbaptized infants and others to whom ecclesiastical burial is denied. Nor is it necessary that that part be separated by a wall, provided it can be distinguished from the other part. But if, because of civil law, all persons are to be buried indiscriminately in the cemetery, then the blessing of the cemetery is to be omitted; but on each occasion on which a Catholic is to be buried, the place in which his body is to be deposited will have to be blessed, as in the Ritual.

1150. **What about the choice of burial?** All can choose burial where they prefer, although outside the church or cemetery of their own parish, provided they do not choose churches of nuns, and they choose a religious place, or at least one that is not profane, such as a private oratory, and the place has the right of burial.

But the following are excepted: 1. regulars, unless they have died so far from their own monasteries that they cannot conveniently be carried to them; 2. those below puberty, for whom the father can choose burial, or the mother, after his death.

One who dies with no burial chosen for himself is to be buried in the tomb of his ancestors, namely the family tomb, which one establishes for himself and his family, or the hereditary tomb, which one establishes for himself and his heirs. Otherwise he is to be buried in that parish in which he died, if he had domicile or quasi-domicile in it. And if he died outside these places, he is to be carried to the place of domicile or quasi-domicile; if this is so distant that he cannot conveniently be carried there, he will be buried either in the cathedral church, if one exists there, or in the church of the parish in which he died.

By special law, however, bishops are to be buried in the cathedral church, if they do not choose another place for themselves; a wife will be buried in the tomb of her last husband, if she does not choose her own burial; but the husband, if he dies first without choosing a burial, in the burial chosen by the wife; foundlings in the tomb of the hospital by which they were being supported; clerics in that church in which, when dying, they possessed a residential benefice; regulars in the church of their own order, although they died outside the monastery, if they can conveniently be carried to it, and therefore all who enjoy the right of regulars, namely novices, servants, male and female tertiaries who dwell perpetually in the monastery. But those who live separately can be buried in the church of the order whose habit they had assumed, if their common burial exists in these places and they did not die after choosing another burial; otherwise they are to be buried in the parish church.

Women who, with license of the Apostolic See, had entered a monastery with the intention of remaining there perpetually are to be buried there. Not so girls who were staying in a monastery for

the sake of education; these are to be buried in the parish where the monastery is. C. 1, 3, 5, 6, 7, 10, this title; C. 1-5, same title, in the Sixth; Clementina 2, same title; S.C. of Bishops and Regulars, June 8, 1731; May 6, 1870; Apr. 5, 1878; A.S.S., vol. 5, p. 568; vol. 11, p. 352; Ferraris, this word, n. 102; word *Moniales*, art. 1, nn. 61, 62, 63; Schmalzgrueber, l. 3, t. 28, nn. 1-48, 72-82; Giraldi, *Animadversiones ad Barbosa de officio et potestate parochi*, p. 3, c. 26, n. 25.

1151. **What about the right of carrying out and conducting the funeral?** "The rite of the Church commands that the bodies of the faithful, however they are carried either to the church or to the cemetery, always be accompanied by a priest." S.R.C., July 15, 1876.

The right of carrying out the dead and conducting the funeral to the church, as today they call it, the exposition, belongs regularly, with respect to secular persons, to the parish priest alone, namely to the proper parish priest of each person by reason of domicile or quasi-domicile, if someone has died in his own parish and is buried in it; or even if he died in his own parish but is to be buried in another, although the church is one of regulars; or if he died in another parish and is to be buried in his own.

To the church, I say; for from this church to the cemetery, without pomp and by a direct path, the right belongs to those to whom, if cemeteries did not exist, the right of burying would belong.

For a bishop, the canons of the cathedral church perform these things; for regulars, the prelate; for nuns, the ordinary chaplain or confessor of the monastery, although the cemetery is outside their church and the parish must be passed through, "provided the body is carried with stole and cross, but without pomp and by a direct path to the cemetery." S.C.C., Feb. 24, 1872; Aug. 12, 1872. Nevertheless, "dispersed religious, with respect to funerals, are subject to the parish priest of the place like the other parishioners." S.C. of Bishops and Regulars, Feb. 26, 1864; A.S.S., vol. 1, p. 168.

Roman Ritual, *De exsequiis*; S.C.C., Aug. 21, 1869; A.S.S., cited, vol. 5, pp. 126, 221, 611; S.C. of Bishops and Regulars, Mar. 21, 1884; A.S.S., cited, vol. 16, p. 551; Ferraris, word *Parochus*, art. 3; Benedict XIV, Notification 105, n. 33 ff.; E.M.

1152. **In what church are the funeral rites to be performed?** The due funeral rites are to be performed in that church in which the deceased directed them to be performed; and if he directed nothing, since they are part of ecclesiastical burial, in that church in which he is buried, or would be buried if there are public common cemeteries there. But if a church of this kind is the parish church, the heirs cannot demand that the exposition of the body and the due funeral rites take place elsewhere; but if it is not the parish church, the parish priest likewise cannot demand that they take place in the parish church. Nor indeed is it then permitted to the parish priest to pay the due rites in another's church. S.C.C., Mar. 24, 1821; A.S.S., vol. 5, p. 566.

1153. **What about funeral emoluments?** Funeral emoluments fall to the church in which someone is buried, or exposed, if he is buried in public cemeteries. From these a certain portion is owed to the parish priest in compensation for the work which he sustains in administering the sacraments to his parishioners. Because it is established by Canon Law, it is called canonical. By common law it is a fourth, unless something else has been introduced by local custom or privilege. This is owed to the parish priest of domicile or quasi-domicile; and if someone has

been buried in another church, it will have to be deducted by the church burying or exposing him, unless there is a contrary custom or privilege.

Trent, sess. 25, c. 13, *De regularibus*; St. Pius V, Constitution *Etsi Mendicantium*, May 16, 1567, § 11; Paul V, Brief *Decet Romanum Pontificem*, IV Kal. May, 1725; S.C. of Bishops and Regulars, Apr. 19, 1790; Aug. 18, 1843; S.C.C., Nov. 26, 1864; A.S.S., vol. 1, p. 86; S.C.C., Feb. 16, 1867; A.S.S., vol. 3, p. 305; vol. 5, p. 209 ff.; vol. 9, p. 27; vol. 15, p. 553 ff.; vol. 11, p. 381; C. 1, 4, 8, 9, 10, this title; C. 2, same title, in the Sixth; Clementina 2, same title; Schmalzgrueber, loc. cit., nn. 83-93; Ferraris, word *Quarta Funeralis*.

1154. **What is the funeral fourth?** "The funeral fourth, or canonical portion, is owed from all things which come by reason of the funeral, namely on the day of the funeral." Barbosa, *De parocho*, p. 3, c. 25, n. 36. Benedict XIII, Constitution *Romanus Pontifex*, Apr. 28, 1725, § 4, issued for Italy and the adjacent islands, established:

"That to the parish priests of deceased persons who will be entombed in churches of any regulars whatever there be paid, and actually handed over, the fourth part of all torches and candles with which the body of the deceased will be accompanied on the way to the burying church, and also of all torches and candles which will be lit in the same church around the body, or even on the altars, on the day of the funeral. From the aforesaid funeral fourth, however, the candles are to be understood as excepted, and are excepted, which priests, even regulars, or brethren of pious sodalities accompanying the funeral, carry manually, lit along the way. But if the funeral should not take place on the day of burial, but be deferred to another day, or to another longer time, nevertheless there is to be assigned to the parish priest the fourth part of all torches and candles which, on that very day of the completed funeral, were lit in the church where the deceased was buried, around the cenotaph or honorary tomb, and also on the altars of the same church.... Under the aforesaid funeral fourth We do not intend Mass legacies and anniversary legacies to be comprehended, indeed We expressly except from it these and similar pious bequests disposed by the deceased in favor of the church burying or exposing him," etc.

It must be added that "the fourth is also owed to the parish priest from funeral rites performed in a second place." S.C.C., Aug. 3, 1621. Barbosa, loc. cit.; Ferraris, word *Quarta funeralis*; A.S.S., vol. 5, p. 598 ff.

1155. **Are rights changed by the establishment of a public cemetery?** By the establishment of a public cemetery only the material place of burial is changed; the rights of churches and of the faithful with respect to burial and funerals are by no means changed. Likewise, by an illegitimate suppression of regulars, their ecclesiastical rights cannot be suppressed; nor do the same rights cease if regular families in some way persist and live together, although before civil law they are not recognized as ecclesiastical institutes. For in that case the subject of those rights still persists. S.C.C., Nov. 26, 1814; Feb. 16, 1867; Sept. 16, 1871; Feb. 24, 1872; A.S.S., vol. 1, pp. 87, 124, 239; vol. 5, p. 569; vol. 13, p. 419; vol. 20, p. 587.

1156. **Who are to be deprived of ecclesiastical burial?** Burial is part of ecclesiastical communion; and therefore "no Christian dead in the communion of the faithful ought to be buried outside a

church or a cemetery duly blessed." Roman Ritual, *De exsequiis*. But those to whom it is not permitted to give ecclesiastical burial you have in the Roman Ritual, ibid.; E.M.

1157. **What about suicides?** As regards suicides, the Holy Office, May 16, 1866, has these things: "When it is certainly established either about anger or despair, ecclesiastical burial must be denied, and the pomp and solemnities of the obsequies must be avoided; but when it is certainly established about insanity, ecclesiastical burial is given with the solemnities of obsequies; yet when doubt remains whether someone gave death to himself through despair or through insanity, ecclesiastical burial can be given, but with the pomps and solemnities of obsequies avoided." E.M.

1158. **What about duellists?** According to Benedict XIV, Constitution *Detestabilem*, § 9, duellists are deprived of ecclesiastical burial, although they have been absolved, and even before the sentence of a judge. But duellists do not incur the penalties of duellists because of an unexpected encounter, although the combatants, from the same impulse of the quarrel, went by equal agreement to some suitable place. S.C.C., Oct. 5, 1744.

1159. **What about heretics?** The heretics to whom ecclesiastical burial is to be denied are not occult heretics, but public and manifest ones, although they have not yet been declared such by the Church. This is established from the Constitution of Martin V, *Inter cunctas*, and the Response approved by Urban VIII, Holy Office, Nov. 6, 1641, and also from Constitution *Apostolicae Sedis*, art. 1, excommunications reserved to no one. E.M.

1160. **What about public sinners?** Ecclesiastical burial is not to be denied to guilty persons who are punished with death, if they have given signs of penitence; but they are to be buried without solemnity.

The same must be said of prostitutes who die in a public brothel and who have satisfied for public scandal and confessed their sins. Ecclesiastical burial can be given to them, but with the pomps and solemnities of obsequies avoided. Holy Office, Sept. 19, 1877.

Nor is it to be denied to actors and comedians, provided they have not refused the sacraments; for this is prohibited by no law.

Those who have not satisfied the precept of paschal communion or annual confession are not today deprived of ecclesiastical burial, unless after an edict has been proposed, which is no longer usually proposed, and with the Ordinary consulted.

Likewise it is not to be denied to impenitent sinners if the priest alone was witness of this kind of impenitence, in order to avoid scandals. Hence a priest doubtful about the dispositions of a dying person should address him without witnesses and induce him to confession, provided public scandal does not have to be repaired. E.M.

1161. **What in a case of doubt?** "Where doubt occurs, let the Ordinary be consulted." Roman Ritual, loc. cit.; Holy Office, May 16, 1866, etc. If recourse cannot be had to him, the principle holds: in doubt, odious things are to be restricted; nor, because of grave inconveniences which could arise from it, is burial to be denied to anyone unless this obligation is certainly established. La-Croix, l. 7, nn. 254-256. "For the rest," says St. Alphonsus, *De privilegiis*, n. 91, "no one is to be

deprived of burial in any case without the sentence of the bishop, or of the superior, if the corpse is that of a religious."

Since the matter concerns a positive law, which does not oblige with grave inconvenience, in such a case it is permitted to carry out the dead person with Catholic rite and to pay him the solemn funeral rites, provided these are not extorted in contempt of the Church, and provided the deceased is not carried out with Masonic signs attached to the bier or to the banners. The Holy Office, July 13, 1609, judged that the burial of heretics is to be tolerated if it cannot be resisted without scandal. And the Sacred Penitentiary, Dec. 10, 1860, concerning those notoriously excommunicated, says: "care must be taken that all things be done according to the norm of the sacred canons; but insofar as this cannot be obtained without danger of disturbances and scandal, the parish priest should in no way concur in the burial, either by himself or through other priests," that is, he should behave passively. E.M.

On the Constitution *Apostolicae Sedis*

1162. **What censures are now in force?** These things are in the Constitution *Apostolicae Sedis* of Pius IX concerning censures:

By Our own motion, certain knowledge, mature deliberation, and the fullness of Our Apostolic power, by this Constitution to remain perpetually in force, We decree that, from whatever censures, whether of excommunication, suspension, or interdict, which have thus far been imposed by way of *latae sententiae* and to be incurred by the fact itself, only those which We insert in this very Constitution, and in the manner in which We insert them, shall have force from this point forward; at the same time declaring that the same censures must receive their force not only from the authority of the old canons, insofar as they agree with this Our Constitution, but also from this very Constitution of Ours, no otherwise than if they had first been issued by it.

By force of the present Constitution, only those *latae sententiae* censures now flourish by common law which either are expressly contained in it, or have already acceded to it after its promulgation, or will afterwards accede to it. But all those censures which are clearly and certainly contained in the same Constitution, even if previously they could have been said to be obsolete, or to have gone into desuetude, or to be generally ignored, now admit no such exception and obtain full force of obliging. Holy Office, June 15, 1870. In the following numbers we will explain them step by step, declaring the text itself of the praised Constitution. E.M.

1163. **We declare that the following are subject to excommunication *latae sententiae* reserved in a special manner to the Roman Pontiff:**

In a special manner. The following excommunications are said to be reserved in a special manner for four reasons.

The first is because for them "a general concession of absolving from cases and censures, or excommunications, reserved to the Roman Pontiff is in no way sufficient." Paragraph *A quibus*. But here it must be noted that, even if someone has a special faculty of absolving from these cases reserved to the Apostolic See in a special manner, therefore the faculty is not considered also

conceded for the case of absolution of an accomplice, which needs a most special mention. Holy Office, June 17, 1866; Apr. 4, 1871. But the absolving of heresy is contained in that special faculty, since it has not now been excepted "most specially," as before. Giraldi, *Expositio iuris pontificii*, tom. 2, p. 1, l. 7, s. 809.

The second is because they are excluded also from the faculty of absolving granted to bishops by the Council of Trent, sess. 24, c. 6, *De reformatione*, although the same faculty, namely of absolving from all occult censures, even those reserved to the Pope, remains firm in whatever other censures reserved to the Apostolic See by this same Constitution. Paragraph *Firmam tamen*.

The third is because "those presuming to absolve without due faculty, even under any pretext, are bound by the bond of excommunication reserved to the Roman Pontiff," provided the article of death is not in question. Paragraph *A quibus*.

The fourth is because those absolved in the article of death by one who does not have the power, if they recover, are bound by a special obligation of standing by the mandates of the Church. Cf. 799.

1164. **I. All apostates from the Christian faith, and all and singular heretics, by whatever name they are reckoned and of whatever sect they exist, and those believing them; and their receivers, supporters, and generally any defenders of them whatever.**

Apostates are those who, wholly defecting from the Christian religion, pass over to the Mohammedan sect, or to another, or even to none. But understand an apostate not only by exterior work or sign, but also in mind. For he is said to be an apostate from the Christian faith. But one who is an apostate externally only is not an apostate from the faith, but from the confession of the faith. Moreover, the discussion concerns an apostate from the Christian faith, not merely conceived interiorly, but also solemnly professed exteriorly in baptism.

Heretics. In order that excommunication imposed precisely because of heresy be incurred, it is required, 1. that the heresy be formal, that is, with error of intellect and pertinacity of will. But he is called pertinacious who adheres to his own opinion notwithstanding that he knows it to be opposed to the doctrine of the Roman Church sufficiently proposed to him; or who is so disposed in mind that, even if that doctrine were sufficiently proposed to him, he would nevertheless be unwilling to be moved away from his own opinion. The reason for this last member of the disjunction is that any ignorance whatever, even crass and affected, according to the truer and more common opinion excuses from heresy and the penalties of heretics. For someone can very well have the will of believing all things which are sufficiently proposed to him as revealed by God and as dogmas of the Church, although he does not have the will of applying diligence so that he may know which things are revealed by God and which defined by the Church. Hence, although he sins gravely against faith, nevertheless he is not formally an unbeliever and heretic, but a faithful and Catholic person believing all things which are revealed by God and defined by the Church and sufficiently proposed to him. De Lugo, *De fide*, disp. 20, sect. 6; St. Alphonsus, 301.

It is required, 2. that the heresy of the mind be outwardly betrayed by an external sign, manifestive of the internal error from itself or from the circumstances, with gravely culpable manifestation, although the matter becomes known to no one. St. Alphonsus, 303-305. Hence excommunication is not incurred, 1. by a merely mental heretic, or by one who abstains from hearing Mass; 2. by one who

manifests his heresy in order to seek counsel. But a positive doubt outwardly betrayed by no means excuses, because one doubting in this way judges that a truth proposed by the Church can be false. St. Alphonsus, 302. Cf. Struggl, tr. 4, q. 2, n. 12; Lugo, *De fide*, disp. 20, n. 17.

It is required, 3. that the heresy has not been brought to the judicial forum of the bishop. For bishops, by themselves or through a delegate, can absolve in both forums from any heresy, if once it has been brought to their judicial forum. St. Alphonsus, Appendix *De privilegiis*, n. 39; Benedict XIV, *De synodo*, l. 9, c. 4. But the Constitution of Pius IX does not seem to derogate from this faculty of bishops. Therefore bishops have no faculty only for absolving from heresy, whether occult or notorious, which has not yet been brought to their forum. Hence all Protestants who wished to abjure their heresy, and consequently to bring it to the external forum, do not need to have recourse to Rome, but can be absolved by the bishop, both for the external and for the internal forum, either by himself or through a delegate.

By whatever name they are reckoned, namely by some particular name of heretics.

Of whatever sect they exist: "even if in mind they do not adhere to heresy, they enroll themselves, or even in name only, in a sect, whatever its name may be, heretical or schismatic, for whatever cause this is done," according to the Declaration of the Holy Office, Synod of the Diocese of Albano, in the year 1886, p. 1, art. 6, n. 2.

Believers, namely those truly believing some false dogma of these heretics, although they do not adhere to them in all things, nor are they called by a particular name, for example Calvinists, Lutherans, etc., nor are they reckoned as enrolled in some particular sect, for example the Reformed Church, etc.; or those believing only generally that heretics have the true faith and religion, although they believe nothing distinctly and in particular against faith.

Receivers: to receive is to provide refuge for the sake of hiding, in one's own or another's place. Therefore receivers are those who receive with hospitality or conceal, even once, a heretic so that he may escape the penalties of his heresy.

Supporters: to support in general is to provide any assistance to someone for his convenience and utility, whether by doing something, for example by commending him or furnishing money, or by omitting what one ought to have done by office. Therefore supporters are those who in a cause of faith favor heretics, either negatively, namely by omitting, when they can and are bound by office, to capture, guard, or punish a heretic; or positively, by helping him as such with praises, commendations, money, etc., for example so that he may flee, etc. Hence by the Holy Office, May 11, 1892, it was declared that excommunication is contracted by those who enter marriage before a heretical or schismatic minister assigned to sacred things.

Defenders: to defend is to protect someone so that he may safely and freely do something, or to protect something against contrary attacks. Therefore defenders of errors or of the person are those who defend their errors by words, writings, etc., even if internally they think otherwise, or who impede those persons from being captured or punished because of heresy.

Therefore these words, receivers, supporters, defenders of heretics, are to be understood formally of those who favor heretics insofar as they are heretics, namely either because they profess such doctrine, or also in order to teach, defend, or do something of this kind with respect to that heresy.

The reason is that a penalty is to be understood strictly, according to the subject matter. Besides this, understand receivers, supporters, defenders with complete reception, support, and defense. Thus, if you have received, defended, and supported a heretic so that he would not be captured, but nevertheless he was captured, you have not incurred the excommunication imposed on receivers, supporters, and defenders of heretics.

Bulla *Coenae*, § 1; C. *Sicut ait* 8, *Excommunicamus* 13, 15, *De haereticis*; Suarez, disp. 21, sect. 2, first excommunication; Bonacina, *De censuris in particulari*, disp. 1, q. 2, parts 1, 2, 3; St. Alphonsus, 300 ff.; Ferraris, words *Haeresis*, *Haereticus*; Schmalzgrueber, l. 5, t. 7; St. Thomas, *Quodlibet* 10, art. 15, 16; E.M.

1165. **II. All and singular persons knowingly reading, without authority of the Apostolic See, books of the same apostates and heretics which defend heresy; and also books of any author whatever prohibited by name through apostolic letters; and those retaining, printing, and in any way defending those same books.**

Knowingly. This clause, placed at the beginning, affects, in the obvious and natural sense, not only those reading, but also those retaining, printing, and defending. Therefore ignorance, whether of fact or of law, even crass ignorance, and not improbably even affected ignorance, excuses from this censure. St. Alphonsus, 296.

Reading. By the name of reading is understood here reading in the proper sense and in a human manner, so that one understands the things which he reads. Moreover reading is understood as strictly such; hence it is indeed prohibited to read, but it is not prohibited to hear someone reading, who perhaps has the faculty; nor to recite from memory a part of the book, because these are not comprehended strictly under the name of reading. Ithurriaga, case 39; St. Alphonsus, 292.

Those reading: with a notable quantity and one sufficient for grave sin. Thus the doctors commonly, though they differ in determining this kind of quantity. But it seems more correctly to be distinguished: because if by reading a prohibited book you immediately fall into heresy, you could incur excommunication by reading even a few lines, because there is present a great danger of perversion which the prohibition of the Church intends to remove. But if you fall upon matter altogether indifferent and infected by no error, by reading even a whole page you are excused from mortal sin, and therefore from excommunication. Ithurriaga, loc. cit., nn. 30, 31; St. Alphonsus, 284, 294.

Say the same of those retaining. For one who retains a book for a short time, for example one day or another, even if he has the intention of always retaining it, does not incur excommunication. For the same reason applies to time as to matter. Nor are there lacking theologians who excuse one who retains a book for a longer time while awaiting an opportune time for handing it over to a superior or to another having license.

Without authority of the Apostolic See. Therefore the Pope alone, or those to whom he has committed or delegated this faculty, can dispense concerning the reading of books prohibited by the present censure.

Books. Letters, sermons, public journals, and booklets are not books. Holy Office, Apr. 27, 1880. Nor are manuscripts books. Leaves separated from a prohibited book, fragments of a book, are not a

book. Cf. St. Alphonsus, 293; Suarez, *De censuris*, disp. 23, sect. 7, n. 3. For a book properly is a volume of many leaves collected together, not of an entirely small bulk, treating of one and the same argument, or even of various arguments. Hence those knowingly reading periodical publications bound in fascicles, defending heresy and having a heretical author, incur excommunication. Holy Office, Jan. 13, 1892.

Of apostates and heretics. "Of the same" is added. Therefore the question concerns those of whom there is discussion in the preceding excommunication, namely by whatever name they are reckoned and of whatever sect they exist. But those believing them are omitted; therefore it seems required for incurring this excommunication that the heretical author be known from elsewhere, and not sufficient that he first be manifested as such through the book itself. For such a person would be rather a Catholic believing the errors of heretics than a heretic, as is distinguished in the preceding excommunication. Nevertheless, if the author evidently and certainly defends heresy, and evidently with a pertinacious mind against the authority of the Church, by that very fact he will rightly and deservedly be reckoned a heretic. Hence, if the book is anonymous, from the book itself it can be known whether its author is a heretic, St. Alphonsus, 282, and then the censure is incurred. This is confirmed from the Constitution *Officiorum* of Leo XIII, *De prohibitione et censura librorum*, § 47.

Defending heresy. "Even if only one error is contained in the whole book, the whole is prohibited; nor, even when that error has been deleted, will it be permitted to retain the book, because it is absolutely prohibited by force of this clause." Suarez, loc. cit. La-Croix, n. 330, and others deny this last point, and indeed probably, because then the book no longer contains heresy nor introduces any danger. St. Alphonsus, 283. But it must carefully be noted that to defend heresy is not simply to contain heresy, but to undertake the patronage of heresy deliberately and, as it were, with one's strength. Therefore books of heretics which contain heresy only incidentally are not comprehended under this excommunication, since they do not treat expressly of faith. St. Alphonsus, 287.

Through apostolic letters. Apostolic letters are those which proceed immediately in the name of the Roman Pontiff, whether in the form of a Brief, or in the form of a Bull, or in any other form, provided that in them is read, "By Apostolic Authority," or something equivalent.

Prohibited by name, that is, with the title of the book expressed in particular. Therefore all books which are condemned only in a general way through apostolic letters are not comprehended by this censure. *Prohibited by name*: these words are indeed general; nevertheless the doctors commonly understand them of a prohibition under penalty of excommunication reserved to the Roman Pontiff. Otherwise the Supreme Pontiff seems to relax for others what he does not reserve to himself, and therefore neither then will there be present an excommunication reserved to himself in a special manner. But by this same argument it is proved that that excommunication, although reserved to the Supreme Pontiff, is nevertheless not reserved to him in a special manner. For if the Supreme Pontiff reserves it simply to himself only, by that very fact he seems to take away the special reservation. Therefore it would rather have to be said that the question concerns a prohibition under penalty of excommunication specially reserved. But then this second article of the Constitution would be utterly useless. Therefore it seems that it must be said that the question concerns a prohibition made simply under penalty of excommunication, although no reservation is added to it. It is said under penalty of excommunication because if the prohibition is made either with no penalty added, or with another penalty, this certainly does not pertain here. For here the question concerns censures. Cf. 1178.

Those *retaining*. "He is said to retain who has the book with himself, whether he has it loaned, or deposited, or belonging to another, or for binding, or for selling, or for adorning a library, whether in his own or in another's house; so that in whatever way and wherever he has the book, he incurs the censure imposed against those retaining. Therefore it is not permitted to you to sell or give them.... Yet I myself would think this must be limited, unless you sell or give to one having the faculty of reading them; for then I believe there is present the tacit, or interpretative, faculty of superiors, who are not reasonably judged to be unwilling.... You would not sin if, accommodating another who has the faculty, you yourself carried with you a prohibited book bought at Rome, for example to Fano; just as neither would a bookseller sin who detained in his shop for a rather long time a book to be bound, because all these things are accessory to the faculty itself conceded, and are understood as conceded through it." Ithurriaga, case 39, n. 40.

Those *printing* are generally all who cooperate proximately in printing, as are those who compose the type, ink it, moisten the sheets, turn the press, etc. Those who merely arrange the leaves and books already printed are not properly printing; those selling and carrying elsewhere are rather retaining.

Defending in any way whatever, namely defending either by words, or by writings, or by deeds; whether the depraved doctrine which they contain, or the material book itself, namely if they prevent the book from being burned or handed over to the bishop or inquisitor. St. Alphonsus, 285. But one who approves and praises good and true doctrine contained in the book is not comprehended by this censure, provided, however, that he is not considered to approve the book itself absolutely; nor even one who praises the style, eloquence, phrasing, or talent, provided this does not imply praise and approval of the book.

Bulla *Coenae*, § 1; Lugo, *De fide*, disp. 25, n. 94; St. Alphonsus, 281-299; Bouix, *De Curia Romana*, p. 3, § 3, c. 11; Suarez, disp. 21, sect. 2, first excommunication; Bonacina, disp. 1, q. 2, p. 4; E.M.

1166. **III. Schismatics, and those who pertinaciously withdraw themselves or recede from the obedience of the Roman Pontiff existing for the time.**

Schismatics, properly, are those who, either only from malice of will, or also from error in doctrine of faith, deny subjection to the Roman Pontiff by separating themselves from the body of the Church and establishing a new and separated Church, or by adhering to one already established.

Those who pertinaciously withdraw themselves from the obedience of the Roman Pontiff existing for the time, that is, they separate themselves totally from his ecclesiastical authority, although they adhere to no other head or supreme ecclesiastical authority. Nor indeed is it necessary, for incurring this censure by force of this clause, that these persons be rebels against the authority of the Roman See considered generally; but it suffices that they be rebels against the authority of the person who actually occupies the Roman See.

And *recede*, namely partially; in some matter only, they exist as boldly rebellious against the spiritual authority of the Roman Pontiff existing for the time, by resisting that same authority in a particular matter, namely those who in a particular matter reject the spiritual rule and authority of the Roman Pontiff, as are, for example, certain liberal Catholics. Therefore one does not incur this excommunication who would be unwilling to obey the Roman Pontiff in some particular matter because of the difficulty of the matter, or even because of hatred toward the person, while

nevertheless recognizing his spiritual authority. For by his disobedience he would not truly recede pertinaciously from the Roman Pontiff existing for the time, but would only transgress his laws or precepts.

Pertinaciously, that is, knowingly and willingly. Therefore he does not incur excommunication if he denies his authority and does not submit himself to him because he does not think him legitimate, since his election is doubtfully valid. C. 5, dist. 19; Bulla *Coenae*, § 1; Suarez, disp. 21, sect. 2, first excommunication; disp. 23, sect. 2, second excommunication; sect. 3, paragraph *Melius*; Bonacina, disp. 1, q. 2, p. 5; E.M.

1167. **IV. All and singular persons, of whatever status, rank, or condition they may have been, appealing from the ordinances or mandates of the Roman Pontiffs existing for the time to a future universal Council; and also those by whose help, counsel, or favor appeal has been made.**

With respect to persons this censure is most general, for it is imposed on all of whatever status, rank, and condition. But because excommunication is not imposed on a community but on individual persons, therefore on a community, if it commits such a delict, the censure of interdict is imposed. Cf. 1239.

From ordinances or mandates, namely concerning spiritual things.

Existing for the time, namely still living, since these "words ought to accomplish something," from C. *Si Papa* 10, *De privilegiis*, in the Sixth.

To a future Council: not to a future Roman Pontiff, nor to a present Council.

But as is clear from the very form of the excommunication, those who provide help, counsel, or favor do not incur excommunication unless the effect has followed, namely unless appeal has in fact been made. Hence help, counsel, or favor must precede or accompany the appeal; for if it only follows, and is given for resisting pontifical decrees under the appearance of such an appeal, then this censure will not be incurred by force of this clause, because favor was not truly given for appealing, but for actions afterward following, which are far different. Nor is an appeal from a just or unjust mandate by any means to be distinguished, because the Constitution speaks absolutely and indistinctly, and is not founded on the fact that the matter is just or unjust, but on the fact that one appealing in this way commits injury against the authority of the Roman Pontiff. For by the fact itself he professes that the General Council is superior to him. For to appeal is a provocation from an inferior judge to a superior.

Counsel, favor. Although counsel seems to be some favor or moral help, since one who provides right counsel helps not a little toward acting well, nevertheless they are distinct; for the influences are distinct and ordered to distinct ends. For counsel is for the instruction of the mind; but help and favor are for execution. He gives counsel who persuades, and by persuading impels another to do something. For the question concerns practical counsel, not merely doctrinal counsel. To provide help is to bring subsidy, assistance, aid to the act itself or external work. But favor, from "to favor," which is to be devoted to, to love, to embrace, extends help also to moral subsidy, for example by helping with praises and commendations. Hence, when in laws an extension is made to those counseling and favoring, express mention of them is made.

Pius II, Constitution *Exsecrabilis*; Bulla *Coenae*, § 2; C. *Significasti* 4, *De electione et electi potestate*; Suarez, disp. 21, sect. 2, second clause; Bonacina, disp. 1, q. 3, pp. 1, 2.

1168. **V. All killing, mutilating, striking, capturing, imprisoning, detaining, or hostilely pursuing Cardinals of the Holy Roman Church, patriarchs, archbishops, bishops, and legates or nuncios of the Apostolic See, or expelling them from their dioceses, territories, lands, or dominions; and also those mandating these things, or ratifying them, or providing help, counsel, or favor in them.**

All: understand of whatever sex or status.

Killing, in whatever way, by poison, sword, etc.

Mutilating, that is, cutting off a member.

Striking: a striking is ordinarily done by hand, whether immediately or by means of an instrument, namely a staff.

Capturing, that is, apprehending by preventing freedom of going away.

Imprisoning, that is, thrusting into prison.

Detaining, that is, violently keeping someone shut in prison or in another place from which he cannot freely go out.

Those *hostilely pursuing* are those who pursue one fleeing and taking care for himself with a hostile mind, in order to bring evil upon him, namely by killing, mutilating, etc. For this pursuit is punished, even with no other effect following, insofar as it is an attempted commission of another crime prohibited by this law. Nor is it likely that the law would prohibit an attempted delict which it itself does not prohibit or punish. Therefore those hostilely pursuing are not those who pursue only for the sake of dishonoring or plundering.

Bishops, namely consecrated bishops; for penalties are of strict interpretation.

Expelling, namely expelling one previously received.

Expelling, said generally, whether by public or private authority, with force applied.

From their dioceses, territories, lands, or dominions, namely places where they have right of jurisdiction, domicile, property, or dominion by reason of their office and their dignity.

Therefore by this censure injuries are punished against the body: killing, mutilating, striking; against liberty: capturing, imprisoning, detaining, hostilely pursuing; against dignity: expelling from their own, etc.

Those *mandating*: one mandating is one who orders or asks that something be done in his name.

Those *ratifying*. These conditions are required for ratification: "that the striking was done in your name, or in your favor; that you externally signify ratification; that when the striking happened you were capable of the mandate or counsel of the striking at least habitually; for if you were insane you do not incur it; otherwise if drunk or sleeping: thus commonly." St. Alphonsus, 267; Schmalzgrueber, n. 244.

Those *mandating these things*, etc., *providing help*, etc. Therefore those mandating, helping, counseling, favoring are indeed all to be understood of a mandate, help, and favor that is efficacious and that has gravely influenced, and indeed in those things which have been mentioned, not in another action different from them. Help: one who only promises help does not seem capable of being said to provide help. Counsel, for example by showing usefulness, suggesting suitable means. Favor, either positively by exhorting, inciting, or negatively by not preventing when one can and ought. *Ought*, that is, when one is bound by office or justice, as kings, judges, etc. But if one is bound only by charity, more truly the censure is not incurred.

C. *Felicis* 5, *De poenis*, in the Sixth; Clementina 1, *De poenis*; Extravagant, single, *De consuetudine*; Bulla *Coenae*, § 11; Suarez, disp. 21, sect. 2, eleventh censure; disp. 22, sect. 3, third excommunication; Bonacina, disp. 1, q. 12; disp. 2, q. 3, p. 7; disp. 4, qq. 3, 4; St. Alphonsus, 268, 269; Ithurriaga, case 41, n. 16; case 43, nn. 1-3.

1169. **VI. Those directly or indirectly impeding the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, and those having recourse for this to the secular forum, and those procuring or issuing its mandates, or providing help, counsel, or favor.**

Those impeding in reality; otherwise they will not truly be impeding, but attempting to impede. Those impeding, even if for this they do not have recourse to the secular forum.

Directly, for example by force or fear struck into the ecclesiastical judges themselves who wish to exercise jurisdiction.

Indirectly, if someone obstructs them in another thing or another person, for example if force or fear is brought upon their relatives, officials, etc. For to impede is to do something by which someone unwillingly is kept away from acting, or ceases from acting. Therefore, if someone uses counsels, prayers, or deceits, he is rather understood to persuade, obtain, or deceive.

The exercise of ecclesiastical jurisdiction. Therefore, in order that someone incur this censure, it is necessary that he resist one who is distinguished by jurisdiction, for example a bishop, parish priest, etc.; otherwise he will not be impeding the exercise of jurisdiction, but something else. For example, if someone impedes a plaintiff from approaching the judge, he does not impede the exercise of jurisdiction, but the petition of the plaintiff.

The exercise of jurisdiction, namely according to law, lest someone begin it or continue in it. The question concerns the exercise of ecclesiastical jurisdiction, which flows from Christ the Lord, or from His Vicar as Roman Pontiff, and belongs to clerics insofar as they are clerics. The question concerns the exercise of jurisdiction, whose function is, for example, to commit things to be done, things which belong to order, and to depute to ecclesiastical offices; by no means the exercise of order itself, for example to perform sacred rites, or the exercise of an ecclesiastical office itself, for example to preach, teach, etc.

Of ecclesiastical jurisdiction, whether ordinary or delegated. Jurisdiction is the power of ruling and governing others.

Of the internal forum, as is that which the Sacred Penitentiary uses, and that which pertains to the forum of conscience.

Of the external forum, which looks to Christian society, whether it is contentious, exercised between parties contending in judgment, or voluntary, exercised without any judicial process and sentence, as, for example, to visit a diocese, send preachers, impose censures, etc.

And is to be understood disjunctively from the obvious sense and the whole context, so that another class of persons who incur this censure is denoted.

For this, that is, for impeding the aforesaid exercise, not for another thing, for example, so that the exercise of that jurisdiction and the rendering of justice not be deferred, that a just decree be made, etc. Therefore those having recourse for this, and all others of whom there is discussion in what follows, do not incur this censure unless the effect follows.

Those *having recourse to the secular forum*. To have recourse is to implore another's help against someone or something, as if one were suffering injury from him or it.

Forum, in its proper signification, is the place of exercising judgments. Therefore the patronage of those must be implored who exercise jurisdiction in the forum; such, for example, is not the prefect of the city. Nevertheless, it seems that the secular forum can also be taken more broadly for any civil magistrate, from its opposition with the internal and external forum of the first part, which from common acceptance plainly has the broadest meaning.

Those *procuring mandates* are those who cooperate proximately for this.

Those *issuing*, namely establishing, are civil magistrates, or those who by judicial or even other civil power issue the mandates themselves by decreeing such things.

Help, etc. Cf. the things said in the preceding censures.

Its, namely of the secular forum.

Or: therefore this last clause, "or providing help," etc., in the obvious sense seems to be referred only to the last class of persons, that is, to those procuring and issuing mandates. But others refer it also to the first, second, and third class of persons whom the present censure touches, namely to those impeding; those having recourse; those procuring and issuing mandates.

C. *Clericis* 3, *De immunitate ecclesiastica*, in the Sixth; Bulla *Coenae*, § 16; Suarez, disp. 21, sect. 2, sixteenth censure; Bonacina, disp. 1, q. 17.

1170. **VII. Those compelling, whether directly or indirectly, lay judges to draw ecclesiastical persons to their tribunal contrary to canonical dispositions; and likewise those issuing laws or decrees against the liberty or rights of the Church.**

Those *compelling*. To compel here is to induce unjustly by force or grave fear to do something. Hence those are not compelling who denounce a criminal cleric to the judge, or who sue a debtor cleric before a lay judge.

Those compelling judges. Note that the one compelling is distinguished here from the judge compelled; therefore the judges themselves, who merely pronounce sentence against ecclesiastical

persons brought to their tribunal by others, do not incur this excommunication. In the Instruction of the Holy Universal Inquisition, June 15, 1870, it is said: "Those compelling indicates that excommunication does not touch those who are subordinate, even if they were judges, but that it is imposed only on those who, compelled by no one, either compel judges to such things or compel others to act." And in the circular letters of the same Holy Universal Inquisition, Jan. 23, 1886, these things are contained: "This Supreme Congregation of the Holy Roman and Universal Inquisition has more than once declared that the chapter Those compelling affects only legislators and other authorities.... For the rest, in those places in which the privilege of forum has not been derogated by the Supreme Pontiffs, if in them there is no way to pursue one's rights except before lay judges, individuals are first bound to seek permission from their own Ordinary, so that they can sue clerics in the form of laypersons; and the Ordinaries will never deny this, especially when they have labored in vain to reconcile controversies between the parties. But it is not permitted to sue bishops in that forum without permission of the Apostolic See. And if anyone has dared to draw either a cleric without permission of the Ordinary, or a bishop without permission of the Holy See, before a lay judge or judges, it will be in the power of the same Ordinaries to proceed against him, especially if he has been a cleric, with penalties and censures *ferendae sententiae*, as against a violator of the privilege of forum, if they judge this expedient in the Lord."

Those compelling, however, whether directly or indirectly, are those who, by force or fear struck into the judges themselves, or into other persons who have connection with them, drive them to draw ecclesiastical persons to their tribunal in a cause whether criminal or civil.

Lay judges, namely those who by office pronounce law for a lay tribunal, not other magistrates.

To draw, as one accused, not as a witness, expert, etc.

To their tribunal, namely so that he draws him into court, not so that he commands him something, admonishes him, corrects him.

Ecclesiastical persons, namely those who enjoy the privilege of forum.

Contrary to canonical dispositions. For several cases are given in which a lay judge, both in civil matters and in criminal matters, licitly proceeds against ecclesiastical persons. Cf. on this matter Schmalzgrueber, l. 2, t. 2, par. 6, *De foro competente ratione personarum ecclesiasticarum*, n. 80 ff.; Bizzarri, *Collectanea*, p. 178 ff., ed. 1885.

Contrary to canonical dispositions: understand also the concordats of a kingdom with the Apostolic See.

Those *issuing*: authors of laws and decrees, not the rest.

Laws, general and in perpetuity, for example concerning the royal placet, the royal exequatur, etc., which proceed from supreme authority; or decrees, which are from any power, even inferior, but are generally put forth, not for a particular case. For then they would be mandates, or rather sentences of judges.

Liberty or rights, said most generally, and therefore comprehending all things: for example, by expelling religious families, inhibiting sacred ministries, keeping clerics from the instruction of the people, etc.

Of the Church, namely the universal Church.

C. *Clericis* 3, *De immunitate ecclesiastica*, in the Sixth; Bulla *Coenae*, § 15; St. Alphonsus, *De privilegiis*, nn. 18-24; Suarez, disp. 21, sect. 2, fifteenth censure; Bonacina, disp. 1, q. 16; disp. 2, q. 6, p. 1; E.M.

1171. **VIII. Those having recourse to lay power in order to impede letters or any acts whatever proceeding from the Apostolic See, or from any legates or delegates of the same; and those directly or indirectly prohibiting their promulgation or execution; or, because of them, harming or greatly terrifying either the parties themselves or others.**

Those *having recourse*: whoever, in whatever way. Therefore those will be having recourse who give a supplicatory libellus, cite or call forth, appeal, etc.

To lay power, whatever it may be: prefects of cities, presidents of tribunals, judges, and all others exercising jurisdiction over citizens.

In order to impede, in reality. For although the excommunication is imposed directly not on those impeding, but on those having recourse, nevertheless, since this kind of recourse is for impeding, and the external action must be perfect and consummated for someone to incur excommunication, this recourse is to be understood with the effect following. The same must be said for the same reason about prohibition, harm, and great terrifying. Yet others think otherwise, since the recourse itself, the harm itself, and the great terrifying itself are directly condemned.

Letters, given in whatever form, provided, however, that they proceed from Apostolic Authority; hence immediately it is said: proceeding from the Apostolic See.

Any acts whatever, namely whether they are of grace or of justice; whether they regard a spiritual or temporal affair, yet one of ecclesiastical or spiritual law. Acts of the Apostolic See are called those things which are done by authority of the Roman Pontiff, whether immediately or mediately. Hence it is said: any acts whatever proceeding from the Apostolic See, or from any legates or delegates of the same. "Even those which come mediately from the sacred Roman Congregations" are comprehended. Holy Office, Jan. 13, 1892. Acts of the Holy See are monitora, citations, processes, sentences, etc., made by mandate of the Holy See.

Legates "are said to be those who are deputed by supreme princes, and in our case by the Supreme Pontiff, for conducting certain affairs. Commonly they differ from delegates, to whom one particular business, and not a very complex one, or even particular affairs, are committed, whereas a legate has entrusted to him either a generality of affairs, or at least a very complex office." De Angelis, *Praelectiones iuris canonici*, l. 1, t. 30, n. 1.

Proceeding, not, lest they proceed. Therefore those who impede letters or acts of this kind from being obtained are not subject to this excommunication.

Promulgation, namely publication in the accustomed form and manner.

Execution, that is, whatever things are necessary so that the letters and apostolic acts have effect; for example, if someone prohibits notaries from drawing up instruments concerning them, or from handing over the instruments drawn up to the parties, or prohibits the parties from using those handed over.

Those *prohibiting*, namely by public authority. For as the Pontiff in the first part speaks of recourse to lay power, so in this second part he speaks consequently of the prohibition flowing from that

recourse to lay power. Nevertheless the contrary opinion is also well maintained, because the law does not distinguish.

Parties are those whose interest it is that the letters or acts of the Apostolic See be promulgated or committed to execution.

Others, for example advocates of the same parties, because of the acts obtained; or executors; or other persons to whom the acts obtained in some way are referred and pertain. For it is said: because of them, either the parties themselves or others, etc.

Those *harming*, properly and strictly, are those who bring some grave damage upon someone in goods of the body.

Those *greatly terrifying* are those who threaten to bring very grave damage. For to greatly terrify is to terrify very much, to cause very grave fear.

C. *Clericis* 3, *De immunitate ecclesiastica*, in the Sixth; Bulla *Coenae*, § 13; Suarez, disp. 21, sect. 2, twelfth, thirteenth, and fourteenth censure; Bonacina, disp. 1, q. 14; E.M.

1172. **IX. All falsifiers of Apostolic Letters, even in the form of a Brief, and of supplications concerning grace or justice, signed by the Roman Pontiff, or by the Vice-Chancellors of the Holy Roman Church or those acting in their place, or by mandate of the same Roman Pontiff. And also those falsely publishing Apostolic Letters, even in the form of a Brief, and also those falsely signing supplications of this kind under the name of the Roman Pontiff, or of the Vice-Chancellor, or of those acting in place of the aforesaid.**

Falsifiers of Apostolic Letters are those who, with evil deceit, even once adulterate true Apostolic Letters by adding, subtracting, or changing something, so that they can deceive another. This must be estimated not materially but formally, namely according to the sense principally intended by the Roman Pontiff.

With evil deceit: therefore if you have corrupted true letters with the intention of immediately tearing them up, harming no one and affecting no injury to the authority of the Roman Pontiff, it is more true that the excommunication ceases. Castropalao, tr. 29, *De censuris*, disp. 2, p. 7, n. 4.

But by no means are they falsifiers who fabricate entirely false letters. For these are not falsifiers, since in reality they do not change truth, but are fabricators of false letters, as was contained in the Bulla *Coenae*, where falsifiers and false fabricators were distinguished. Suarez, *De censuris*, disp. 21, sect. 1, sixth censure.

Falsifiers: therefore the present excommunication is incurred by force of this clause as soon as the falsity has been completed, although afterward one does not at all use the falsified letters. But one who uses them incurs another excommunication reserved to the bishop, of which below.

Of Apostolic Letters. Therefore letters of any others whatever do not pertain here, such as those of an Apostolic Nuncio, Legate *a latere*, Major Penitentiary, sacred Congregations, etc. Indeed, neither do Apostolic Letters or Rescripts not yet signed or furnished with seal or leaden seal, because, since they are not yet authentic, they do not yet have force; nor those which have ceased to have force and can no longer have force, such as a dispensation from choir service for a time, when this has elapsed; a matrimonial dispensation, when the one dispensed has died, etc.

Even, and therefore even in another more solemn form, such as Bulls.

In the form of a Brief. By the name of Briefs are understood Pontifical Constitutions which are expedited through the Secretariat of Briefs on white and fine parchment for affairs which, for the most part, are not so grave and universal. They are written in Latin and in a neat character; and they have a seal of red wax on which is impressed the image of St. Peter fishing. Therefore they are said to be expedited from the ring of the Fisherman.

Of supplications. Supplications properly are petitions directed to the Pontiff for obtaining grace or right. But according to the style of the Curia they signify rather the response of the Pontiff, whether it is made by simple application of the seal to the petition, or by subscription of the name, or by a Rescript in which the petition is mentioned. They are taken here in this second sense, for the discussion concerns supplications signed by the Roman Pontiff, etc.

Concerning grace or justice. Those are said to contain grace which contain some benefit or liberality of the Roman Pontiff; but those concern justice which pertain to lawsuits, and therefore to the cognition or definition of some cause.

Signed by the Roman Pontiff, or by the Vice-Chancellor of the Holy Roman Church, or those acting in their place, or by mandate of the same Roman Pontiff: namely Apostolic Letters signed by the proper hand or proper seal of the Pontiff, or indeed signed by another's hand, but in his name or by his mandate. For the question concerns Apostolic Letters.

Those *falsely publishing* are: 1. those who diffuse in public in any way true Apostolic Letters, but adulterated; 2. those who diffuse simply false letters, or whole letters falsely fabricated. Therefore, if someone showed Apostolic Letters simply invented to only a few persons, so that they still could not be said to have been published, he would not incur this excommunication. Some require the mode customarily used for authoritative promulgation; but publication is not the same as promulgation, and in this Constitution one is very clearly distinguished from the other.

Apostolic Letters even in the form of a Brief: it is not added, "and supplications," as in the first part.

Those *falsely signing supplications* are those who apply a false subscription or a false seal to them, so that they may be regarded as authentic.

Supplications: therefore this part is restricted only to supplications. C. *Ad falsariorum* 7, *De crimine falsi*; Bulla *Coenae*, § 6; Bonacina, disp. 1, q. 7.

1173. **X. Those absolving an accomplice in a shameful sin, even in the article of death, if another priest, although not approved for confessions, can hear the confession of the dying person without some grave infamy and scandal likely to arise.**

Those absolving: here the excommunication already imposed by Benedict XIV is changed and enlarged. He imposed it against those daring, presuming to absolve, and absolving with rash daring. Cf. 1280 ff.

1174. **XI. Those usurping or sequestrating jurisdiction, goods, or revenues pertaining to ecclesiastical persons by reason of their churches or benefices.**

Those usurping ecclesiastical goods here are those who authoritatively occupy them from the owner as their own, that is, as if they had a right in them. Hence thieves are not comprehended, although they too invade another's property; nevertheless they invade it as another's, pretending no right in it by which they would retain it, once occupied, as their own. Holy Office, Mar. 9, 1870; Roncaglia, *De censuris*, tr. 4, c. 4, q. 2, resp. 1.

Nor indeed are those comprehended who acquire ecclesiastical goods usurped by others through purchase, donation, or any other contract, although they sin gravely both against justice and against religion. Yet these incur the censure imposed by Trent. The Holy Office, July 8, 1874, also declared that "usurpers of ecclesiastical goods of this kind are bound only by the excommunication specially reserved to the Roman Pontiff," by force of the present Constitution *Apostolicae Sedis*, and not also by excommunication simply reserved, by force of the Council of Trent.

Those *sequestrating* are here called those who by judicial office and jurisdiction unjustly commit a thing to some third person to be guarded, or guard it themselves, and thus prevent it from remaining under the power of the one to whom it pertains and from being freely used by him.

Those sequestrating: therefore judges are excommunicated. For sequestration has all its force from the mandate of a judge. Here those who detain a thing by force of sequestration are also sequestrating. The plaintiff also seems to be comprehended, for according to common usage he is well said to sequestrate.

Jurisdiction, even temporal, as is clear from the whole context and because it is said absolutely.

Goods, whether immovable or movable.

Revenues, whatever a thing bears, or whatever is perceived in view of the thing; but by no means proceeds and offerings from elsewhere, such as daily distributions.

Pertaining to ecclesiastical persons. Hence those who usurp or sequestrate goods of pious places, namely hospitals, lay confraternities, etc., do not incur this censure, although they are subject to the Tridentine censure. The same must be said of goods which pertain to churches but not to ecclesiastical persons, for example goods destined for repairing a church, performing divine rites, relieving the poor, providing dowries for girls, etc.

By reason of their churches or benefices, whether secular or regular. Therefore the present excommunication is not incurred if the question concerns goods pertaining to ecclesiastical persons, but by another reason. Nor is it incurred if someone usurps or sequestrates these same goods while the benefice is vacant; for the present excommunication seems especially to provide for ecclesiastical persons themselves, "pertaining to ecclesiastical persons."

Of churches. Hence those usurping or sequestrating goods of monasteries do not incur the present censure by force of this clause. Universally and speaking in itself, goods of monasteries do not pertain to ecclesiastical persons, namely to religious by reason of their churches or benefices; for example, goods of a college of religious in which boys are educated, etc. Goods of monasteries pertain to no ecclesiastical persons, but pertain either to the monasteries themselves or to the Roman Church.

Of benefices. Hence, again, those usurping or sequestrating goods or revenues of lay chaplaincies do not incur this censure. For these are not benefices in the true sense, and they are resolved into pious foundations or pious legacies. But those usurping or sequestrating goods or revenues of benefices

which are of lay patronage do incur it. For they are benefices accepted in the strict sense, although they are subject to the servitude of patrons, who have the right of presenting the beneficiary when they become vacant, the right to certain prerogatives of honor, and some right to support if they incline toward need.

C. *Generali Constitutione* 13, *De electione et electi potestate*, in the Sixth; Bulla *Coenae*, § 17; Bonacina, disp. 1, q. 18; Suarez, disp. 21, sect. 2, seventeenth censure; Ferraris, word *Bona*, art. 1, n. 13 ff.

1175. **XII. Those invading, destroying, or detaining, by themselves or through others, cities, lands, places, or rights pertaining to the Roman Church; or those usurping, disturbing, or retaining supreme jurisdiction in them; and also those providing help, counsel, or favor for each of the aforesaid things.**

Those *invading*, namely with force applied; for to invade is to enter by force or attack, although one does not intend to withdraw that city from the dominion of the Pope, nor to injure the right of the Church in anything.

Those *destroying*, in whole or in part.

Those *detaining*, whether they themselves have invaded, or retain what was received from others, as for example heirs, if nevertheless they can at once abandon it without greater public damage and without greater damage to the temporal principality itself of the Roman Pontiff; and unless there is at least the tacit consent of the Roman Pontiff himself, as seems to have acceded for several places enumerated in the Bulla *Coenae*. In this matter the only legitimate judge is the Roman Pontiff himself.

Either by themselves or through others refers to the three preceding things.

Under this head, only men who are princes incur this excommunication; not likewise senators and deputies, since they retain not as individuals, but as estates.

Rights, that is, temporal and supreme, principal rights, such as the right of imposing tributes, creating magistrates, etc.

Pertaining to the Roman Church, not to private persons, even of the Supreme Pontiff.

Those *usurping*, that is, claiming supreme jurisdiction for themselves as their own.

Those *disturbing*, for example those who directly impede laws from being passed, promulgated, or committed to execution in these places; those who promote rebellion, etc., striving to change the established government, or to undermine and diminish supreme jurisdiction; not others.

Those *retaining*, that is, de facto exercising supreme jurisdiction in place of the legitimate prince, thus impeding his jurisdiction.

Supreme temporal jurisdiction, namely that which belongs to the prince alone, or to the supreme ruler; which, that is, belongs to the Supreme Pontiff as he is prince, concerning matters of greater moment, such as causes of state, blood, confiscation of goods, etc.

In them, that is, in the aforesaid cities, lands, and places.

For each of the aforesaid things, namely for invading, destroying cities, etc.; for usurping, disturbing, retaining supreme jurisdiction, etc.

Those *providing help*, namely by proximate cooperation, and with all grave fear, coercion, and proportionate grave inconvenience excluded, whether proper or public, which excuses. Those providing help or favor in retaining are by no means those who, by opinion only, without doing anything in reality and by formal cooperation or adherence, stand for the usurpers. Encyclicals of Pius IX, Nov. 1, 1870; Mar. 26, 1860; Sacred Penitentiary, Dec. 10, 1860.

But those providing help or favor in retaining are those who provide some work which proximately confirms the usurpers in detention; for example, by furnishing money, denouncing persons influential among the people, diffusing writings among the public for changing popular opinion, etc.

But the question here is whether those who hold public offices provide help and favor in retaining. Now these offices are of two kinds: for some are merely civil, namely those which pertain to the necessities and utilities of citizens; others are political, which look to preserving the government itself of the whole nation. It is licit to undertake offices of the former kind, since they do not directly and of themselves tend to approving or confirming the usurper, but only to preserving public order, which the usurper himself ought to preserve from the very nature of society, which cannot ruin itself.

But as regards offices of the other kind, the Sacred Penitentiary, Oct. 10, 1860, to the thirteenth general question, "Whether offices can be retained and undertaken under an intruded government," responded: "that it can be tolerated, provided the question does not concern offices which directly and proximately influence the spoliation, or the maintenance of the same spoliation, and provided they can be exercised without danger of injury to divine and ecclesiastical laws." And thus those directly and proximately influence the maintenance of the spoliation by office who hold the first or supreme magistracy in any province, etc. Instruction of Pius VII, May 22, 1809; June 10, 1809.

The cited Encyclical of Pius IX, *Respicientes*, Nov. 1, 1870, which was issued after the Constitution *Apostolicae Sedis*, explicitly extends the excommunication also to other cooperators: to those mandating, supporters, helpers, counselors, adherents, procurers, executors.

Bulla *Coenae*, § 20; Bonacina, disp. 1, q. 21; E.M.

1176. **From all these excommunications thus far reviewed, We declare that absolution is and remains reserved in a special manner to the Roman Pontiff existing for the time; and that for it a general concession of absolving from cases and censures, or excommunications, reserved to the Roman Pontiff is in no way sufficient. Besides this, with respect to the same, all indults whatever are revoked, granted under any form and to any persons whatever, even regulars of whatever order, congregation, society, and institute, even those worthy of special mention and constituted in any dignity. But those presuming to absolve without due faculty, even under any pretext, should know themselves bound by the bond of excommunication reserved to the Roman Pontiff, provided the article of death is not in question; in it, however, the obligation of standing by the mandates of the Church remains firm for those absolved, if they recover.** Cf. 799; E.M.

1177. **Excommunication *latae sententiae* reserved in a special manner to the Roman Pontiff, which acceded to the Constitution *Apostolicae Sedis*.**

XIII. From the Constitution of Pius IX, *Romanus Pontifex*, Aug. 28, 1873, paragraph *Confidimus* ff., A.S.S., vol. 7, p. 104, excommunication *latae sententiae*, specially reserved to the Roman Pontiff, is imposed:

1. on the dignitaries and canons of vacant cathedral churches, and on those who, when chapters are lacking, depute vicars of the vacant church, or legitimately administer vacant churches, who, before the exhibition of the Apostolic Letters, have dared to concede and transfer to the one nominated and presented to the same church its care, rule, and administration under any title, name, or sought color;
2. on those nominated and presented to vacant churches who dare to undertake their rule and administration from a concession and transfer made to them by dignitaries and canons, and others of whom above;
3. and also on those who have obeyed the preceding things, or have provided help, counsel, or favor, of whatever status, condition, preeminence, and dignity they may have been.
4. **We declare that the following are subject to excommunication *latae sententiae* reserved to the Roman Pontiff:**

I. Those teaching or defending, whether publicly or privately, propositions condemned by the Apostolic See under penalty of excommunication *latae sententiae*; likewise those teaching or defending as licit the practice of inquiring from a penitent the name of an accomplice, as it was condemned by Benedict XIV in the Constitutions *Suprema*, July 7, 1745; *Ubi primum*, June 2, 1746; and *Ad eradicandum*, Sept. 28, 1746.

Those *teaching*. To teach, like to believe, is not the same as to bring into practice; these two can very well be distinguished in reality or in fact. To teach properly is simply to hand on and persuade some doctrine, whether by private or public teaching. Therefore, if someone only says that he holds this or that proposition ought not to have been condemned, he does not incur this excommunication.

Those *defending*. To defend is to undertake their patronage by vindicating them from attacks and contrary reasons, as if they had been unworthy of condemnation.

Publicly: in public school, university, conference, disputation, published books, etc.

Privately: in private school, conference, disputation, etc. This double addition, whether publicly or privately, placed at the end, affects both things which precede, teaching or defending, as is established from the obvious sense.

By the Apostolic See, namely by the Supreme Pontiff, not by the Index, not by the Sacred Congregation of the Inquisition, not by an Ecumenical Council.

Under penalty of excommunication latae sententiae. Therefore the question here concerns the Roman Pontiff condemning *ex cathedra* under penalty of excommunication *latae sententiae*, although reservation is not added; for first, this is not had in the Constitution; secondly, this part of the article would become useless.

Likewise those teaching, etc. Benedict XIV in the Constitution *Suprema* entirely reproves the practice of requiring the name of an accomplice, with denial of sacramental absolution also denounced unless it

is revealed. The question concerns an accomplice not only in a shameful matter, but in any sin. For the law speaks absolutely.

In the Constitution *Ubi primum*, the penalty of excommunication by the fact itself and reserved to the Roman Pontiff is imposed on anyone who "has dared to teach that a practice of this kind is licit."

In the Constitution *Ad eradicandum*, the Pontiff decrees and declares "that the mentioned practice in itself, and in every place and time, has been reprobated and condemned by Apostolic Authority and must be regarded as such."

Therefore three things, as is clear, are required for someone to incur excommunication of this kind: 1. that he teach or defend that this practice is licit; 2. that he teach or defend both together as licit, that is, both to require the name of the accomplice and to deny absolution to one keeping silent; 3. that he teach or defend these things with daring and presumption. And this seems to have force also by force of the Constitution *Apostolicae Sedis*, for it says there, "as it was condemned by Benedict XIV," etc.

1179. **Is asking the name of the accomplice so forbidden by the aforesaid letters of Benedict XIV that in no case is it licit?** Response: Negatively, 1. because Benedict XIV himself supposes cases in which it is licit, according to true and sound doctrines; 2. because sometimes the confessor must ask about circumstances from which, although accidentally, he comes to knowledge of the accomplice; and sometimes even the penitent himself is bound to manifest the accomplice to the Superior, or to another, and yet can do this only through the confessor. St. Alphonsus, l. 6, nn. 491, 499; Ithurriaga, case 31; Lugo, *De poenitentia*, disp. 16, nn. 432, 433.

1180. **Is this licit even for correction or the public good?** Response: To the first, negatively. This is established, 1. from the Constitutions of Benedict XIV cited; 2. because correction of this kind would render the sacrament of penance odious to the faithful, is pernicious to the reputation of neighbors, and contains danger of violation of the sacramental seal.

To the second, it must be distinguished: if the discussion concerns impeding public damage, affirmatively, namely if this is the only necessary means; but if the question concerns merely promoting the public good, negatively, for the same reasons.

1181. **Does a confessor sin gravely if he asks the name of the accomplice, but not under penalty of denying absolution?** An imprudent interrogation of this kind from curiosity, levity, or another similar cause would be excused from mortal sin, with grave defamation of the neighbor and grave scandal of the penitent nevertheless excluded. The reason is that those grave reasons just now set forth would then be lacking, cf. 1180, and Benedict XIV enumerates them in his Constitution *Suprema*.

1182. **II. Those laying violent hands, at the persuasion of the devil, upon clerics, or upon monks of either sex, excepted, as regards reservation, the cases and persons concerning whom by law or privilege it is permitted that a bishop or another absolve.**

Violent hands. By this is understood any injurious exterior action, by deeds and not by words, mortal against the person of a cleric; whether by it one injures his body by striking him, wounding him, or

giving him poison when an action of this kind has begun to harm; or injures his liberty by thrusting him into prison, C. *Nuper* 29, *De sententia excommunicationis*, etc.; or injures his dignity by bringing force upon him in any way, for example if he stops the carriage in which he is being carried, violently takes off his hat, defiles him, etc. St. Alphonsus, 272-275, 280.

An injurious striking would be had even if the cleric consented to it, since this law is in favor of the state. C. *Contingit* 36, *De sententia excommunicationis*. On the contrary, they do not incur excommunication if they strike a cleric for the sake of defense, or in play; or if parents, teachers, or superiors strike a cleric for the sake of correction. C. *Cum voluntate* 54, § 2, ibid.; C. *Ex tenore* 10, ibid.; C. *Si vero* 3, ibid.; C. *Super* 1, ibid.

At the persuasion of the devil: this "only imports a striking with grave sin." St. Alphonsus, 275, 48; Suarez, *De censuris*, disp. 22, sect. 1, n. 2; Schmalzgrueber, n. 228; Elbel, n. 133.

Those *laying on*, not those mandating, counseling, consenting, ratifying, or not preventing the laying on.

Clerics: by this name is understood everyone initiated at least by first tonsure, even if married, provided he is married with one virgin only and wears clerical habit and tonsure, C. single, *De clericis coniugatis*, in the Sixth; likewise even one excommunicated, suspended, interdicted, only verbally deposed, or irregular.

Monks: "understand any religious, even a lay convert, novice, of either sex. Likewise tertiaries of St. Dominic and St. Francis, if they wear the habit and live in community. Likewise hermits subject to some rule or superior.... Fagnanus says the same of women living together in conservatories, although the religion is not yet approved.... And Renzius says the same of seminarians, etc." St. Alphonsus, 271; Schmalzgrueber, n. 219.

Excepted, etc. Therefore the cases and persons are excepted concerning whom by law or privilege it is permitted that a bishop or another absolve.

Cases. A threefold striking must be distinguished: enormous, mediocre or grave, and light. A striking is enormous if by it someone has mutilated a cleric or monk, knocked out his eye, broken a member, inflicted a great wound, or caused a great quantity of blood to be poured out from somewhere other than the nostrils. It is mediocre if the striking brings a contusion or deformity, for example if a tooth is pulled out, if a quantity of hair is torn out, if a bruising of the flesh is made, if a quantity of blood is poured out, yet without graver bodily injury. Finally a striking is called light here, not because it imports venial sin, but because, although it is mortal, in the judgment of prudent persons it is considered light compared with an enormous striking; for example, if it is done with palm, fist, staff, or stone, without leaving a trace.

But it must be noted that a light striking can become grave or enormous by reason of the circumstances, namely by reason of the person injured, the person injuring, the person before whom the striking takes place, and by reason of scandal, place, time, or injury. St. Alphonsus, 276-278; Extravagant, word *Perlectis*, apud S.D., n. 277.

From a light striking, even a public one, bishops can absolve from C. *Pervenit* 17 and C. *Si vero* 3, *De sententia excommunicationis*. And so likewise can their vicars general, because bishops have this by ordinary law. Others having quasi-episcopal jurisdiction can do the same. St. Alphonsus, 79, 279.

From an enormous or mediocre striking, if it is public, only the Pope can absolve, or a legate *a latere*, who enjoys pontifical authority, from C. *Ad Eminentiam* 20, *De sententia excommunicationis*. Legates sent to some province can do the same from C. *Excommunicatis*, penultimate, *De officio legati*, only in their own province, and not with respect to outsiders. But if the striking was occult, bishops also can absolve from it from Trent, c. *Liceat* 6, sess. 24. St. Alphonsus, 88, 279.

Persons. From a striking, even public, bishops can absolve nuns and all other women, from CC. *Mulieres* 6, *Ea noscitur* 13, *De monialibus* 32, *De sententia excommunicationis*; Ithurriaga, case 43, n. 29. "And this even if the striking was enormous.... Likewise those who live collegially, if the striking was grave, but not if enormous.... Likewise all impeded from going to Rome." St. Alphonsus, 279; C. *Canonica* 50, *De sententia excommunicationis*; C. *Quoniam* 9, *De vita et honestate clericorum*. Add also regulars, "if the striking was light or enormous occult..., with the license of their prelates." St. Alphonsus, 107; Appendix *De privilegiis*, n. 97. Cf. Suarez, *De religione*, tom. 4, l. 2, c. 23.

Or another. Therefore regular prelates can absolve their own subjects, even novices: 1. if they struck a fellow member of the same order, unless the striking is enormous or the hand was laid upon a bishop or abbot; 2. if they struck a religious of another order, provided the sentence of the prelate to whom the one struck is subject is also used. But they cannot absolve them if they struck a secular cleric; rather they must be absolved by the Apostolic See, except in the case of a light striking, in which they can be absolved by the bishop. CC. *Monachi* 2, *Cum illorum* 32, *Canonica* 50, *De sententia excommunicationis*; *Religioso* 21, same title, in the Sixth; St. Alphonsus, n. 107, where he adds: "It must be noted... that the aforesaid proceed according to common law; for, considering privileges, religious can well be absolved by their own prelates even if the striking was enormous, from several privileges... even if the religious struck another of another order, or a secular cleric..., even if the striking was public." Cf. Lucidi, *De visitatione*, etc., c. 4, *De clero regulari*, § 4, nn. 96-98; Scavini, l. 1, n. 954.

Or another: "when the penitent is impeded from going to the superior, or in danger of death, he can be absolved by any confessor." D'Annibale, *Summula*, p. 1, n. 368, 3rd ed. C. 29, cause 17, q. 4; Suarez, disp. 22, sect. 1; Schmalzgrueber, nn. 97, 243-262; Elbel, nn. 125-149; Bonacina, disp. 2, q. 3, p. 6.

1183. **Does one incur excommunication who, wishing to kill Peter, a cleric, by invincible error kills Anthony, a cleric?** Several grave doctors deny it, because that real striking with respect to Anthony the cleric was not voluntary, but merely accidental. Others more probably and commonly, as St. Alphonsus says, l. 3, n. 628, affirm it, because although there is error in the person, nevertheless he truly wills to injure a cleric, and in fact injures one. Therefore he truly injures the clerical state. Therefore. Suarez, loc. cit., n. 54; Molina, *De institutis et iure*, tr. 3, disp. 53, n. 2; Sanchez, *De matrimonio*, l. 9, disp. 32, n. 27; Schmalzgrueber, nn. 229, 234.

1184. **Does one incur excommunication who strikes someone, being ignorant that he is a cleric, but with such a mind that, if he knew, he would still strike him?** "More commonly and more probably Sanchez, Suarez, etc., deny it, because with concomitant ignorance there is present only an interpretative will, which is not a true will." St. Alphonsus, 275; Schmalzgrueber, n. 233; C. *Si vero* 4, *De sententia excommunicationis*.

1185. **III. Those perpetrating a duel, or simply provoking to it, or accepting it, and any accomplices providing any work or favor whatever; and also those deliberately watching**

it, and those permitting it, or not prohibiting it as much as is in them, of whatever dignity they may be, even royal or imperial.

Duel, insofar as it is punished by this penalty of excommunication, is an illicit war or fight between two persons, by agreement, at an established time, in an agreed place, and with lethal and equal weapons, even if "they agreed that not individuals with individuals, but pairs, threes, or more on each side would fight," Clement VIII, Constitution *Illius vices*, §§ 3, 5; namely one against one, even if several have engaged successively with the same person.

Those *perpetrating a duel*, that is, committing a duel, whether privately or publicly, namely with seconds employed, placards affixed and subscribed, or a libellus of provocation, etc. Also comprehended here are those between whom agreements have been entered about ending the contest as soon as either has been wounded, or has poured out blood, or a certain number of blows has been inflicted on both sides. For these truly perpetrate a duel, provided, however, that the duel is of itself lethal.

Simply provoking to it, whether they provoke by writing or another exterior sign. The present excommunication is incurred even if a duel does not in fact follow, nor approach, nor any other act proximate to the fight. For since it says "simply provoking," the censure is imposed precisely because of the provocation, and not also because of the duel.

Accepting it: the same observation must be made as for those provoking.

Any accomplices, or those providing any work or favor whatever. Therefore those mandating, giving counsel, accompanying, messengers, those dictating provocative libelli, or writing or affixing them, seconds, witnesses, masters of weapons, etc., are excommunicated. But do accomplices and cooperators incur excommunication if the fight is not brought to effect? Some affirm; but others deny, for then it is not verified that they were accomplices and cooperators of a duel.

Those *deliberately watching*, that is, those who purposely come to the place of the duel and assist at the duel. Hence one does not incur excommunication who, while passing by the place of the duel along the way and by chance, looks on, led by curiosity. Likewise neither do they seem to incur this excommunication who watch from afar, or in secret, or in another way inducing nothing toward sharpening the fight. Finally, neither does one incur this excommunication who goes to the place of the duel to impede it; for they perform a very good thing.

Those *permitting it, or not impeding it as much as is in them*: therefore those civil or military authorities are subject to this excommunication who, when they can, by no means impede the duel; temporal lords not prohibiting these things in their lands, etc. Gregory XII, Constitution *Ad tollendum*; Clement VIII, Constitution *Illius vices*; Benedict XIV, Constitution *Detestabilem*; St. Alphonsus, 220; Reiffenstuel, l. 5, t. 14; Schmalzgrueber, l. 5, t. 14; Lugo, *Responsa moralia*, l. 2, disp. 1, 2; Bonacina, disp. 2, q. 3, p. 48; E.M.

1186. **IV. Those giving their name to the Masonic sect, or the Carbonarian sect, or other sects of the same kind, which plot against the Church or legitimate powers, whether openly or clandestinely; and also those providing any favor whatever to the same sects; or those not denouncing their occult ringleaders and leaders, until they have denounced them.**

Those *giving their name* are whoever knowingly and willingly are admitted into it, by whatever rite, or are initiated, even without a rite.

Masonic sects are assemblies or societies of men which propose to themselves to contrive something against the Church or the legitimate government, "whether they do this secretly or openly, whether or not they have exacted from their adherents an oath of keeping secrecy." Holy Office, Jan. 12, 1870; May 10, 1884; Aug. 15, 1846.

Or other sects of the same kind: plainly religious, heretical, and schismatic sects do not pertain here.

Legitimate powers, whether civil or religious.

But it must be noted here that those who gave their name to the aforesaid sects cannot be absolved if, although they repent of the oath emitted, nevertheless they externally communicate with the same associates, by reason of the scandal which is present. Holy Office, July 5, 1837; June 27, 1838; Sacred Penitentiary, Nov. 8, 1821.

Any favor whatever: "any whatever" plainly has the broadest meaning, whether negatively, when someone ought and can do something; or positively, whether someone acts physically or morally; whether by himself or through others; whether directly or indirectly, whether openly or occultly.

Occult ringleaders and leaders, not any persons whatever who have given their name to condemned sects.

Occult: therefore if they are publicly known, denunciation can be omitted, as is drawn from the Instruction of the Holy Office, Feb. 1, 1871.

Ringleaders and leaders. By the present Constitution no censure indeed is present with respect to those omitting denunciation of other sectarians. But the obligation of denouncing them always remains, either from ecclesiastical law, if it is in force, or from natural law, which obliges gravely where the question concerns avoiding grave damage.

Until they have denounced them. The denunciation must be made to the Inquisitor or bishop of the place, or to one holding there a quasi-episcopal office, or to another delegated by them for this effect, as is drawn from the cited Instruction. But grave damage to oneself or one's own can excuse from it, unless there is danger of common damage, which always prevails over private damage; or the uselessness of the denunciation, because the prelate would apply no remedy.

But a notable lapse of time is required for excommunication because of omitted denunciation. Such is a whole month from the time one knew the obligation and was able to fulfill it, according to the common rule. But once the denunciation has been made, at least the reservation of the censure ceases, since it is imposed conditionally, until they have denounced. Indeed, "the censure itself ceases through denunciation. Holy Office, Feb. 1, 1871." But if, for a just cause, someone is absolved before he makes denunciation, by one having power for this, and then does not keep the promise made of making denunciation, he falls back into the same excommunication by force of this clause: until they have denounced.

Clement XII, Constitution *In eminenti*; Benedict XIV, Constitution *Providas*; Pius VII, Constitution *Ecclesiam*; Leo XII, Constitution *Quo graviora*; Gregory XVI, Constitution *Inter*; Pius IX, Allocution *Qui*

pluribus, Nov. 9, 1846; Encyclical Epistle of Leo XIII, *Humanum genus*, Apr. 20, 1884; Instruction of the Holy Office, May 10, 1884; Ferraris, word *Denuntiatio*; E.M.

1187. **V. Those ordering, with rash daring, violation of the immunity of ecclesiastical asylum, or those violating it.**

The immunity of ecclesiastical asylum is the right which belongs to sacred or religious places, lest those who flee to them be extracted by force from there. C. *Inter* 6, *De immunitate ecclesiastica*. Nevertheless, from the Bull *Cum alias* of Gregory XIV and from the Bull *Ex quo divina* of Benedict XIII, public thieves, highway robbers, ravagers of fields, homicides, heretics, rebels guilty of violated majesty against the person of the prince, and others whom Benedict XIII excepts in the cited Constitution, and Benedict XIV in the Constitution *Officii nostri*, are excepted, with the formalities prescribed in these two Constitutions nevertheless observed. Cf. A.S.S., vol. 2, pp. 49 ff., 120, 486.

This right belongs to churches, even not yet consecrated, polluted, interdicted, and to their sacristies, bell towers, roofs, atria, cemeteries, even those separated from the church; to oratories erected by the bishop; to hospitals in which some public chapel exists; to the house of religious; to seminaries; to palaces of bishops or of Cardinals of the Holy Roman Church. CC. 9, 21, 35, 36, last, *De immunitate ecclesiastica*; C. 4, *De religiosis domibus*; St. Alphonsus, *De privilegiis*, nn. 25-27.

Having regard, indeed, to places and times, many acts to the contrary are excused accidentally from sin because they cannot morally be avoided, and positive law does not oblige with so great an inconvenience. Nevertheless, in itself this right still obtains, notwithstanding a contrary custom introduced, namely so that reverence for sacred things may be provided for. Holy Office, Dec. 22, 1880.

With rash daring embraces both members. From this it is understood that only he incurs excommunication who, by no means compelled by others, prudently and knowingly either orders violation of the immunity of ecclesiastical asylum, or violates it by executing the order. Holy Office, Feb. 1, 1871; A.S.S., vol. 15, p. 539.

Those *ordering violation*. Hence all those mandating that a delinquent be extracted from ecclesiastical asylum incur excommunication, with the effect of violation following.

Those *violating* are those who in fact extract the guilty person from asylum by force, not those who only attempt it. C. 6, cause 17, q. 4; title 49, *De immunitate ecclesiastica*, book 5 of the Decretals; Gregory XIV, Constitution *Cum alias*; Benedict XIII, Constitution *Ex quo divina*; Clement XII, Constitution *In suprema*; Benedict XIV, Constitutions *Alias felicis*, *Officii nostri*, *Elapso proxime*; Ferraris, *Bibliotheca*, word *Immunitas ecclesiastica*; Reiffenstuel, l. 3, title 49; Bonacina, disp. 2, q. 3, p. 16.

1188. **VI. Those violating the enclosure of nuns, of whatever kind or condition, sex or age they may have been, by entering their monasteries without legitimate license; and likewise those introducing or admitting them; and likewise nuns going out from it outside the cases and form prescribed by St. Pius V in the Constitution *Decori*.**

Those violating the enclosure of nuns are, as is established from what follows, those who enter their monasteries without legitimate license.

Enclosure is called that whole space which is contained within the boundaries of the monastery.

Of nuns, that is, those who strictly profess religion by a true and proper profession. For the discussion here concerns that enclosure about which Trent speaks, sess. 25, *De regularibus*, c. 5, and Pius V in the Constitution *Decori*. Hence more recent nuns, as they are not bound to canonical and pontifical enclosure, are not liable to this censure. S.C. of Bishops and Regulars, Aug. 1, 1839.

Of whatever kind or condition. Persons of a royal family do not seem to be comprehended, since by reason of their supreme dignity they are worthy of a more special mention; nor do prelates, whether secular or regular, entering without necessity, seem to be comprehended, for it cannot be said of them that they enter without faculty.

Sex or age. Hence not only men, but also women; not only adults, but also seven-year-old children capable of fraud.

Monasteries. By the name of monastery is understood a house in which religious women gathered together regularly live. St. Alphonsus, 231.

Without legitimate license. Therefore it does not seem necessarily required, by reason of incurring this excommunication, that this license be obtained in writing, as is contained in Trent, loc. cit.; and even a general license seems sufficient. And certainly one who enters after receiving license from the superior, although neither had in writing nor special but general, does not enter without legitimate license.

The following can grant this license: 1. bishops by their own or delegated authority, according as the monasteries are subject to the bishop or immediately subject to the Supreme Pontiff; 2. vicars general, only with respect to monasteries subject to the bishop; 3. capitular vicars, when the see is vacant, both with respect to monasteries subject to the bishop and also with respect to those which are subject to the Apostolic See; 4. the bishop, and in addition the regular prelate, that is, the general, provincial, or immediate superior of the monastery, with respect to monasteries subject to regulars, unless a contrary custom is in force, that it be given by the bishop alone. Benedict XIV, *De synodo*, l. 13, c. 12, n. 23; 5. the abbess, confessor, or another prudent man by delegation or commission of the bishop. S.C.C., Nov. 26, 1722; St. Alphonsus, 223, 224, 228.

But this license cannot be given except in necessary cases, and therefore for a grave cause; and a lesser cause is required for the entrance of a woman than of a man, for daytime entrance than nighttime, of a blood relative than of a stranger, and for entrance into the outer reception rooms than into the interior rooms. But in urgent necessities which do not allow delay, as in the case of death, fire, violence, etc., no license is required for entering. St. Alphonsus, 225.

The ordinary physician cannot enter except from a license renewed every three months; and also he must be accompanied by two senior nuns, and enter alone. An extraordinary physician cannot enter at the choice of the nuns, but only in the absence of the ordinary physician, or when a consultation is to be had with the ordinary physician. Moreover, craftsmen and other necessary persons who must exercise their craft within the enclosure can enter by license. St. Alphonsus, 226.

The confessor can enter to administer to the sick the sacraments of penance and the Eucharist, not only in danger of death, but as often as communion is distributed according to the prescription of the rule, and as often as that nun was accustomed to communicate; likewise to administer extreme

unction and to commend the souls of the dying, vested with stole and surplice, S.C. of Bishops and Regulars, Jan. 1714; nevertheless not to perform the obsequies of a deceased nun. A secular confessor must enter without a companion, but a regular confessor must have a companion of proven life and mature age. But while he hears confession, the accompanying women must be present at the door so that they may see him. St. Alphonsus, 227.

Lastly, bishops can enter monasteries of nuns in a case of necessity or visitation, but accompanied by a few senior and religious persons; likewise regular prelates for the sake of visitation, once a year. And if he is the general, he can have with him two companions of his order who are exemplary and of mature age; but if another, only one. And in addition four nuns from the seniors must be present, who are not to separate from the visitor. St. Alphonsus, 221; Bizzarri, *Collectanea*, p. 262, ed. 1885.

Although one who has entered a monastery with license and, when the business is finished, does not immediately go out, does not incur the censure, nevertheless he sins mortally if the delay is notable.

By entering: to enter is to go inside, to remain inside, and not merely to place a foot inside.

Those *introducing* are those who cooperate positively toward entrance, by sending inside, or by opening the door to one wishing to enter.

Those *admitting* are those receiving, who do not prohibit entrance when they can and ought by office, namely the prefects and door-keepers.

Likewise those introducing or admitting them: "them," namely those violating.

Outside the cases, etc. From the cited Constitution of Pius V, "going out is excused if there is a just cause, namely, as it is said there, of great fire, or illness, leprosy, or epidemic." Hence similar causes suffice for going out, such as imminent war, an incursion of robbers, flooding of a river, or ruin of a building.

And form, etc. For when access and time are available, namely if the danger allows delay, by the aforesaid Bull of St. Pius V there is altogether required for going out a license had in writing from the bishop, and also from the regular prelate if the monastery is exempt. But even in the aforesaid cases it is not permitted to remain outside the monasteries except for the necessary time.

Those *going out*, that is, going out with the whole body outside the enclosure. St. Alphonsus with others does not admit smallness of matter. Therefore, if a nun goes out from the enclosure, or someone enters the enclosure, even by one step, he incurs this excommunication. Yet others, cited by the same holy Doctor, deny this, n. 229. E.M.

1189. **Note 1.** For the greater custody of chastity, frequent access for speaking with nuns at the grates without a special faculty and without a reasonable and manifest cause is prohibited under grave obligation both to clerics and to laypersons, and where there is no legitimate contrary custom. This frequency consists in this, that someone goes to the monastery on three continuous days, or four times in a week, or once in each month for about a year.

But for regulars this conversation with nuns is specifically prohibited, even if it happens once and for a quarter hour with a half, indeed "for any small space of time whatever, they sin mortally." Thus S.C., May 1, 1669. "Regulars approaching to speak with nuns without license sin mortally; even from a reasonable cause, when license is not present," etc. S.C., Nov. 26, 1672.

Moreover from the decree of the Sacred Congregation issued by command of Sixtus V in the year 1590, on regulars speaking with any nuns whatever, whether of their own or another order, or with any woman living in a monastery, there is imposed the penalty of privation of office, of active and passive voice, to be incurred by the fact itself. More probably the abbess outside Rome is excepted.

But those joined in the first and second degree of consanguinity are exempted from this prohibition, after the permission of the Ordinary has first been obtained; he can give it in the prescribed form and for four times at most in any year. S.C. of Bishops and Regulars, 13 Kal. Dec. 1623. C. *Monasteria, De vita et honestate clericorum*; C. *Periculoso, De statu regularium*, in the Sixth; St. Alphonsus, l. 6, nn. 232-243; Bonacina, tom. 1, *De clausura*, q. 3; Lezana, *Summa quaestionum regularium*, vol. 2, word *Moniales*, n. 17 ff.

Note 2. From Trent, sess. 25, c. *De regularibus*, a secular magistrate is excommunicated, by an excommunication reserved to no one, if, at the instance of the bishop, he does not provide help against those disobedient to and contradicting the enclosure of nuns. Bonacina, disp. 2, q. 10, p. 7; *De clausura*, q. 4; Ferraris, word *Moniales*, art. 3, 4; Lucidi, *De visitatione*, etc., vol. 2, c. 5, § 2; vol. 3, document 55 ff., 3rd ed.; Bizzarri, *Collectanea*, pp. 301, 311, 319, 329, 347, 410, 438, 454 ff., 546 ff., 596 ff., 723 ff., ed. 1885; Benedict XIV, *De synodo*, l. 9, c. 15; Schmalzgrueber, l. 3, t. 35; Reiffenstuel, ibid.

1190. **VII. Women violating the enclosure of male regulars, and superiors or others admitting them.**

Women. Since this same excommunication previously was in force, and nothing new is now added, it seems that the same exception must be made as before. Therefore "queens, electresses, and similar women, and their daughters" are excepted. St. Alphonsus, 231, 225.

Women, namely those having the use of reason and who are pubescent.

Those *violating*, namely by entering, even if at that time no religious man is inside; for this is accidental.

Of regulars, that is, religious who emit solemn vows; for those who pronounce only simple vows, at least from the sacred canons, are not subject to enclosure.

Enclosure is that whole space which is contained by the boundaries of the monastery, and therefore workshops, dining rooms or refectories, sick rooms or infirmaries, dormitories, kitchen, etc., cloisters, gardens, meadows, pleasure-grounds, unless they are separated by key and suitable wall; not likewise the sacristy, if access to it is open from the church; indeed not even the first cloisters into which women go to draw water, provided the monastery has other cloisters inaccessible to women. S.C. of Bishops and Regulars, Apr. 24 and May 16, 1582; Ferraris, word *Conventus*, art. 3, n. 9 ff.

In some orders of regulars, which within the monastery have the room of the holy Founder or of another saint, a legitimate custom exists of admitting the faithful of either sex there on the feast day of the same. "Elbel says, n. 671, that with respect to the manner of observing enclosure, legitimate and reasonable customs approved by the authority of superiors must be attended to; but not those which should rather be called abuses and corruptions." St. Alphonsus, 231.

But under the name of monastery or convent do not come private houses or residences where one or another religious is accustomed to live; nor a house which is being built, unless there already are sufficient dwellings, so that a community can already live regularly. St. Alphonsus, 231.

Or others: therefore even inferiors and subjects admitting them incur this excommunication.

Them, namely women violating.

Those *admitting*, that is, receiving, approving the admission, or not impeding it when they can and ought by office. Cf. Suarez, disp. 22, sect. 6, sixth excommunication; Bonacina, disp. 2, q. 3, p. 38; *De clausura*, q. 5.

1191. **VIII. Those guilty of real simony in any benefices whatever, and their accomplices.**

Those *guilty*: it is not had here, "of whatever dignity they may be." Hence some exclude cardinals, but others wish them also to be comprehended. For this clause is not therefore had in the following article so that here they may be understood as excluded, but so that in that article even cardinals and prelates may be understood as included, who previously, according to the opinion of many, were punished only by interdict from entrance into the church. Pius IV, Constitution *Romanus Pontifex*, § 4.

Of real simony, by giving and accepting on both sides the thing and the price. But although it is required that the simony be real, a fulfillment from both sides, nevertheless, if only part of what was promised is paid, real simony is already understood to have been completed from both sides and to be sufficient for incurring this excommunication.

In benefices, that is, in benefices properly so called; of this kind are not pensions, or temporary vicarages, etc., offices, dignities, etc., in religious orders. Therefore one who sells a spiritual pension, although he commits simony, does not incur the present excommunication. For a benefice is: a perpetual right of perceiving revenues from goods of the Church on account of a sacred office, constituted by ecclesiastical authority.

Perpetual, that is, both objectively, namely insofar as the benefice itself is of itself so perpetual that it remains with the beneficiary until it is taken away from him for a legitimate cause, and so that by the death of the beneficiary, or by his removal from the benefice, the benefice itself is not extinguished, but is vacant of a possessor, so that it must be conferred on another and therefore endures perpetually in itself; and subjectively, namely insofar as the beneficiary ought to have it perpetually and irrevocably as long as he lives. Hence under the name of benefices, properly and strictly, do not come parishes which are conferred revocably. Others, however, for incurring this censure, do not require subjective perpetuity also.

In benefices, that is, in buying or selling the benefices themselves; in collation, election, presentation, and other acts which pertain to provision of benefices.

Any whatever, namely whether the benefices are double or simple, whether of the right of patronage or of free collation, etc.

Accomplices: therefore this penalty is incurred, for example, not only by the one conferring and the one receiving the benefice, but also by those through whose cooperation, mediation, or favor the simoniacal contract is completed. Extravagant 2, this title; Lugo, *Responsa moralia*, l. 2, disp. 3, nn. 2,

3; Suarez, disp. 22, sect. 5, fourth excommunication; Bonacina, disp. 2, q. 3, p. 24; Thesaurus, *De poenis*, p. 2, *Simonia*.

1192. **IX. Those guilty of confidential simony in any benefices whatever, of whatever dignity they may be.**

Those *guilty*, namely those giving and accepting benefices and their fruits, and likewise those resigning. For those guilty of confidential simony are those who enter a confidential pact among themselves. Those guilty: not also accomplices, as in the preceding article.

Confidential, which has place only in ecclesiastical benefices; hence it is added, in any benefices whatever, etc.

But this excommunication is incurred both because of real confidential simony and because of mixed confidential simony, namely completed on one side only; for it is true confidential simony. Nor indeed is it required that what was promised be fulfilled on both sides.

Of whatever dignity they may be, and therefore the present excommunication holds even Cardinals of the Holy Roman Church and other prelates. Pius IV, Constitution *Romanum*; Pius V, Constitution *Intolerabilis*; Trent, sess. 25, c. 7; Suarez, disp. 22, sect. 6, seventh excommunication; Bonacina, disp. 2, q. 3, p. 25.

1193. **X. Those guilty of real simony because of entrance into religion.**

Those *guilty*: therefore, in the case of simoniacal entrance into religion, both those giving and those receiving incur the present excommunication.

Because of entrance: "It is very probable that excommunication is not incurred in simple entrance, but in profession." St. Alphonsus, 108.

Because of entrance: this simony is of divine law; but because of the support of novices there is no simony; because of the support of professed persons, either there is none, or there is only simony of human law, and therefore, where it still has force, it is by no means liable to this excommunication.

Into religion, strictly and properly such. Extravagant 1, this title; Suarez, disp. 22, sect. 5, second excommunication; Bonacina, disp. 2, q. 3, p. 29.

1194. **XI. All who, making gain from indulgences and other spiritual graces, are punished with the censure of excommunication by the Constitution of St. Pius V, *Quam plenum*, Jan. 2, 1569.**

All who, etc. By the aforesaid Constitution of St. Pius V only those inferior to bishops are decreed to incur the sentence of excommunication, § 6.

Those *making gain*: therefore it is necessary at least to receive part of the price. Those making gain, etc., namely: 1. by granting indulgences and other spiritual graces, which are to be conferred with no temporal thing, to those paying a certain money, so that this payment of money is a condition owed for that concession, as if its price, although this is done under pretext of promoting a pious work; 2. by presuming to publish letters which contain graces of this kind, or by ordering that a list of cases and indulgences be hung in sacred buildings, by which they seem to hunt buyers, since it is openly

signified that the aforesaid things are conceded to those paying, although again this is done under pretext of a pious work. Cited Constitution, §§ 1, 2, 3, 4.

And other spiritual graces. These are reviewed in the aforesaid Constitution: 1. the faculty of choosing any priest whatever, by whom one may be absolved not only from non-reserved cases, but also from reserved ones, § 1; 2. "remissions of imposed penances," § 2; 3. "the sacrifice of Mass, burial, during time of interdict; use of prohibited foods; assumption of two or more sponsors at sacred baptism, against the decree of Trent, besides those who are adopted by synodal constitutions, as they say; absolution from the guilt of simony reserved to the Apostolic See," § 3.

Of excommunication, etc. Therefore the suspension imposed in the same Constitution of Pius V against bishops and cardinals, § 6, has by no means been renewed through the Constitution *Apostolicae Sedis*. Bonacina, disp. 2, q. 3, p. 30.

1195. **XII. Those collecting alms of a higher price for Masses and seeking profit from them, by causing them to be celebrated in places where Mass stipends are usually of a lower price.**

Those *collecting*: collection indicates an abundant gathering of those alms and a studied search in the manner of trade. Therefore one who collected only one stipend or another would not incur this censure; nor one to whom Masses to be celebrated by himself are spontaneously committed. Those collecting is said generally, whether they are laypersons or clerics.

Those *collecting alms*, etc., *where Mass stipends*, etc. Therefore the present censure is to be understood only of manual Masses, and by no means of those which are owed because of a foundation or benefice, or in perpetuity. St. Alphonsus, l. 6, n. 321, third excommunication; cf. A.S.S., vol. 4, p. 39; vol. 8, n. 84.

Of a higher price, of a lower price: therefore one who causes Masses to be celebrated in a place where they are celebrated for the same stipend does not incur this censure, although he retains part of the stipend.

Seeking profit from them: hence those do not incur the censure who collect alms by office for Masses to be celebrated, if from them they retain for themselves an equitable remuneration for labor, St. Alphonsus, loc. cit., n. 332, dub. 3; or retain for themselves as an alms, if they are truly poor; or simply retain for themselves as another's thing. For then they are not to be regarded as merchants, but as true thieves. Nor indeed do those incur the censure to whom the excess is remitted liberally and altogether spontaneously. Liberally and altogether spontaneously: for they incur it if they ask the priest to remit it, or ask from him whether he consents that they retain part; for Benedict XIV, loc. cit., reviews this among execrable abuses.

Finally, neither do even those incur the censure who subtract part from the stipend so that it may be expended for certain pious uses, although S.C.O., Sept. 9, 1874, disapproved this.

And seeking profit from them: therefore excommunication is not incurred when someone collects alms, but when, with a lesser stipend handed over to another, he retains part of it for himself, in grave matter, namely by reason of theft.

In places where, etc. The expression is general. Therefore not only one who commits Masses to be celebrated for a smaller alms in another place is subject to this excommunication, but also one who does this in the same place in which he collects the alms. Holy Office, Jan. 13, 1892. That is, if he himself collected stipends exceeding the tax and handed over to others only the established stipend, retaining the excess for himself. Exceeding the tax: otherwise it would not be verified that he collected alms of a higher price and caused Masses to be celebrated in a place where Mass stipends are usually of a lower price, that is, commonly speaking, either from the diocesan tax or merely from custom and common practice. E.M.

1196. **XIII. All who are punished with excommunication in the Constitutions of St. Pius V, *Admonet nos*, fourth Kalends of April, 1567; of Innocent IX, *Quae ab hac sede*, the day before the Nones of November, 1591; of Clement VIII, *Ad Romani Pontificis curam*, June 26, 1582; and of Alexander VII, *Inter ceteras*, ninth Kalends of November, 1660, regarding alienation and infeudation of cities and places of the Holy Roman Church.**

All, absolutely altogether, with no exception made. Constitution *Admonet nos*, § 3.

Those *who are punished with excommunication*, etc. Moreover, by the cited Constitution of St. Pius V, *Admonet nos*, loc. cit., first, those treating, counseling, or otherwise making words about infeudations or alienations of cities and places immediately pertaining to the Holy See are punished with excommunication.

Likewise, the aforesaid are punished with excommunication when treating, counseling, or otherwise making words about asking from the Holy See any persons whatever as dukes, vicars, governors, or under any other title, for life, or in perpetuity, or for a long time, or even at the good pleasure of the Apostolic See, of the aforesaid cities and places.

Those *treating*, whether publicly or privately.

About infeudations or alienations, to be made in whatever way, for example under an annual census or canon; in perpetuity, for life, for a long time, at the good pleasure of the Holy See; under whatever title, for example of government, vicariate; for whatever cause, even necessity or evident utility. Hence it is clear that the question here is not about alienation properly so called, which consists in perpetual transfer of direct and useful dominion to another, as in donation, sale, etc.; but about alienation improperly such, by which direct dominion or some right in the alienated place is always retained by the Holy See. § 1.

Immediately pertaining: places immediately subject are those in which the Supreme Pontiff exercises temporal jurisdiction either through himself or through his delegated ministers, governors, judges.

Now, truly, all the aforesaid are punished with excommunication: those proposing that orators be chosen to be sent to the Holy See concerning the premises or on occasion of them, both they themselves and the orators receiving an office of this kind, or any others whatever insinuating or persuading alienations of this kind to the Roman Pontiff existing for the time, by themselves or by another or others.

To insinuate is the same as to declare that one's mind is that the Supreme Pontiff alienate and infeudate the aforesaid places. To persuade, by reason or motive, is to move toward making

alienations of this kind. By himself or another or others: therefore not by letter.

Innocent IX approves and extends this Constitution in the cited Constitution to places not only devolved, but also to be devolved, subject to the Holy See both immediately and mediately. Places mediately subject are those in which the Supreme Pontiff does not exercise temporal jurisdiction, and has transferred it to another, reserving direct dominion to himself. Such are states granted in fief.

Clement VIII, in the cited Constitution, approves, confirms, renews, and declares the Bull of St. Pius V extended by Innocent IX, revoking the Constitution of Gregory XIV, Sept. 13, 1591, by which he had declared that the Constitution of St. Pius V was not to be understood of a fief not yet devolved, when evident utility or necessity of the Church required that it again be handed over in fief.

Finally, Alexander VII in the cited Constitution not only approved, confirmed, and renewed the three unfolded Constitutions, but also added by declaring that under the same Constitution of St. Pius V were comprehended principalities, duchies, cities, etc., after it up to that time and in future successive times acquired and to be acquired in perpetuity by title either of devolution or by any other title whatever, in whatever way, by the Holy Roman Church and the Apostolic See and Camera. Likewise he asserted how the Constitutions of Gregory XIII, fifth Ides of July, 1580, and of Sixtus V, Kalends of July, 1585, issued for confiscated goods, were to be understood, and also other letters of Clement VIII given seventh Kalends of June, 1596. Avanzini, annotations 35; Bonacina, disp. 22, q. 3, p. 41; E.M.

1197. **XIV. Religious presuming, outside a case of necessity, to administer to clerics or laypersons the sacrament of extreme unction, or the Eucharist as viaticum, without license of the parish priest.**

Religious: novices of any order or congregation are not reckoned as such here. Nor are religious of those congregations in which only simple vows are emitted comprehended. The reason is that in penal matters the law is to be interpreted strictly. For the same reason, neither are religious of those orders in which solemn vows are indeed emitted comprehended, if they themselves have emitted only simple vows.

But under this name all solemnly professed religious are comprehended, although they themselves are also parish priests. For by common law strictly they are regarded as true religious, but by no means are others, although they have emitted simple vows in a religion in which solemn vows are emitted. This was declared positively by special privilege only concerning Scholastics of the Society of Jesus. Bizzarri, *Collectanea*, p. 745, ed. 1885; Suarez, disp. 22, sect. 4, second excommunication; Lugo, *Responsa moralia*, l. 4, disp. 44, nn. 2, 3.

Those *presuming*: therefore excommunication ceases if you falsely thought that a case of necessity was present, or that license of the parish priest was not lacking. For if you thought so, you did not presume.

To clerics and laypersons. Nevertheless, from Trent, sess. 24, c. 11, *De regularibus*, religious can administer the last sacraments to clerics and laypersons who "actually serve and reside within their enclosures and houses, and live under their obedience." Nor indeed is excommunication incurred if they administered to regulars.

Outside a case of necessity, namely as often as there is danger of death and the parish priest cannot or will not administer the sacraments to the sick person.

Or the Eucharist as viaticum: therefore there is no censure if not as viaticum, but if they administered again from devotion to one who has already received viaticum; this is not prohibited either, unless one must go along public ways.

Without license of the parish priest, at least presumed.

Of the parish priest, namely the one who has care of souls or acts in his place, by whatever name he is called, and to whom the sick person is subject by domicile or quasi-domicile. Therefore travelers and vagi are excluded. Clementina 1, *De privilegiis*; Bonacina, disp. 2, q. 9, p. 5.

1198. **XV. Those extracting relics from the sacred cemeteries or catacombs of Rome and its territory without legitimate permission, and those providing help or favor to them.**

Of the relics which are found in the crypts and cemeteries of the City, it is established that certain ones are of the holy martyrs, for example "when glass or earthen phials tinged with blood are found at the tombs of those buried in sacred cemeteries, either inside or outside them." S.C. of Relics and Indulgences, Dec. 10, 1863.

But it is established that certain ones are not of martyrs, such as those which can be found in open tombs. Finally, it is doubtful whether certain ones are of martyrs or not. One who extracts the former relics of the holy martyrs incurs the present excommunication, but by no means one who extracts the rest, whether it is certainly established that they are not of saints, or whether it is doubted.

Relics, namely bones and ashes. Paul V, by decree of Aug. 23, 1613 and May 16, 1614, prohibited under grave obligation carrying off even the smallest particle of these without permission; and at the same time he declared that theft of this kind is never excused because of smallness of matter.

Legitimate permission must be given by the eminent Cardinal Vicar, with the form established by Paul V, loc. cit., and by Clement X in the Brief *Ex commissae nobis*, Jan. 13, 1672, observed.

To them, those extracting. Bonacina, disp. 2, q. 3, p. 13, § *Incidens*.

1199. **XVI. Those communicating with one excommunicated by name by the Pope in a criminal crime, namely by furnishing him help or favor.**

Those *communicating*, both clerics and laypersons.

With one excommunicated by name by the Pope, namely one whom the Supreme Pontiff excommunicates by name with a particular excommunication, or denounces by name as excommunicated by a general excommunication *latae sententiae*. Therefore one who is excommunicated by anyone else is by no means comprehended here; nor one who, although he incurred a papal excommunication, is afterward denounced by name as excommunicated by any other Ordinary.

In a criminal crime: "That is, in the same crime or contumacy because of which the excommunication was imposed, after the excommunication has been imposed and is known to him; for example, if someone again knows his excommunicated concubine after the excommunication, as is had from C. *Si Concubinae* 55, *De sententia excommunicationis*; or if someone, after excommunication has been

imposed on someone because of theft, concubinage, etc., furnishes him help or counsel so that he does not restore, does not dismiss the concubine, or does not depart from the excommunication." St. Alphonsus, 197.

Namely by furnishing him help or favor: therefore not any communication is comprehended here, but communication: 1. with one excommunicated by name by the Pope; 2. in a criminal crime; 3. by furnishing him help or favor in that crime. Counsel is not added. Therefore crime here, as is clear, is a crime already committed; for one who would furnish help or favor in committing a crime would communicate with one not yet excommunicated. C. *Nuper* 29, *De sententia excommunicationis*; Bonacina, disp. 2, q. 3, p. 21; E.M.

1200. **XVII. Clerics knowingly and spontaneously communicating in divine things with persons excommunicated by name by the Roman Pontiff, and receiving them in offices.**

Clerics: therefore laypersons and bishops do not incur this censure. There is dispute about regulars.

Knowingly and spontaneously: therefore any ignorance, even affected, and any fear or coercion excuse. Note this clause, which is absent in the preceding article.

Communicating in divine things: therefore it is not incurred because of communication in civil matters. But this communication in divine things must be grave, so that smallness of matter does not excuse.

Excommunicated by name by the Roman Pontiff: the same must be said as in the preceding article.

And receiving them in offices. This part is understood by authors as explanatory and determinative of the prior part, so that the communication in divine things which is forbidden to clerics under penalty of reserved excommunication is only that by which they admit those excommunicated by name by the Pope to performing divine offices. For this is to receive someone in divine offices.

But divine offices, or divine things, are the same here, namely sacraments, the sacrifice of Mass, public prayers, etc. For divine offices are those which clerics perform as ministers of the Church, or which are usually done by clerics alone. C. *Significavit* 18, *De sententia excommunicationis*; St. Alphonsus, 33; Suarez, disp. 10, sect. 2; Bonacina, tom. 3, disp. 2, q. 5, p. 3, n. 3.

1201. **XVIII. Those presuming to absolve without due faculty, even under any pretext, from excommunications reserved in a special manner to the Roman Pontiff, provided the article of death is not in question.** Paragraph *A quibus*. Cf. 1177.

Those *presuming to absolve*, not simply those absolving.

To absolve, not to feign absolution.

From excommunications reserved in a special manner to the Roman Pontiff, not from others.

Provided the article of death is not in question, or a more urgent case, or it would be very hard for the penitent to remain longer in the state of mortal sin. Cf. 800; Suarez, disp. 22, sect. 5, fifth excommunication.

1202. **XIX. From the Council of Trent, sess. 22, c. 11, *De reformatione*, occupiers of goods of any church or pious place incur excommunication simply reserved to the Roman Pontiff,**

confirmed by the present Constitution, paragraph *Praeter hos*:

"If the root of all evils, covetousness, should so occupy any cleric or layperson, of whatever dignity he may shine forth, even imperial or royal, that he should presume to convert to his own uses the jurisdictions, goods, revenues, and rights, even feudal and emphyteutic, fruits, emoluments, or any offerings whatever, of any church, or of any secular or regular benefice, of mounts of piety, and of other pious places, which ought to be converted to the necessities of ministers and the poor, by himself or through others, by force or fear struck in, or even through supposed persons of clerics, or by any art, or under any sought color, and to usurp them, or to impede them from being perceived by those to whom by law they pertain, let him lie under anathema so long as he has not fully restored to the Church and to its administrator or beneficiary the jurisdictions, goods, things, rights, fruits, and revenues which he has occupied, or which have come to him in any way whatever, even from the donation of a supposed person, and then obtained absolution from the Roman Pontiff. But if he is patron of the same church, beyond the aforesaid penalties he shall also be deprived of the right of patronage.... But the cleric who has been the maker or consenting party of this kind of wicked fraud and usurpation shall lie under the same penalties, and also..."

This Tridentine censure must be compared with articles 11 and 12 of the excommunications of this Constitution reserved in a special manner to the Roman Pontiff. In those, the question concerns goods and rights pertaining to ecclesiastical persons by reason of their churches or benefices, and places and rights pertaining to the Roman Church. And occupiers of ecclesiastical goods of this kind "are bound only by the excommunication specially reserved to the Roman Pontiff," Holy Office, July 8, 1874, and not also by the Tridentine censure. This censure comprehends all other goods or rights which can be called ecclesiastical in any way. But since this censure is most broad, hence of itself it extends to occupiers of all ecclesiastical goods.

If any of the clerics or laypersons: therefore regulars are not comprehended.

If any, etc., *of whatever dignity, even royal or imperial... to usurp or impede*. Therefore this decree pertains not to any occupations whatever, but to authoritative and potential occupations. Therefore not everyone who in any way converts any thing whatever to his own uses, for example a tenant who does not pay rent, a borrower or depositary who does not restore a thing, a debtor not paying debts, incurs excommunication. S.C.C., Feb. 27, 1569; Trent, sess. 23, c. 3. Nor do those who subtract or impede tithes, Trent, sess. 25, *De reformatione*, c. 12, which is plainly decretory. Nor indeed are those alienating comprehended, about whom there is a special censure here.

To convert to his own uses, not to another's; for example, if the rector of a pious place cut trees pertaining to the same place and converted them not to his own advantage but to another's.

Should presume to convert to his own uses, and to usurp them: both must be taken copulatively, not disjunctively. For "thieves stealing things of a church or pious places do not incur the excommunication of the Council." S.C.C., Feb. 27, 1596.

Or to impede them from being perceived by those to whom by law they pertain. Therefore the question concerns outsiders, and not the possessors themselves. Therefore "this decree does not have place when the lord of a benefice cuts fruit-bearing trees and converts them to his own advantage." S.C.C. apud Pignatelli, tom. 7, cons. 11.

Goods, as elsewhere in Canon Law, immovable goods or precious movable goods. C. 13, *De electione*, in the Sixth; Extravagant *Ambitiosae*, *De rebus Ecclesiae non alienandis*. But understand goods of which dominion and possession, and right in the thing, are already had; not also goods not yet possessed, such as pious legacies, etc., or goods of which only a right to the thing is had.

Emoluments signify any utilities whatever coming from some thing in whatever way.

Of pious places, namely those erected by ecclesiastical authority, destined for a pious work, and which are ruled and administered dependently on the Church. Hence it is said: that usurper should lie under anathema so long as he has not fully restored to the Church and to its administrator or beneficiary.

By himself or others. Therefore those mandating are also comprehended, and clerical cooperators and consenters also, for it is said at the end: the cleric who has been the maker or consenting party of this kind of wicked fraud and usurpation, etc.; and therefore with the effect following, which holds also for the others. Sacred Penitentiary, Apr. 15, 1873.

By force or fear, etc. Therefore the action which is restrained by this decree is to convert goods, revenues, etc. to one's own uses, to usurp them, or to impede them from being perceived by those to whom they pertain; and this not in just any way, but by force or fear struck in, or by any art, namely fraud, or under any sought color, that is, title or pretext, and not merely by occupying them as one's own and owed to oneself. But it does not matter whether one has usurped or impeded by himself or through others, or even through supposed persons.

Nor indeed are only those excommunicated who convert these goods to their own uses, usurp them, and impede them from being perceived by those to whom they pertain, or mandate these things by occupying through others, etc., whether clerics or laypersons, beneficiaries or patrons, do these things; or even counsel them, or merely consent, if clerics, by positive consent. But also those to whom those goods have come from these in any way whatever, by inheritance, legacy, donation, lease, purchase, etc., in a quantity nevertheless not simply grave, which would be foreign to the same Trent, sess. 23, c. 3, *De reformatione*, but notable. Allocution of Pius IX, *Quod praenuntiavimus*, July 25, 1875; Holy Office, July 8, 1874, to the second.

But presumption is required. For it is said, "should presume to usurp." Therefore fear and ignorance excuse.

Let him lie under anathema so long as, etc. Therefore a special faculty is needed for absolving these penitents. It must be sought either from the Sacred Penitentiary or from Ordinaries, to whom extraordinary faculties are conceded for this effect. The Holy See conceded to Ordinaries in Italy, for one year, the faculty of making an equitable composition for those who unjustly acquired ecclesiastical goods, or alienated goods acquired. Suarez, disp. 22, sect. 6, ninth excommunication; disp. 23, sect. 4, fourth excommunication; Bonacina, disp. 1, q. 18, p. 4; Cardinal De Luca, Appendix, tom. 14, annotations to S.C.C., disc. 23; E.M.

1203. **We declare that the following are subject to excommunication *latae sententiae* reserved to bishops or Ordinaries:**

Confessors in Rome do not need a special faculty of the eminent Cardinal Vicar for absolving the following cases, by ancient custom. Holy Office, Dec. 1, 1875.

I. Clerics constituted in sacred orders, or regulars or nuns after the solemn vow of chastity, presuming to contract marriage; and also all presuming to contract marriage with any of the aforesaid persons.

Clerics: not all, but those constituted in sacred orders.

Regulars, nuns: not all, but after the solemn vow of chastity. Nor indeed all these, but those presuming; and therefore ignorance excuses, even if afterward, when the matter is known, they persevere in cohabitation, because then they are no longer contracting, but have already contracted before. The question concerns contracting marriage, and therefore the present censure is not incurred for betrothals.

The Holy Office declared Dec. 22, 1880: "Clerics constituted in sacred orders, or regulars or nuns after emitting the solemn vow of chastity, presuming to contract so-called civil marriage in places where the Tridentine law of clandestinity is in force, incur excommunication *latae sententiae* reserved to bishops or Ordinaries." Similarly the Holy Office declared Jan. 13, 1892 that they also incur this excommunication if, besides the impediment of the solemn vow of chastity, they have other impediments, for example of affinity or consanguinity. But it is by no means required that this attempted marriage also be consummated, for it is imposed against those presumptuously contracting marriage.

And also all, etc. Therefore not only clerics constituted in sacred orders, regulars, or nuns incur this excommunication, but also those who contract with them. Clementina single, *De consanguinitate et affinitate*; Suarez, disp. 11, sect. 3, n. 15; disp. 4, sect. 3, n. 3; disp. 23, sect. 5, seventh excommunication; Sanchez, *De matrimonio*, l. 7, disp. 48; E.M.

1204. **II. Those procuring abortion, with the effect following.**

Those *procuring* are properly said to be those who directly intend abortion and deliberately attempt it by an exterior work of itself efficacious so that it really follows. Those procuring by immediate and proximate action. Those procuring: nothing is distinguished; therefore all, and therefore pregnant women themselves, if they procure abortion in themselves. Lugo, *Responsa moralia*, l. 2, dub. 4; St. Alphonsus, l. 3, n. 395.

Abortion is the ejection of an immature fetus. Therefore surgeons exercising craniotomy, although they sin gravely, do not incur this censure. Abortion is said absolutely; therefore at whatever time it happens after conception, whether the fetus is animated or inanimate, namely in the first days of conception. St. Alphonsus, l. 3, n. 396.

With the effect following. Therefore the present censure is not incurred if, although someone procured abortion, nevertheless he did not procure it efficaciously. St. Alphonsus, 40, 368; Lugo, *De poenitentia*, disp. 16, n. 444; Palaus, disp. 4, p. 7, n. 15; Bonacina, disp. 2, q. 2, p. 10; Ithurriaga, case 21, n. 30 ff.

1205. **III. Those knowingly using false Apostolic Letters; or those cooperating in the crime in that matter.**

Apostolic Letters, in whatever form.

False, whether partly true and changed, or entirely substituted.

Knowingly: therefore ignorance excuses.

Those *using*, namely those who exhibit them so that they can have effect, although in fact they do not have it, for example because the falsity is detected; whether laypersons or clerics.

Those *cooperating in the crime in that matter*, namely those who supply proximate work, not counsel, not exhortation, to the one using them, not to the one falsifying, in the use of them. For to cooperate is to provide help to another. C. *Ad Falsariorum* 7, *De crimine falsi*.

1206. **IV. To the preceding excommunications reserved to bishops there must be added excommunication against laypersons offending against the decrees of S.C.C., Sept. 9, 1874.** Cf. 1238.

1207. **We declare that the following are subject to excommunication *latae sententiae* reserved to no one:**

I. Those mandating or compelling notorious heretics, or those excommunicated by name, or interdicted, to be handed over to ecclesiastical burial.

Those *mandating or compelling*: therefore not those burying, nor those simply admitting to ecclesiastical burial. Therefore a parish priest obeying mandates of civil authority and admitting one excommunicated by name to ecclesiastical burial does not incur this censure. Nevertheless he falls into interdict *latae sententiae*. Those mandating, namely those who order or ask in their own name that the thing be done.

Those *compelling*, who compel by applying force. For compulsion properly is not present unless force intervenes, and injury, if it is unjust. Those mandating or compelling, from the subject matter, seem to be restricted to those mandating or compelling by public power or force. For the question concerns public and common burial.

To be handed over to ecclesiastical burial, that is, to bring or concede to the tomb. Therefore those who mandate and compel do not incur excommunication except after the burial has been handed over.

But ecclesiastical burial is a sacred place assigned for burying Christ's faithful, or at least for performing divine offices, from the destination of the bishop, or even from common use and custom. Whether episcopal blessing is necessarily required, some affirm, others deny. Therefore one does not incur this excommunication who would mandate or compel burial by Catholic rite, but in a profane place; on the contrary, he incurs it who would mandate or compel burial in a sacred place, even with no rite used.

Notorious heretics, and not only those to be avoided. As is clear, notorious schismatic heretics and apostates from the Catholic faith who are true heretics are also comprehended.

By name, etc., with the name expressed through words or undoubted signs.

Excommunicated or interdicted, publicly denounced as such. For no one is bound to avoid one censured if the censure has not been publicly denounced. C. *Ad evitanda*. C. *Quicumque* 2, *De haereticis*, in the

Sixth; Clementina 1, *De sepulturis*; Ferraris, word *Sepultura*; Suarez, disp. 12, sect. 4, n. 6; Bonacina, *De censuris*, disp. 2, q. 2, p. 3, § 3, n. 3; Reiffenstuel, l. 3, t. 28, n. 2.

1208. **II. Those harming or greatly terrifying inquisitors, denouncers, witnesses, or other ministers of the Holy Office; or those seizing or burning the writings of its sacred tribunal; or those providing help, counsel, or favor to any of the aforesaid.**

Those *harming* are those bringing damage upon the person.

Those *greatly terrifying* are more than those simply causing grave fear, but causing very grave fear.

Ministers, who are deputed by office for the service or business of conducting the affairs of the Holy Office, for example consultors, advocates, notaries, executors, etc.

Of the Holy Office, wherever it may be, whether in Rome or elsewhere; the law does not distinguish. Of the Holy Office, not of bishops, although these are born inquisitors.

Writings, not writing. Writings, that is, instruments whether public or private, whether printed by type or manuscript, pertaining to the acts of the Holy Office. For it says: the writings of its sacred tribunal.

To seize properly is to snatch into different parts, and as it were to plunder; but to snatch is to carry off by force. Therefore those do not incur this excommunication who secretly steal writings of the Holy Office, or who carry off by force only one or another.

Those *seizing, burning*, not otherwise destroying. St. Pius V, Constitution *Si de protegendis*; Bonacina, disp. 2, q. 2, p. 13.

Those who commit the same things against denouncers before bishops, or witnesses, or ministers of bishops, or writings pertaining among them to the matter of sacred Inquisition, are not subject to this excommunication. Holy Office, Jan. 28, 1892.

1209. **III. Those alienating, and those presuming to receive, ecclesiastical goods without Apostolic good pleasure, according to the form of the Extravagant *Ambitiosae*, *De rebus Ecclesiae non alienandis*.**

Those *alienating*: therefore those destroying, stealing, or seizing are by no means comprehended. Nor indeed are all those alienating comprehended, but only those to whom the administration of ecclesiastical goods is entrusted, such as parish priests, rectors, etc., in whose name and by whose mandate the alienation is made, not their mandataries. For in the obvious sense those here are illegitimately alienating who, with the form of the Extravagant *Ambitiosae* observed, would alienate legitimately. But bishops and abbots must be excepted, who from the cited Extravagant *Ambitiosae* are punished not by excommunication, but by the penalty of interdict from entrance into the church. Schmalzgrueber, l. 3, p. 1, title 13, n. 164.

Those *presuming to receive*: therefore ignorance excuses.

Alienation here is taken most broadly, as is established from the Extravagant *Ambitiosae* itself, which is had in book 3, title 4 of the Common Extravagants, C. single, *De rebus Ecclesiae non alienandis*. For the Supreme Pontiff says: "By this Constitution to remain perpetually in force We prohibit the

alienation of all things and goods of churches, and every pact by which their dominion is transferred, concession, hypothecation, lease and hiring beyond three years, and also infeudation or emphyteutic contract, except in cases expressed by law, and concerning things and goods customarily conceded in emphyteusis from ancient times, and with evident utility of the churches, and concerning fruits and goods which cannot be preserved by being kept, according to the demand of the present time."

Then it is added: "If anyone should presume, contrary to the series of this Our prohibition, to alienate anything concerning the same goods and things, alienation, hypothecation, concession, lease, hiring, and infeudation of this kind shall be of no force or moment at all." Finally the penalty of excommunication is imposed on those alienating and receiving, and it is commanded that alienation of these goods never be made without consulting the Roman Pontiff.

Alienation, that is, perfect from both sides, the thing handed over and accepted; nor does it suffice if it has been sold, for example, under a suspensive condition.

Ecclesiastical goods, etc., namely those which have already been duly and rightly acquired, acquired absolutely, according to the form of the same Extravagant *Ambitiosae*. For to alienate is to cast away from oneself things already acquired, but by no means to renounce things to be acquired. Hence it is not alienation to accept or give money as a loan; although "the Sacred Congregation declared that religious cannot accept money as a loan with payment of interest." St. Alphonsus, l. 4, n. 187.

But ecclesiastical goods are goods of monasteries, churches, any pious places whatever, although they are administered by laypersons, provided nevertheless that they have been erected by ecclesiastical authority; likewise ecclesiastical benefices, but by no means merely lay chaplaincies.

Ecclesiastical goods, that is, immovable and precious movable goods, as is had in the cited Extravagant. But under the name of precious things come gold or silver vessels, gems, abundant libraries; likewise flocks and herds considered totally; likewise cutting of trees and forests, if it happens with deterioration. A great sum of money donated and destined for buying immovables also comes under it, for then it is reckoned as something immovable. Not likewise money; and still less precious relics, which is foreign to the mind of Paul II and to the propriety of the words, for no one would say that these are in our patrimony.

Nor indeed is every disposal of an immovable thing, or precious movable thing, or lease beyond three years, forbidden by this Extravagant. Ordinaries still alienate by their own law, as before, fields of slight value, C. *Terrulas* 53, cause 12, q. 2; indeed even those not of slight value, if they bring more inconvenience than convenience. CC. 7, 8, § last, *De rebus Ecclesiae alienandis*; or if necessity presses, which does not allow delay, or if there is an occasion which otherwise would pass. Leases also lack both fault and censure if they have been made under this law, that, at the end of each three-year period, it is permitted to the lessor to withdraw from the lease. Nor is it illicit to sell revenues of one's benefice for a wage or annual pension beyond three years, because it is prohibited by no law, provided they are not sold or leased for a represented, that is, anticipated, wage. Trent, sess. 25, c. 11, *De reformatione*.

Moreover, the Sacred Congregation of Bishops and Regulars, May 1, 1840, determined for fields of slight value the sum of 25 gold scudi of the Camera, namely about 225 Italian lire, which at present can be increased in proportionate reason because of the changed value of money. Things which probably do not endure for three years without notable deterioration can be alienated without license

of the Pontiff, such as fruits, garments, individual beasts of burden, etc.; useless things, damaging things, and any thing acquired for the Church under this agreement, that it can be alienated. Schmalzgrueber, nn. 38 ff., 141, 142, 143; St. Alphonsus, loc. cit.

But can monies placed in administrations of railways or governments be alienated without Apostolic placet? Several affirm, because it cannot be said to be comprehended under the denomination of immovable good or precious movable good. Schmalzgrueber, nn. 50-52; Reiffenstuel, n. 15.

Without good pleasure of the Apostolic See. Besides a just cause, in order that alienation of immovable things and precious movable things can be made, it is also necessary that it be made with the solemnities required by law, all of which, however, the Apostolic good pleasure supplies. St. Alphonsus, l. 4, n. 187; La-Croix, l. 4, n. 1363 ff.; Suarez, disp. 22, sect. 6, second excommunication; Schmalzgrueber, l. 3, p. 1, t. 13; Bonacina, disp. 2, q. 5, p. 11; Bizzarri, *Collectanea*, pp. 298, 299, 537 ff., 544 ff., etc., ed. 1885; Instruction of the Sacred Congregation de Propaganda Fide, July 30, 1867; E.M.

1210. **IV. Those neglecting, or culpably omitting, to denounce within a month confessors, or priests, by whom they have been solicited to shameful things, in any cases whatever expressed by Our predecessors Gregory XV, Constitution *Universi*, Aug. 20, 1622, and Benedict XIV, Constitution *Sacramentum Poenitentiae*, June 1, 1741.**

Those neglecting, etc. Cf. On the Constitution of Benedict XIV, *Sacramentum Poenitentiae*, 1249 ff.

1211. **V. Besides these thus far reviewed, We likewise declare that those whom the Most Sacred Council of Trent excommunicated, whether with absolution reserved to the Supreme Pontiff or to Ordinaries, or without any reservation, are excommunicated in the same way; excepted the penalty of anathema established in the decree of sess. 4, *De editione et usu Sacrorum Librorum*, to which We will those alone to be subject who print, or cause to be printed, books treating of sacred things without approval of the Ordinary.**

The censures of the Council of Trent confirmed by the present Constitution are those which were imposed directly by the Council itself, which either were first imposed by the Council of Trent, or, already imposed before, were distinctly and expressly commemorated and were imposed anew by its authority. Such, for example, is the censure of which mention is made in the present paragraph. For it is expressly said to have been taken "from the canon of the most recent Lateran Council."

Moreover, the cited Council of Trent, sess. 4, has this: "Let it be permitted to no one to print, or cause to be printed, any books about sacred things without the name of the author, nor in the future to sell them, or even to retain them with himself, unless they have first been examined and approved by the Ordinary, under penalty of anathema.... And if they are regulars, beyond examination and approval of this kind, they are also bound to obtain license from their superiors, the books having been reviewed by them according to the form of their ordinances. But those who communicate them in writing, or publish them, unless they have first been examined and approved, are subject to the same penalties as printers."

This Tridentine excommunication, which is reserved to no one, is now restricted and extended. It is restricted only to those "who print, or cause to be printed, books treating of sacred things without

approval of the Ordinary," by no means comprehending those retaining, selling, or publishing, as before. Those printing are typographers, publishers; not also authors, if they are not publishers of the same books. But it is extended to all books, whether the book has the name of the author or does not have it.

About sacred things. Although these words, about sacred things, are very broad, nevertheless they must be contracted to those books about which the cited decree treats, namely "to books of the Sacred Scriptures, and also to annotations and commentaries on them, but by no means to be extended to any books whatever treating about sacred things in general, that is, about things pertaining to religion." Holy Office, Dec. 22, 1880.

Without approval of the Ordinary. Only the approval of the Ordinary is required under the said censure, namely so that the book may be printed; not that the approval obtained also be printed in the book itself. Constitution *Officiorum* of Leo XIII, *De censura et prohibitione librorum*, § 48. Suarez, disp. 23, sect. 7, first excommunication; Bonacina, disp. 2, q. 2, p. 16.

1212. **VI. The remaining Tridentine excommunications, reserved to no one, which are retained by the present Constitution, are the following: 1. The abductor, and all those providing counsel, help, and favor, are excommunicated by the law itself.** Sess. 24, c. 6, *De reformatione matrimonii*.

The *abductor*, namely of a woman for contracting marriage with the abducted woman. For the question concerns abduction, the diriment impediment of matrimony.

And all those providing counsel, help, and favor, namely for the abduction; not likewise if they provide these after the abduction has been committed, so that the abducted woman may more easily marry the abductor.

Are excommunicated by the law itself. The diriment impediment ceases if the abducted woman is no longer detained under the power of the abductor; but the excommunication perseveres and has an end only by absolution. Suarez, disp. 31, sect. 5, last paragraph; Bonacina, disp. 2, q. 2, p. 9, and *De suspensione*, disp. 3, p. 5, par. 1, n. 38.

1213. **VII. 2. The Holy Synod commands all, of whatever rank, dignity, and condition they exist, under penalty of anathema, which they incur by the fact itself, not in any way directly or indirectly to compel their subjects, or any others, so that they may not freely contract marriages.** Sess. 24, c. 9, *De reformatione matrimonii*.

All, of whatever rank, dignity, and condition they exist: nevertheless not all simply incur excommunication, but only all temporal lords and magistrates of whatever rank, dignity, and condition. For the discussion in the cited chapter concerns these.

Under penalty of anathema, not reserved.

Directly, when force is exercised upon the very person whom one wishes to compel to marriage, and is brought immediately in order to marriage.

Indirectly, when force is exercised upon another person who influences the person whom one wishes to compel to marriage, or when force is exercised upon this very person not immediately in order to

marriage, but in order to something else which compels the sufferer to marriage.

Their subjects or any others, living under their jurisdiction, as is had in the same cited chapter, or at least subject to their jurisdiction in some way and at some time.

Compel, by grave and unjust coercion.

So that they may not freely contract marriages: therefore the coercion must regard marriage actually contracted, and it is not sufficient for incurring excommunication to compel only to betrothals, or to compel to marriage if, however, marriage does not follow. Suarez, disp. 23, sect. 7, fourth excommunication; Ithurriaga, case 14, n. 14 ff.; case 24, n. 14 ff.; Cardinal De Luca, works, tom. 14, annotations to the Sacred Council of Trent, disc. 26, n. 35 ff.; Bonacina, disp. 2, q. 2, p. 6.

1214. **VIII. 3. Against all and singular persons, of whatever quality or condition they may have been, clerics as well as laypersons, seculars or regulars, and even those functioning in any dignity, if in any way they have compelled some virgin, or widow, or any other woman unwilling, except in cases expressed in law, to enter a monastery, or to receive the habit of any religion, or to emit profession; and those who have given counsel, help, or favor; and those who, knowing that she does not spontaneously enter the monastery, or receive the habit, or emit profession, have in any way interposed presence, consent, or authority to the same act. Likewise against those who in any way, without just cause, impede the will of a holy virgin or of other women of receiving the veil or emitting a vow.** Sess. 25, c. 18, *De regularibus*.

Virgin or widow, or any other woman: therefore if coercion is done to some man so that he may enter religion, this censure is not incurred. Since the Council excepts cases expressed in law, a delinquent woman can licitly be compelled to enter a monastery, as penalty for her crime, or as a precaution lest she fall into some incontinence; but rarely or never to the habit or profession. St. Alphonsus, 212; C. 18, *De conversione coniugatorum*; C. 19, same title.

To enter a monastery, or to receive the habit, or to emit profession. "Three members are enumerated distinctly, namely coercion to enter a monastery, to receive the habit, and to emit profession.... The Council twice enumerates these three as altogether distinct. And therefore in that first member it does not say to enter religion, but a monastery, because by it namely it prohibits women from being compelled to dwell there, even with their own habit retained." Suarez, disp. 23, sect. 7, sixth excommunication.

Therefore, according to Suarez and others, the present censure is incurred even if someone compels a woman to entrance into a monastery, not so that she may profess, nor so that she may take the habit, but so that she may there be honorably educated. Bonacina, however, disp. 2, q. 2, p. 2, n. 6, and others do indeed distinguish those three things; hence they assert that one incurs excommunication who compels a woman even to entrance alone, although she neither receives the habit nor emits profession. But they say that entrance is to be understood in order to receiving the habit or emitting profession. Therefore one would not incur this excommunication who compelled a woman to enter a monastery for another end, for example so that she may be educated there. St. Alphonsus judges the first opinion more probable, n. 212.

To receive the veil, or to emit a vow, seems to be the same as to profess religion. Nevertheless, because no one can profess unless the habit has first been received, one who impeded this reception

would *a fortiori* impede profession, and consequently would incur this censure. Suarez, loc. cit.; Bonacina, loc. cit., p. 3, n. 3. But Sanchez and others deny this, "because the decree of the Council is to be received with rigor." St. Alphonsus, n. 212.

In any way without just cause: therefore, if with just cause, this excommunication is not incurred.

Impede: to impede is not to compel; to impede is to oppose oneself, or to place obstacles, so that someone cannot attain what he justly desires. Ithurriaga, case 24; Sanchez, *In Decalogum*, l. 4, c. 4.

1215. **IX. 4. Lest so great a sacrament, the Eucharist, be received unworthily and therefore unto death and condemnation, the Holy Synod itself establishes and declares that those whom consciousness of mortal sin burdens, however contrite they may think themselves, when there is availability of a confessor, must necessarily premise sacramental confession. But if anyone should presume to teach, preach, or pertinaciously assert the contrary, or even to defend it by public disputation, by that very fact let him exist excommunicated.** Sess. 13, canon 11.

Must necessarily be premised: it is not added, by divine law. Therefore if someone defends that confession must be premised by merely ecclesiastical law, he in no way incurs this excommunication. But if he defends "that the mandate of Trent made to a priest sacrificing from necessity with mortal sin, of confessing as soon as possible, is a counsel, not a precept," or that "that particle as soon as possible is understood when the priest will confess in his own time," he incurs an excommunication simply reserved to the Roman Pontiff by force of article 1 of that series. For those two are propositions 38 and 39, which Alexander VII condemned with others under penalty of excommunication reserved to the Apostolic See on Mar. 18, 1666. Suarez, disp. 23, sect. 7, second excommunication; Bonacina, disp. 2, q. 12, p. 14.

1216. **X. 5. Although it is not to be doubted that clandestine marriages, made by the free consent of the contracting parties, are ratified and true marriages so long as the Church has not made them invalid, and therefore those are rightly to be condemned, as the Holy Synod condemns them with anathema, who deny that they are true and ratified, and who falsely affirm that marriages contracted by children of families without the consent of parents are invalid, and that parents can make them ratified or invalid; nevertheless the holy Church of God, for most just causes, has always detested and prohibited them.** Sess. 24, c. 1, *De reformatione matrimonii*.

Contracted without the consent of parents are invalid, and that parents can make them ratified or invalid: therefore the question here does not concern the power of civil authority. This is treated in sess. 24, cc. 3, 4, 9, 12, and propositions condemned by the Synod of Pistoia, 53, 59, 60. Bonacina, disp. 2, q. 2, p. 8.

1217. **Other Tridentine excommunications which are present have already been enumerated in their own place:** namely, 1. concerning enclosure, which is also reserved to no one, cf. 1189; 2. concerning duellists, which has been transferred in the present Constitution among excommunications simply reserved to the Roman Pontiff, cf. 1185; 3. concerning usurpers of ecclesiastical goods, which is also simply reserved to the Roman Pontiff, cf. 1202; 4. finally, as

regards the Tridentine censures which are issued under anathema at the end of individual canons, all are indeed implicitly contained, by reason of heresy, in the first article of excommunications reserved in a special manner to the Roman Pontiff. The same must be said of the anathema of sess. 25, decree *De indulgentiis*.

1218. **An excommunication reserved to no one acceded to the Constitution *Apostolicae Sedis* against missionaries giving their work to negotiation and trade, and against their immediate superiors who have not punished delinquents, according to the Constitution of Urban VIII, *Ex debito*, Feb. 21, 1633, and of Clement IX, *Sollicitudo*, July 17, 1669, from the declaration of the Supreme Pontiff.** S.C. de Propaganda Fide, Mar. 29, 1873; Holy Office, Dec. 4, 1872.

Clement IX has these things, loc. cit., § 3: "To all and singular ecclesiastical persons, both secular and regular, of whatever status, rank, condition, and quality, and of any order, congregation, and institute... and to each of them, who have been sent for the time being to the islands, provinces, kingdoms of the East Indies... and into the parts of America, both southern and northern, by the Apostolic See, or by the Congregation of Our venerable brothers the Cardinals of the Holy Roman Church placed over the affairs of Propagating the Faith, or by their superiors under the name of missionaries, or under any other title, or who will in any way stay in those parts, under penalties of excommunication *latae sententiae*, and privation of active and passive voice... and also loss of all goods and profits, to be incurred by the fact itself..., by the tenor of the present letters We strictly prohibit... that under any pretext, title, color, device, cause, occasion, and form, even once, by themselves or through intervening ministers or other subsidiary persons, directly or indirectly, both in their own name, and in the name respectively of their religions... or of any others whatever, and otherwise in any way and in whatever manner, they insert or mix themselves into secular trades and negotiations of this kind.

"And from now..., after the case has occurred, We apply by the series of these letters any goods and profits whatever which have come from trades and negotiations of this kind... to the uses and advantage of the poor, hospitals, seminaries, etc.; and delinquents are bound to consign goods and profits of this kind to the Ordinaries of places..., who ought to distribute and expend them as stated before, and not for other uses....

"§ 4. Moreover, by the same censures and penalties We bind, and declare bound, the immediate superiors, and provincials, and generals of the aforesaid orders or congregations, who have not punished their respective subjects delinquent in the premises... even for a single occasion in any way, at least by removing them from the places of the delict committed by them. But from the sentence of excommunication of this kind, no one of the aforesaid delinquents can be absolved by superiors or by any other or others whatever, even supported by any authority, except those constituted in the article of death, unless profits of this kind have first been restored."

Kingdoms of the Indies, parts of America: the praised declaration of the Holy Office and of the Congregation de Propaganda Fide also comprehends Chinese missionaries. Holy Office, Jan. 17, 1883.

Or who will in any way stay in those parts: "the same prohibition and penalty, according to the mind of Clement IX, affects not only European missionaries, but also any ecclesiastical men whatever who,

under the name of missionaries or any other title, have been sent for the time being, or will in any way stay in those parts." Holy Office, Jan. 17, 1883.

Negotiation is to buy something so that it may be sold unchanged at a higher price, for example oil, grain, books, etc. But trade also comprehends those things which, changed naturally, are customarily resold, for example must which has become wine, calves which have become oxen, swine which are fattened and resold. Naturally: for if they are changed by the art and industry of men and resold, it is craft, which does not pertain here; for example if from bought wool you make garments, from iron weapons, from wood vessels. But if these things too are done with hired workers, they are something gainful and differ little from negotiation, and consequently are not regularly exercised without lethal fault. St. Alphonsus, l. 3, n. 836.

In any way and in whatever manner insert or mix themselves: therefore also those giving their work to trade and negotiation for others.

No one of the aforesaid delinquents, that is, of those who give their work to negotiations or trades, or insert and mix themselves into them. Therefore superiors, even when the profits have not been restored by the delinquents, can be absolved, and the delay of the delinquents does not harm them.

Unless profits, etc. Therefore, when profits of this kind have been restored, someone can be absolved by another than the Supreme Pontiff. Condonation of the profits must be obtained only from the Holy See. But restitution must be made "to the Ordinaries of places, or their Vicars General in spiritual matters, or Officials, or Apostolic Vicars or Pro-vicars." These must distribute and expend the restored profits "for the use and advantage of the poor, hospitals, ecclesiastical seminaries and laborers, not however of the religions... of those who have offended in the premises or about them, but of others not delinquent..., and not for other uses." § 3. E.M.

1219. "**Whether after the Bull *Apostolicae Sedis* the censures prescribed in the two Constitutions of Benedict XIV concerning the Chinese and Malabar rites are still in force?** Response: The Constitutions of Benedict XIV of holy memory concerning the mentioned Chinese and Malabar rites, issued in the years 1742 and 1744, are altogether in force, except only the censures *latae sententiae*, of which no mention is made in the Constitution of our Most Holy Lord Pope Pius IX, issued on the fourth Ides of October, which begins *Apostolicae Sedis moderationi*; and therefore at the end of the formula of oath which is prescribed and confirmed by Benedict XIV in the same Constitution, between the words, 'I acknowledge and declare myself subject to the penalties imposed by the aforesaid Constitutions,' there is to be inserted, after the word 'imposed,' this addition: 'and still in force.'" Holy Office, Mar. 3, 1873; E.M.

Suspensions *Latae Sententiae* Simply Reserved to the Supreme Pontiff

1220. **I. Chapters and convents of churches and monasteries, and all others who receive bishops or other prelates, provided in any way by the same Holy See concerning the aforesaid churches or monasteries, to the rule and administration of those churches or monasteries before they themselves have exhibited Apostolic Letters about their**

promotion, incur by the fact itself suspension from perception of their benefices at the good pleasure of the Holy See.

From perception of their benefices. "When a chapter or convent is suspended, the individual persons are not considered suspended, unless they are in fault. When suspension is imposed on the community alone, it does not affect individual persons with respect to particular offices, but only with respect to offices or benefices of the whole community." St. Alphonsus, 317. But benefices of the whole community are those which pertain to the community as community, although their fruits are distributed to individual persons.

Of benefices: those things which belong to order and jurisdiction remain safe.

Perception, not administration; namely perception of fruits.

At the good pleasure of the Holy See: therefore this suspension is not to endure for some determined time, but as long as it pleases the Holy See, that is, the Roman Pontiff existing for the time and his successors, namely until the suspended have deserved to obtain the grace of the same See concerning this. Therefore, once the will of the Holy See of remitting or revoking the suspension has been declared, it expires without another absolution. Laymann, p. 3, c. 3, n. 3.

And all others. In the obvious sense these words do not seem to be understood of the individual persons of chapters and convents, but seem to be referred to others who are not members of chapters and convents. Hence chapters and convents are indeed suspended from common benefices which the chapters and convents themselves, as such, possessed, but by no means from benefices which individual persons possess. But others distinct from chapters and convents are all indeed punished by privation of perception of those things which individuals obtain.

This suspension, with respect to chapters and convents, is partly penalty and partly privation; and those too incur it who have not received from the chapters and convents. But with respect to others it is simply penalty; therefore they do not incur it unless they are not free from mortal fault.

Receive to rule and administration. A bishop or prelate is considered to be received into the rule and administration of a church as soon as his authority is recognized as legitimate, by accepting and admitting him. Therefore, once the prelate has been received, those who show obedience to him already received and in peaceful possession of his office do not incur this suspension.

Bishops: some understand consecrated bishops, because, since we are in odious matters, we use strict interpretation. But others understand also those simply elected or confirmed, even though they have not yet received episcopal consecration, because it says "provided in any way," and the question concerns promotion. Cf. Ferraris, word *Episcopus*, art. 2, nn. 32, 36, 38.

Prelates, who are strong in quasi-episcopal and external jurisdiction, not those who are sent as administrators.

Provided in any way by the same Holy See, namely "those who are promoted at the said See, or receive the office of confirmation, consecration, or blessing." Common Extravagant *Iniunctae nobis*, C. 1, *De electione*. Bonacina, disp. 3, q. 4, p. 10.

1221. **II. Those ordaining someone without title of benefice or patrimony, with a pact that the one ordained not seek support from them, incur by the law itself suspension for three**

years from collation of orders.

Suspension for three years: therefore, when the three years have passed, the suspension expires of itself. Laymann, p. 3, c. 3, n. 3.

Those *ordaining without title of benefice or patrimony*: therefore the question concerns collation of major orders; for receiving these requires title of benefice, or, this lacking, of patrimony.

Someone, whether another's subject or one's own subject, cf. C. *Si episcopus* 37, *De praebendis*, in the Sixth; whether secular or regular; regulars nevertheless excepted who have a privilege in this matter. Cf. 1222.

Without title: therefore they incur this censure if they ordain someone with a false title from which no right of perceiving fruits passes to the ordained. But by no means do they incur it if they ordain someone with a title, but an insufficient one, although this is prohibited by the Council of Trent.

Of patrimony: perpetual pensions, perpetual legacies of Masses, and manual chaplaincies under condition until the ordained is provided for are reckoned to patrimony. St. Alphonsus, l. 6, n. 825; Benedict XIV, Notification 26.

With a pact, etc. "Innocent III, in C. *Cum secundum Apostolum*, *De praebendis*, imposed on those ordaining who promote clerics to sacred orders without title the burden of supporting them, until through them they obtain ecclesiastical benefices." This was also confirmed and explained in C. *Si episcopus*, *De praebendis*, in the Sixth. "But in the Lateran Council under Alexander III, part 1, c. 5, the limitation was added: unless the one who is ordained can have support from his own or paternal inheritance. Yet this must now be observed according to the prescriptions in the Council of Trent, sess. 21, c. 2, *De reformatione*." Suarez, disp. 31, sect. 1, seventh suspension. C. *Si quis* 45, *De simonia*; Cardinal De Luca, works, tom. 14, annotations to the Sacred Council of Trent, disc. 14; Bonacina, disp. 3, q. 1, p. 8.

1222. **III. Those ordaining another's subject, even under pretext of a benefice to be conferred at once, or already conferred but by no means sufficient, without dimissorial letters of his bishop; or even their own subject who has stayed elsewhere for so much time that he could have contracted a canonical impediment there, without testimonial letters of the Ordinary of that place, incur by the law itself suspension for one year from administration of orders.**

Those *ordaining*: even only minor orders, and even, according to some, conferring tonsure; for the word is general and is extended to every one ordaining. Yet first tonsure is rightly excluded, since it is not an order. Holy Office, Apr. 18, 1888.

Another's subject, who consequently is not one's own subject by title of birth, origin, domicile, benefice, or familiarity.

Even under pretext: therefore the present censure is incurred even if someone, without such a pretext, ordains another's subject without dimissorial letters of the bishop whose subject he is.

Dimissorial letters are those which contain in writing the express consent and license of the proper bishop, so that the subject can be ordained by another bishop.

Testimonial letters are those which make faith that someone is worthy to whom orders may be conferred. Therefore commendatory letters in general about someone's life and morals, without any respect to orders to be received, do not suffice. But the aforesaid license and testimony can also be given by living voice from Trent, sess. 14, *De reformatione*, c. 2, except for Ultramontanes living in Italy, C. 1, *De temporibus ordinationum*, in the Sixth.

Testimonial letters must be given by the bishop of domicile, by the bishop of origin, by the bishop of that place where someone was born by chance, and by the bishop of the place where someone has stayed for some time, if in such a place he has stayed so long, namely beyond six months, and at such an age, namely after seven years, that he could have contracted a canonical impediment.

But what is here prescribed about dimissorial and testimonial letters also pertains to those who have given their name to pious sodalities or congregations in which simple vows are emitted. S.C. of Bishops and Regulars, May 6, 1864. But to those religious who today emit simple vows before solemn vows, during the three years of these vows after novitiate, dimissorial letters are given by regular superiors only with respect to tonsure and minor orders, S.C. of Bishops and Regulars, Jan. 12, 1858; but after solemn vows have been emitted, with respect to all orders.

Of his bishop, namely who could have conferred orders on him or granted dimissorial letters for orders. But by the name of bishop here is understood also the vicar general, when the bishop is acting in remote places; and the capitular vicar, when the see is vacant, and indeed even within the year for those pressed, namely those for whom, by reason of a benefice either received or to be received, there is need that collation of sacred order or tonsure not be deferred; after the year, for those not pressed.

So much time, that is, as in marriages according to the truer opinion, beyond six months, or beyond three for clerics assigned to military service. Cf. 893.

Canonical impediment, for example censures, irregularity, etc. C. *Eos qui* 2, *De temporibus ordinationum*, in the Sixth; Innocent XII, Constitution *Speculatores*, Nov. 4, 1694; Cardinal De Luca, loc. cit.; Bonacina, disp. 3, q. 1, q. 11; q. 2, p. 7; Giraldi, *Expositio iuris pontificii*, p. 2, s. 96; Honorante, *Praxis Secretariae Urbanae Vicariae*, c. 1, n. 9.

1223. **IV. He who, except in a case of legitimate privilege, has conferred sacred order without title of benefice or patrimony on a cleric living in some congregation in which solemn profession is not emitted, or even on a religious not yet professed, incurs by the law itself suspension for one year from collation of orders.**

"Pius V, by Motu Proprio of the year 1568, which begins *Romanus Pontifex*, extended the decree of the Council of Trent, sess. 21, c. 2, *De reformatione*, insofar as it requires title of benefice or patrimony, also to religious clerics, or those living in the manner of religious, who have not emitted profession and solemn vows, and suspends by the law itself those ordained otherwise, and, if they minister, makes them irregular." Suarez, *De censuris*, disp. 31, sect. 1. This extension of St. Pius V is preserved by the Constitution *Apostolicae Sedis*, as is established from the present suspension.

Except in a case of legitimate privilege: hence religious of the Society of Jesus are excepted, although they have emitted only simple vows, from the Constitution of Gregory XIII, *Ecclesiae catholicae*, June 28, 1591. Cf. Sanchez, *Consilia moralia*, l. 7, c. 3, disp. 35, n. 9.

On a cleric in some congregation, etc. Therefore, with special privilege excluded, the following cannot be ordained under title of poverty: 1. religious who have emitted simple vows in a congregation to which only simple vows were conceded; 2. religious who now emit simple vows by pontifical mandate, although they belong to orders in which previously only solemn vows were emitted. S.C., Jan. 20, 1860.

He who has conferred sacred order: therefore one class of persons incurs this suspension, namely those themselves conferring order, or ordaining. Cardinal De Luca, loc. cit.; Bonacina, disp. 3, q. 1, p. 8; q. 2, p. 10.

1224. **V. Religious who have been cast out and are living outside religion incur by the law itself perpetual suspension from exercise of orders.**

Religious. The aforesaid suspension touches only religious admitted to solemn profession, 1. because the Sacred Congregation of Cardinals interpreting the Council of Trent, on Sept. 21, 1624, with counsel communicated to Urban VIII and by his faculty, issued among other things the following decree: "Those cast out and living outside religion are perpetually suspended from exercise of orders, the faculty of Ordinaries of places of relaxing or moderating the said suspension having been taken away." Moreover, the aforesaid suspension, according to the common opinion of theologians, did not touch religious not admitted to solemn profession. 2. For under the name of religious in odious matters only religious strictly so called, or professed, are accustomed to come. Therefore neither novices nor religious who have emitted only simple vows incur this censure.

Cast out: therefore apostates or fugitives do not incur this suspension, because they have not been cast out. Nor indeed do those unjustly cast out incur it. Therefore it is necessary that someone be cast out for a just cause and with the order of law observed. Otherwise he will not truly be cast out.

Living outside religion: therefore those cast out themselves who are again received, or canonically pass to another religion, are no longer bound by this suspension, because they are not living outside religion. Bonacina, disp. 3, q. 8, p. 12; *De clausura*, q. 2, p. 12; Lucidi, vol. 2, p. 36 ff., 3rd ed.

1225. **From the decree of the Sacred Congregation of Bishops and Regulars, Nov. 4, 1892:**
"Alumni of solemn or simple vows, perpetual or temporal, constituted in sacred orders, who have been expelled or dismissed, shall remain perpetually suspended until otherwise provision is made for them by the Holy See; and besides this, until they have found a benevolent bishop as receiver and have provided for themselves concerning ecclesiastical patrimony.

"Those constituted in sacred orders and bound by simple vows, whether perpetual or temporal, who have spontaneously sought and obtained dismissal from the Apostolic See, or otherwise by apostolic privilege have been dispensed from simple vows, whether perpetual or temporary, are not to go out from the cloister until they have found a benevolent bishop as receiver and have provided for themselves concerning ecclesiastical patrimony; otherwise they remain suspended from exercise of the orders received.

"This is extended also to alumni of simple temporal vows who already would be loosed from any bond of profession because of the elapsed time for which vows were pronounced by them."

1226. **VI. Those who have presumed to receive the same order from one excommunicated, or suspended, or interdicted, denounced by name, or from a notorious heretic or schismatic, incur by the law itself suspension from the order received; but We declare that one who in good faith was ordained by any of them does not have exercise of the order thus received until he is dispensed.**

Suspension from the order received, that is, validly received; otherwise suspension cannot even be understood.

Those *who have presumed to receive the same order,* etc. Therefore it is not a total suspension from every order received, but a partial suspension only from the order received from one excommunicated, suspended, or interdicted.

From the order received: therefore this suspension is not extended also to first tonsure; but it is extended to consecration of a bishop, for the text speaks generally.

From one excommunicated, or suspended, or interdicted from collation of orders.

Denounced by name, or from a notorious heretic or schismatic: therefore the present suspension is not incurred if order is received from one interdicted, suspended, excommunicated, but tolerated; or from a heretic or schismatic, but occult.

They have presumed: therefore ignorance, even crass or supine, and grave fear excuse from this suspension.

But one who in good faith... does not have exercise. The opposition which is established here between one who presumes to receive order and one who in good faith is ordained by an excommunicated person, and likewise that different manner of speaking, for of the first it is said that he incurs suspension, and of the latter that he does not have exercise of the order thus received, seems openly to suggest that this privation of the received order is imposed on the ordained not as a censure, but as a privation and penalty in injury of the ordaining person acting without due power, and as a quasi-irregularity from defect. Hence the same must be said also in the case of coercion and fear falling upon a constant man. For that defect of power is not removed because of fear; indeed, in some way it is increased, especially if it is struck in by the one ordaining himself.

Until he is dispensed. This dispensation, as is established from law, is not reserved to the Supreme Pontiff; nor indeed is it reserved here, since it is placed indefinitely. Hence it is to be understood with the clause, as by law: until he is dispensed by his own bishop. Before dispensation he sins by ministering in the orders received. C. *Quod* 1, *De schismaticis*; C. *Fraternitati* 2, ibid.; C. single, *De ordinatis ab episcopo qui renuntiavit episcopatui*; Bonacina, disp. 3, q. 1, pp. 9, 10; Thesaurus, *De poenis ecclesiasticis*, p. 2, word *Ordo*, c. 24, n. 1, word *Limita* and *advertendum*.

1227. **VII. Foreign secular clerics staying in the city of Rome beyond four months, ordained by someone other than their own Ordinary without license of the Cardinal Vicar of the City, or without a previous examination completed before the same, or even by their own Ordinary after they have been rejected in the aforesaid examination; and also clerics pertaining to one of the six suburbicarian bishoprics, if they are ordained outside their own diocese, with dimissorial letters of their Ordinary directed to someone other**

than the Cardinal Vicar of the City; or if spiritual exercises through ten days in the urban house of the priests called of the Mission have not been premised before receiving sacred order, incur by the law itself suspension from the orders thus received at the good pleasure of the Holy See. But bishops ordaining incur suspension from use of pontificals for one year.

Secular clerics: therefore these things do not pertain to regulars, nor to laypersons who receive tonsure and with it minor orders at the same time.

Beyond four months: not before this time; namely those who have drawn out a stay in the City for a shorter time.

Foreign clerics here are called those who pertain neither to the Roman diocese nor to any of the six suburbicarian bishoprics. This is established from that other added part: foreign secular clerics... and also clerics pertaining to one of the six suburbicarian bishoprics, etc.

Staying in the City, and still continuing to stay there; for it says staying in the City, not those who have stayed, ordained by another, etc. Therefore these things do not pertain to those who depart to be ordained and are not about to return anymore.

Their own Ordinary, by reason of origin, domicile, benefice, or familiarity.

After they have been rejected in the aforesaid examination, not likewise, without the aforesaid previous examination.

And also clerics pertaining, etc. It is not added, staying in the city of Rome beyond four months. Therefore they incur this suspension, although they stay in their own diocese, if, etc.

The suburbicarian bishoprics are Ostia and Velletri, Porto and Santa Rufina, Albano, Tusculum, Palestrina, and Sabina.

Or if exercises have not been premised, namely unless they enjoy a privilege.

Before sacred order, not any order whatever.

The priests of the Mission, commonly called Lazarists, are those who have St. Vincent de Paul as founder.

Bishops ordaining, not those conferring simple tonsure.

Suspension from use of pontificals. Cf. 1130, 1131. Edict of the Cardinal Vicar issued by command of Benedict XIV, Mar. 20, 1743; Declaration issued by command of Alexander VII, in the year 1668; Honorante, *Praxis Secretariae*, c. 16.

1228. **The preceding suspensions are not all censures in the strict signification.** For certain ones are simply penalties, namely those which are imposed at good pleasure, in perpetuity, or for a determined time, for example for three years, for one year. But a certain one is simply privation, as that which is imposed on clerics receiving orders in good faith from a bishop excommunicated by name, etc. Finally, a certain one is privation and penalty, as that which is imposed on chapters and monasteries.

Hence violation of suspension imposed on innocents, on moral persons, on chapters, monasteries, universities, etc.; or indeed on individuals who are gravely guilty, either in perpetuity or at good pleasure, induces no irregularity. Whether the same has force when suspension is imposed to a certain day, for one year, for three years, some deny, because it does not have the character of a censure, namely of a medicinal penalty; others affirm from C. *Cum aeterni* 1, *De sententia et re iudicata*, in the Sixth, and more truly, since from the fact that it is imposed by the law itself, it is already for preventing future delicts, and not merely for punishing past ones. Therefore under this head it truly also has the character of a censure. Cf. St. Alphonsus, l. 7, n. 314; Salmanticenses, tr. 10, c. 5, n. 13.

1229. **The Tridentine suspensions to be added to the preceding suspensions of the Constitution *Apostolicae Sedis* are the following:**

VIII. "It is not permitted to chapters of churches, when the see is vacant, within a year from the day of vacancy, to grant license of ordaining, or dimissorial letters, or reverends, as some call them, either from the disposition of common law or even by force of any privilege or custom, to anyone who has not been pressed by occasion of an ecclesiastical benefice received or to be received. If it is done otherwise, the chapter acting contrary shall be subject to ecclesiastical interdict; and those so ordained, if they have been constituted in minor orders, shall enjoy no clerical privilege, especially in criminal matters; but if in major orders, they are suspended by the law itself from execution of orders at the good pleasure of the future prelate." Sess. 7, c. 10, *De reformatione*.

If in minor orders. "For those receiving minor orders another penalty is established, namely that they should not enjoy clerical privilege, especially in criminal matters; therefore they are not suspended, as the Congregation of the Council declared.... The penalty imposed on those ordained in minor orders does not comprehend this one receiving first tonsure, because under the appellation of minor orders, especially in a penal and odious decree, only the four minor orders are to be understood, and not first tonsure, which is distinguished from them....

"But one pressed by occasion of a benefice received... is said to be one who obtains a benefice by reason of which he is obliged to cause himself to be promoted; as one who obtains a parish church is pressed to be promoted to the priesthood within a year.... But one is said to be pressed by occasion of a benefice to be received who has been called to a vacant benefice requiring a certain order which he lacks." Castropalao, *De censuris*, disp. 4, p. 10, par. 1, n. 11; Suarez, *De censuris*, disp. 31, sect. 1, second suspension; Bonacina, *De suspensione*, disp. 3, p. 5, par. 1, n. 5.

Within a year from the day of vacancy: because if after the year the see is still vacant, it is permitted that the chapter provide for new priests by granting dimissorial letters. But granting dimissorial letters after the year belongs to the capitular vicar, not to the chapter. S.C. of Bishops, Jan. 12, 1804. The vicar of the Supreme Pontiff, when the see is vacant, is by no means comprehended by the Tridentine decree.

License of ordaining: dimissorial letters can be granted even within the year for conferring tonsure. S.C.C., Feb. 10, 1594.

This penalty "imposed on those who contrary to this decree of the Holy Synod under Paul III (sess. 7, c. 10, *De reformatione*) obtain dimissorial letters from the episcopal chapter when the see is vacant, is

commanded to be extended to those who would obtain the same letters not from the chapter, but from any others succeeding in the place of the chapter in the jurisdiction of the bishop when the see is vacant. But those granting dimissorial letters contrary to the form of the decree are suspended by the law itself from office and benefice for one year." Council of Trent, sess. 23, c. 10, *De reformatione*. Bonacina, disp. 3, q. 1, p. 11.

1230. **IX. Each person is to be ordained by his own bishop. But if someone seeks to be promoted by another, by no means is this permitted to him, even under pretext of any general or special rescript or privilege, even at the established times, unless his probity and morals are commended by the testimony of his own Ordinary. If it is done otherwise, the one ordaining is suspended from collation of orders for one year, and the one ordained from execution of the orders received, as long as it seems expedient to his own Ordinary.** Sess. 23, c. 8, *De reformatione*.

Unless his probity and morals are commended by the testimony of his own Ordinary. Therefore this suspension is incurred by another bishop ordaining and by the one ordained by him without testimonial letters of the proper Ordinary. Therefore the question here does not concern the lack of dimissorial letters. "A cleric who obtained a rescript or privilege from the Pope of receiving orders from any bishop, if he receives them without commendatory letters of his own bishop, incurs the same suspension from the same Trent, because that rescript excludes dimissorial letters, but not commendatory letters, that is, testimonials about life and morals." Bonacina, n. 22. Mazzotta, tr. 8, disp. 3, q. 2, c. single, par. 1, n. 9.

But this censure is incurred "because of reception of both major and minor orders, because the text speaks generally about all, as the Sacred Congregation of the Council declared there. But this suspension does not seem to be contracted because of reception of first tonsure." Castropalao, *De censuris*, disp. 4, p. 10, par. 1, n. 4.

For one year. "How is a suspension imposed for a determined time, or under some condition, taken away? Response: If the time has elapsed, or the condition has been fulfilled, it ceases without any absolution, because it cannot proceed beyond the intention of the one imposing it.... But in the intervening time, or before the condition has been fulfilled, such a suspension can be taken away by dispensation by the one who imposed it, or by his superior or successor, but not by an inferior. And therefore if it has been imposed by common law to a certain time, only the Pontiff can take it away or relax it before the time is finished.... The reason is that otherwise the intention of the Pontiff would be frustrated." Schmalzgrueber, l. 5, p. 4, t. 39, nn. 311, 312.

As long as it seems expedient to his own Ordinary. This suspension is to be taken away by the proper bishop to whom the injury was done. Bonacina, disp. 3, q. 1, p. 11; E.M.

1231. **X. It is not permitted in future to abbots and any others whatever, however exempt, established within the boundaries of some diocese, even if they are said to be of no diocese or exempt, to confer tonsure or minor orders on anyone who is not a regular subject to them; nor may those abbots and other exempt persons, or any colleges or chapters whatever, even of cathedral churches, grant dimissorial letters to any secular clerics so that they may be ordained by others. But the ordination of all these, with all**

things observed which are contained in the decrees of this Holy Synod, pertains to the bishops within whose diocesan boundaries they exist, notwithstanding any privileges, prescriptions, or customs, even immemorial. It also commands that the penalty imposed on those who, contrary to this decree of the Holy Synod under Paul III, obtain dimissorial letters from an episcopal chapter when the see is vacant, be extended to those who would obtain the same letters not from the chapter, but from any others succeeding in the place of the chapter in the jurisdiction of the bishop when the see is vacant. But those granting dimissorial letters contrary to the form of the decree are suspended by the law itself from office and benefice for one year. Sess. 23, c. 10, *De reformatione*.

To anyone, etc. "Hence it follows that the aforesaid abbots and other exempt persons are subject to this penalty when they make dimissorial letters for a secular cleric, although otherwise he pertains to their jurisdiction. The reason is that the Council speaks about those granting dimissorial letters to secular clerics." Bonacina, *De suspensione*, disp. 3, p. 5, par. 4, n. 12.

Colleges or chapters, that is, when the see is not vacant, which by some special law have jurisdiction in some part of a diocese. For another decree exists concerning chapters when the see is vacant. Cf. 1229.

It also commands the penalty, etc. Cf. 1229; Benedict XIV, *De synodo*, l. 2, c. 11.

1232. **XI. Let none of the bishops who are called titular, even if they have resided or stayed in a place of no diocese, even exempt, or in some monastery of any order, by force of any privilege granted to him for the time being concerning promoting any persons whatever coming to him, be able to promote or ordain another's subject, even under pretext of familiarity of his continuous commensality, without the express consent of his own prelate or dimissorial letters, to any sacred or minor orders or first tonsure. One acting contrary, and one promoted in such a way, are suspended by the law itself, the bishop from exercise of pontificals for one year, and the one promoted from execution of the orders thus received until it has seemed good to his own prelate.** Sess. 14, c. 2, *De reformatione*.

Titular bishops are said to be those who indeed have been consecrated for some diocese. But because a diocese of this kind has been invaded by infidels, heretics, or schismatics, the bishop has in it neither clergy nor people subject to him. Cf. Giraldi, *Expositio iuris pontificii*, p. 1, s. 64.

To promote to any sacred or minor orders or first tonsure. "It was provided that by no means should this faculty be attributed to a titular bishop, so that no competency enters in them. For that of origin cannot enter, and still less that of domicile or benefice, since in titular bishops none of these remains verifiable, although someone from a church occupied by infidels comes to Catholic places so that he may live in Catholic fashion, because he is made subject of that diocese, as was suggested above. Hence for this reason there would remain only the title of familiarity, which was removed by this conciliar decree, since under this pretext several frauds were committed, and many who were rejected by the Ordinary because of illiteracy, or because of life and morals or other just causes, thus assumed orders." Cardinal De Luca, loc. cit., disc. 14, n. 19.

1233. **XII. It is permitted to no bishop, under pretext of any privilege, to exercise pontificals in another's diocese, unless with the express license of the Ordinary of the place, and only upon persons subject to that Ordinary. If it has been done otherwise, the bishop is suspended by the law itself from exercise of pontificals, and those thus ordained from execution of orders.** Sess. 6, c. 5, *De reformatione*.

To no bishop. What has been said about a bishop is to be understood of an archbishop, because it has not been given to him to exercise pontificals in the diocese of suffragans except in some cases.

And upon persons, etc. This decree does not prevent a bishop existing in another diocese, with previous license of the Ordinary of the same diocese, from being able to confer orders both on his own subjects and on subjects of the bishop granting the license, S.C., Feb. 22, 1630; indeed even on subjects of another bishop, if they have his dimissorial letters and the license of the bishop of the place again accedes. Bonacina, disp. 3, q. 1, p. 12; q. 2, p. 12; Lugo, *Responsa moralia*, l. 1, disp. 32.

1234. **XIII. Bishops, if, which may it not happen, they have not abstained from a crime of this kind, and, after being warned by a provincial synod, have not amended themselves, are suspended by the fact itself; and if they persevere...** Sess. 25, c. 14, *De reformatione*.

From a crime of this kind, that is, concubinage.

Warned: a threefold warning is not required, but one suffices.

Have not amended themselves, namely unless, morally speaking, they immediately remove the occasion of delict and scandal.

Suspended: "this suspension is imposed absolutely and without limitation of time, office, or benefice; and therefore of itself it comprehends all things." Suarez, disp. 31, sect. 5, penultimate paragraph. Trent, sess. 15, c. 12, *De reformatione*; Bonacina, disp. 3, q. 6, p. 1; q. 7, p. 4.

1235. **XIV. If any parish priest or other priest, whether regular or secular, even if he contends that this is permitted to him from privilege or immemorial custom, has dared to join or bless in marriage spouses of another parish without the license of their parish priest, let him remain suspended by the law itself until he is absolved by the Ordinary of that parish priest who ought to have been present at the marriage, or from whom the blessing was to be received.** Sess. 24, c. 1, *De reformatione matrimonii*.

"The Council does not explain from what such priests are suspended because of such a crime; since nevertheless it is not likely that he is suspended from every office and benefice, as that word simply uttered seems to indicate, both because that sin does not seem worthy of so great a penalty, and also because that penalty is imposed indifferently on parish priests and on simple priests, both regular and secular. And so the suspension seems to be only from a thing common to all these. Therefore I judge that it is suspension from priestly office, or at most from priestly duty, because, according to the common understanding of the canons, the penalty is determined from the subject matter, so that one is punished in that in which he has offended. Likewise, because when a priest is suspended because of abuse of priestly duty, he is rightly understood to be suspended formally insofar as he is a

priest, and therefore from priestly duty." Suarez, *De censuris*, disp. 31, sect. 3. Filliucci, tr. 17, n. 101; Bonacina, disp. 3, q. 3, p. 5.

1236. **XV. Lest the bishop be ignorant of the time of profession, as regards nuns, so that he may examine them, the prefect of the monastery is bound to make him more certain a month before. But if the prefect has not made the bishop more certain, she is suspended from office as long as it seems good to the bishop.** Sess. 25, c. 17, *De regularibus*.

This suspension is not a censure, but a mere penalty. The question concerns nuns properly so called, namely those who emit solemn vows.

Here can be added the penalties to be incurred by the fact itself by superiors of regular institutes, whether of men or women, not observing the dispositions of the decree *Quemadmodum* of the Sacred Congregation of Bishops and Regulars, Dec. 17, 1890, concerning account to be rendered of conscience, concerning confession, concerning communion; namely the penalties against superiors violating mandates of the Apostolic See.

1237. **Suspension which acceded to the Constitution *Apostolicae Sedis*, reserved in a special manner to the Roman Pontiff.**

XVI. But if any of the aforesaid are marked with episcopal character, they fall, by the fact itself and without any declaration, into the penalty of suspension from exercise of pontificals, likewise reserved to the Holy See. Pius IX, Constitution *Romanus Pontifex*, Aug. 28, 1873, paragraph *Confidimus* ff.

But if any of the aforesaid, namely those who undertake the rule of a church when the bulls of provision have not yet been presented to one by law. Cf. 1177.

If they are marked with episcopal character: therefore bishops incur not excommunication, but suspension. For an exception is made for them.

Likewise reserved, namely in a special manner.

1238. **Other suspensions also acceded:** "... In order to restrain the depraved license of certain persons who used the work of Masses for more easily exchanging newspapers, books, and other merchandise with the clergy, the Sacred Congregation established certain things; and, with Pius IX of happy memory approving them, it took care that they be issued and made known to Ordinaries, so that they might be observed by all. For among other things the following doubts were proposed:

"1. Whether the manner of acting of those booksellers or merchants who, by employing public inducements and rewards, or in any other way, collect Mass alms and repay to the priests to whom they commit them for celebration not money, but books or other merchandise, tastes of shameful trade, and therefore is to be disapproved and, if necessary, restrained by bishops even with ecclesiastical penalties?

"2. Whether this manner of acting can be made honorable either because, with no diminution made, as many Masses are committed for celebration by the mentioned collectors as correspond to the

collected alms, or because through it poor priests lacking Mass alms are assisted?

"3. Whether collections and expenditures of alms of this kind are then also to be disapproved and restrained by bishops, as above, when the profit which is drawn from the exchange of merchandise with alms is spent not for the collector's own advantage, but for the use or increase of pious institutions and good works?

"4. Whether those concur in shameful trade, and therefore are to be disapproved and restrained, as above, who hand over Mass alms accepted from the faithful or from pious places to booksellers, merchants, and other collectors of them, whether or not they receive anything from them under the name of reward?

"5. Whether those are in shameful trade, and therefore are to be disapproved and restrained, as above, who receive from the said booksellers and merchants books or other merchandise, whether at a diminished or whole price of these, for Masses to be celebrated?

"7. Whether it is permitted to bishops, without special permission of the Holy See, to subtract something from the Mass alms which the faithful are accustomed to hand over to more celebrated sanctuaries, so that provision may be made for their decorum and adornment, especially when they lack their own revenues?

"In the particular meeting of the year 1874, the Sacred Congregation resolved: To the first, affirmatively; to the second, negatively; to the third, fourth, and fifth, affirmatively; to the seventh, negatively, unless with the consent of the offerers.

"The eminent Fathers of the Sacred Congregation, interpreters and defenders of Trent, judged it to be their office to call back again among all into memory and full observance what had long before been decreed, and in addition to fortify it with an opportune sanction.

"Therefore by the present decree they establish that in future, if anyone of the priestly order has offended against the stated decrees, he is liable to suspension from divine things reserved to the Holy See and to be incurred by the fact itself; but a cleric not yet initiated to the priesthood is likewise subject to the same suspension with respect to the orders received, and besides this becomes incapable of receiving higher orders; finally laypersons are bound by excommunication *latae sententiae* reserved to bishops.

"Moreover, since experience has taught that the evils which are deplored draw their origin and strength chiefly from the fact that a greater number of Masses is accumulated into the hands of certain private persons than just necessity requires, therefore the same eminent Fathers, adhering to the dispositions issued by the Roman Pontiffs, and especially by Urban VIII and Innocent XIII in the Constitutions *Cum saepe contingat* and others, under grave precept of obedience, decree and command that in future all and singular beneficiaries everywhere and administrators of pious causes, or those in any way obligated to fulfill burdens of Masses, whether ecclesiastical or lay, at the end of each year hand over to their own Ordinaries the burdens of Masses which remain and which they have not yet satisfied, according to the manner to be defined by them.

"But the Ordinaries will first distribute the Mass intentions accepted with the attached stipend among priests subject to them whom they know to be in need; then they will commit others either to the Holy See or to other Ordinaries, or even, if they wish, to priests of other dioceses, provided these

are known to them and above every exception, and issue legitimate documents within a set suitable time, by which it is established that exact satisfaction of the same has been made.

"Finally, with any indults and privileges granted up to now revoked, insofar as they in any way oppose the dispositions of the present decree, the Sacred Congregation commits it to the care and office of individual Ordinaries that they diligently make the present decree known to all ecclesiastics subject to their jurisdiction, and to others whose interest it is according to the prescriptions... and in addition that, whether in sacred visitation or outside it, they carefully watch lest abuses in this matter grow again." S.C.C., May 25, 1893, Leo XIII fully confirming and commanding it to be issued, notwithstanding any things whatever to the contrary.

1239. **Any Latin missionary, from the secular or regular clergy, who by counsel or help induces any Eastern person to the Latin rite, besides the suspension from divine things which he will incur by the fact itself, and the other penalties inflicted by the same Constitution *Demandatam* of Benedict XIV, Dec. 24, 1743, is deprived of and excluded from his office. That this prescription may stand certain and firm, We order an example of it to lie open, published among the churches of the Latins.** Leo XIII, Bull *Orientalium dignitas*, the day before the Kalends of December, 1894, concerning preserving and protecting the discipline of Easterners. A.S.S., vol. 27, p. 260.

1240. "**Our Most Holy Lord Pope Leo XIII, after maturely weighing all things, and according to those things which at another time he had ordered to be issued through the eminent Vicar of the City, prescribed and established the following through the Sacred Congregation of the Council:**

"1. Clerics and secular priests of another diocese, or even regulars living outside the cloisters, will not be able in future to establish stable domicile in the City without the express permission of the Supreme Pontiff, to be obtained through the office of the Sacred Congregation of the Council.

"2. But those who at present are living in Rome, if they are bound by no title of benefice or office to residing, and have not acquired domicile in Rome through long stay and tacit or express license of their bishops, after a month has elapsed from the day of this decree, must return to their own diocese.

"3. No one from clerics and priests of another diocese will be able in future to be chosen by anyone for an ecclesiastical office, whatever it may be, or for another duty which requires residence in the City, unless, besides testimonial commendatory letters of his bishop, he also exhibits permission already obtained from the Supreme Pontiff of remaining in Rome; likewise no benefice is conferred on anyone unless he has obtained the assent of his own Ordinary for this; and a collation of benefice otherwise made will be null and void.

"4. Those who are staying in the City with license of the Ordinary in order to give work to studies of letters and sciences, or to conduct honorable business, or from another just cause, as soon as a temporary cause of this kind has ceased, or they are recalled by their own bishop, must return to their own diocese, every futile excuse excluded; and especially, because of the peculiar condition of dioceses in these times, no exception drawn either from studies undertaken or from the pretended slenderness of support offered by the bishop is to help them in any way. But if during their stay in the

City they have not conducted themselves as is fitting, they will be denounced through the Vicariate of the City to their own Ordinaries, and will be compelled to depart from the City.

"5. Finally, whoever in any way has not conformed himself to the present dispositions, or, may God avert it, has gone against the same, by the fact itself will become liable to suspension from divine things." S.C.C., Dec. 22, 1894.

Interdicts from the Constitution *Apostolicae Sedis*

1241. **I. Universities, colleges, and chapters, by whatever name they are called, appealing from the ordinances or mandates of the same Roman Pontiff existing for the time to a future universal Council, incur by the law itself an interdict reserved in a special manner to the Roman Pontiff.**

Universities, colleges, and chapters: therefore this interdict is not imposed on all and singular persons, but on the communities themselves. Therefore the present interdict is not a special interdict, but a general interdict of persons, affecting not singular persons but moral bodies. Hence it does not have the character of a censure; and therefore clerics who did not give cause to it, violating it by exercising order, do not contract irregularity. Nevertheless, it binds their individual members; otherwise it would be useless, whether clerics or laypersons, whether guilty or innocent.

By whatever name they are called: other similar communities of particular persons are comprehended, called by any other name, confraternity, congregation, etc., whether secular or ecclesiastical.

Appealing: to incur this interdict, it is not necessary that all in that community, but it is enough if several, nevertheless in the name of the community, appeal. Bulla *Coenae*, § 2; Bonacina, appendix, tom. 1, *De interdicto*, disp. 5, p. 8, nn. 8, 9; tom. 3, *De censuris in particulari*, disp. 4, q. 1, p. 5.

1242. **II. Those knowingly celebrating, or causing divine things to be celebrated, in places interdicted by the Ordinary, or by a delegated judge, or by law; or those admitting persons excommunicated by name to divine offices, or ecclesiastical sacraments, or ecclesiastical burial, incur by the law itself interdict from entrance into the Church, until they have competently satisfied, according to the judgment of him whose sentence they have contemned.**

Knowingly: this adverb, placed at the beginning, affects all the following members. But "spontaneously" is omitted; therefore not any fear or coercion excuses, but only grave fear.

Those *celebrating or causing to be celebrated*: therefore the interdict is special and personal. But to celebrate, etc., is understood as unlawful except on days and in places and with the conditions observed by which it is permitted by law. Cf. 1135.

Divine things, namely those which it is lawful for ministers of the Church alone to undertake.

In interdicted places, by a general or particular local interdict, with denunciation of the interdict made. Martin V, Constitution *Ad evitanda*.

Excommunicated by name: therefore the penalty is imposed against those participating with those excommunicated by name, but not with those suspended or interdicted. Likewise with those

excommunicated by name, not with any excommunicated persons whatever. Besides this, the penalty is not imposed against all participating and in whatever things, but against those admitting and participating in three sacred things, namely divine offices, sacraments, and ecclesiastical burial. But that special participation, which is denoted by the words causing to be celebrated and admitting, pertains only to those to whose care and office it belongs to prohibit or admit someone to acts of this kind. These are parish priests, rectors, and others to whom care of churches or cemeteries has been committed, priests, clerics.

Sacraments, namely excepted penance, and viaticum in the article of death.

Until, etc. Therefore an interdict of this kind can be absolved by anyone, but after those liable to the interdict have competently satisfied, according to the judgment of him whose sentence of excommunication or interdict they have contemned. Perhaps then the interdict also ceases by the fact itself. Cf. 1186. C. *Episcoporum* 8, *De privilegiis*, in the Sixth; Suarez, disp. 22, sect. 4, fourth censure; Bonacina, disp. 3, q. 3, p. 1; disp. 4, q. 2, p. 6.

1243. **Finally, whomever else the Most Sacred Council of Trent decreed to be suspended or interdicted by the law itself, We will and declare that the same are liable in the same way to suspension or interdict.**

We reviewed the Tridentine suspensions above. Cf. 1229 ff. But the following are the Tridentine interdicts, which do not have reservation annexed; yet this is drawn from the subject matter.

1244. **III. "The metropolitan is bound to denounce to the Roman Pontiff within three months, by letters or messenger, the absent suffragan bishops; but the older resident suffragan bishop is bound to denounce the absent metropolitan, under penalty of interdict of the church, to be incurred by the fact itself."** Sess. 6, c. 1, *De reformatione*.

This obligation of denouncing the absent one under penalty of interdict is present when the absent prelate already has been absent without any just and reasonable cause for a whole year, and his contumacy perseveres beyond the year. For after the Council decreed the penalty of privation of the fourth part of the fruits of one year if a prelate has been absent for six months, and privation of another fourth part of the fruits if the same prelate has been absent for another six months, it adds: "But with contumacy increasing, so that he may be subjected to the severer censure of the canons, the metropolitan," etc. Therefore that obligation is not present unless, with contumacy increasing, after a year of absence has already elapsed.

1245. **IV. A chapter of churches, when the see is vacant, granting within a year from the day of vacancy license of ordaining, or dimissorial letters or reverends, to someone who has not been pressed by occasion of an ecclesiastical benefice received or to be received, is subject to ecclesiastical interdict.** Sess. 7, c. 10, *De reformatione*.

Pressed by occasion of a benefice: cf. 1229.

1246. **Interdict which acceded to the Constitution *Apostolicae Sedis*, reserved in a special manner to the Roman Pontiff.**

V. But if any of the aforesaid are marked with episcopal character, they fall, by the fact itself and without any declaration, into the penalty of interdict from entrance into the Church, likewise reserved to the Holy See. Pius IX, Constitution *Romanus Pontifex*, Aug. 28, 1873, paragraph *Confidimus* ff.

Into the penalty of interdict, etc., namely besides suspension. Cf. 1237.

But if any of the aforesaid: cf. 1177.

Likewise reserved, namely in a special manner.

1247. **But whatever censures, whether of excommunication, suspension, or interdict, have been imposed by Our Constitutions, or by those of Our predecessors, or by the sacred canons, besides those which We have reviewed, and have thus far persisted in their force, whether for the election of the Roman Pontiff, or for the internal governance of any orders and regular institutes whatever, and also of any colleges, congregations, associations, and pious places whatever, of whatever name and kind they may be, We will and declare that all these are firm and remain in their force.**

By Constitutions or sacred canons. Therefore censures imposed by superiors of regulars, or by chapters, whether provincial or general, for subjects of their own order, do not pertain here.

For the election of the Roman Pontiff. "Today the election of the Pontiff is made by the cardinals according to two Constitutions of Gregory XV. The first is *Aeterni Patris Filius*, Nov. 15, 1621; and the other is *Decet Romanum Pontificem*, Mar. 12, 1622. Therefore the censures which are present for the election of the Supreme Pontiff are chiefly to be sought from these Constitutions." Cf. Benedict XIV, Constitution *Pastor bonus*, n. 12.

For internal governance, that is, for promoting the spiritual good of these orders, institutes, etc., insofar as they are such. Such for regulars are:

1. The excommunication imposed on regulars who rashly lay aside the habit of their religion, from C. *Ut periculosa* 2, *Ne clerici vel monachi*, in the Sixth. Cf. Sanchez, *In Decalogum*, l. 6, c. 8, n. 45.
2. Excommunication on monks holding arms within the enclosures of monasteries without license of abbots, from Clementina 1, § 9, at the end, *De statu monachorum*.
3. Excommunication on those who violate enclosure or permit it to be violated. Gregory XIII, Constitution *Inscrutabili*; Constitution *Ubi gratia*; St. Pius V, Constitution *Decori*.
4. Excommunication on those who do not denounce to the Supreme Inquisition their subjects who are heretics or suspected of heresy; or who deter their subjects wishing to denounce; or otherwise draw back those wishing to denounce persons suspected concerning faith, whether confreres or superiors. Paul V, Constitution *Romanus Pontifex*; Alexander VIII, Constitution *Licet alias*.
5. Excommunication on those who go to the courts of princes so that they may bring some damage upon their prelates or monasteries. Clementina 1, *De statu monachorum*.

6. Excommunication against apostates and those cast out, if they have laid aside the habit; for crimes are both punished and guarded against. Cf. Suarez, disp. 22, sect. 5, third excommunication; disp. 23, sect. 3, twenty-first excommunication; sect. 4, tenth excommunication, fourteenth excommunication; sect. 5, fourth excommunication, fifth excommunication, tenth excommunication; disp. 31, sect. 6.

"Likewise censures imposed for the internal governance both of orders and regular institutes in general, and particularly of individual orders and institutes, remain in their force." Holy Office, Mar. 22, 1881; Diocesan Synod of Albano, year 1886, appendix, n. 10.

And of pious places, namely those which are strong in their own internal governance, and in addition constitute particular associations erected by ecclesiastical authority.

All these firm, etc. Therefore the Supreme Pontiff does not renew such censures, but merely declares that they have not been abrogated by this Constitution and remain in their force, namely that they remain in that state in which they were found before the present Constitution. Therefore, if any have ceased by desuetude or another cause, they can by no means be regarded as renewed by force of the present Constitution. Bonacina, tom. 2, *De censuris in particulari*.

1248. **For the rest, We decree that in any new concessions and privileges whatever which may happen to be granted by the Apostolic See to anyone, it never ought or can be understood in any way or reason that the faculty of absolving from any cases and censures whatever reserved to the Roman Pontiff is comprehended, unless formal, explicit, and individual mention has been made of them. But whatever privileges or faculties, whether by Our predecessors or even by Us, have been granted from any time whatever up to now to any association, order, congregation, society, and institute, even regular of any species, even if endowed with a peculiar title and even worthy of special mention, We will all these and all those to be revoked, suppressed, and abolished by this Our Constitution, as in reality We revoke, suppress, and abolish them, no privileges whatever opposing or standing in the way, even special ones, whether comprehended or not in the Body of Law or in Apostolic Constitutions, and strengthened by any Apostolic confirmation or even immemorial custom, or by any other firmness whatever, in any forms and tenors, and with any derogatory and other more efficacious and unusual clauses. All of these, insofar as there is need, We intend to derogate, and We derogate.**

A double revocation of privileges is contained in the present Constitution: the first in the paragraph *A quibus*, cf. 1176; the other in this paragraph, *Ceterum*. Each revocation, if the discussion is at least about privileges of regulars or of any associations whatever, is most full, as is established from the clauses inserted in each cited paragraph, which are most fully derogatory.

This derogation of privileges is restricted to those privileges alone which concern absolution from censures of common law, or excommunications, suspensions, and interdicts in force by common law and reserved to the Holy See. This is openly established from the double paragraph cited. Whatever other privileges remain entirely intact.

Nor indeed are any extraordinary faculties whatever derogated by the present Constitution, granted for a time to some person or community before the said Constitution. Sacred Penitentiary, Dec. 5,

1873; Instruction of the Holy Office, Feb. 1, 1871. By a special decree of the Holy Office, Mar. 9, 1870, Pius IX confirmed the faculties by which all priests, whether secular or regular, providing spiritual care to the sick in any hospitals of the City enjoyed. A.S.S., vol. 6, p. 284 ff.

1249. **Nevertheless We will that the faculty of absolving conceded to bishops by the Synod of Trent, sess. 24, c. 6, *De reformatione*, be firm in whatever censures reserved to the Apostolic See by this Our Constitution, with only those excepted which We have declared reserved to the same Apostolic See in a special manner.**

Moreover the Tridentine faculty is of the following tenor: "It is permitted to bishops to dispense in all irregularities and suspensions arising from occult delict, except that which arises from voluntary homicide, and except others brought to the contentious forum; and in whatever occult cases, even those reserved to the Apostolic See, to absolve gratuitously any delinquents subject to them in their own diocese, by themselves or by a vicar to be deputed specially for this, in the forum of conscience, with salutary penance imposed."

1250. **Decreeing**, etc. (the accustomed clauses follow here). Given at Rome in the year 1869, on the fourth Ides of October.

CONCERNING THE CONSTITUTION *SACRAMENTUM POENITENTIAE*

1251. **What is to be said concerning solicitation in confession?** - As regards solicitation, three things concerning it are established in the cited Constitution of Benedict XIV, June 1, 1741. The first is that Inquisitors and local Ordinaries should "severely proceed by fitting penalties," section 1, against confessors soliciting in confession, who are to be denounced to the same Inquisitors or Ordinaries. The second is that confessors should "warn their penitents whom they know to have been solicited by others of the obligation of denouncing," section 2. The third is that those "who falsely accuse innocent priests before ecclesiastical judges of solicitation" are deprived of the benefit of absolution, which is reserved to the Supreme Pontiff, section 3. - E.M.

1252. **Who are to be denounced?** - Indeed, there are to be denounced "all and singular priests, both secular and regular, in whatever way exempt... of whatever dignity and preeminence, or furnished with any privilege and indult," sections 1 and 2, who solicit to shameful things in confession. All and singular priests, "even if they are priests who lack jurisdiction for validly imparting absolution," section 2; Holy Office, Feb. 11, 1661.

"But under these Constitutions there are not comprehended interpreters, or messengers of solicitation, or those mandating it or giving counsel, even if they are priests. For these are neither properly soliciting, nor having dishonest treatment in sacred confession, nor are those actions priestly actions, nor as such do they come under the name of priests... Thus also there is not comprehended a priest or another who solicits a penitent while he is confessing not to him but to another." Pignatelli, *Consultationes Canonicae Novissimae*, c. 117, paragraph *Non vero*. Nor indeed is a penitent to be denounced who in confession solicits the priest. L. 689. - E.M.

1253. **What is the crime of solicitation on account of which confessors are to be denounced? -** It is that by which confessors of this kind have attempted to solicit or provoke some penitent, whoever that person may be, either in the act of sacramental confession, or before, or immediately after confession, or on the occasion or pretext of confession, or even outside the occasion of confession in the confessional, or in another place destined or chosen for hearing confessions, with simulation of hearing confession there, to dishonest and shameful things, whether by words, or by signs, or by nods, or by touch, or by writing, either then or afterward to be read; or have with rash daring had illicit and dishonest conversations or dealings with them, section 1.

Whoever that person may be, "whether males or females, whoever they may be." Instruction of the Universal Inquisition to all bishops, Feb. 20, 1867.

1254. *In the act of sacramental confession*, not of other sacraments. The act of sacramental confession is verified between the beginning of confession and absolution given. Solicitation has place in the act of sacramental confession either when the confessor then simply has illicit and dishonest conversations or dealings, or when he then merely sets up the means by which afterward he solicits. And this distinction of formal solicitation, or only causal solicitation, that is, of solicitation in itself or in the means then placed, is to be understood with regard to all the other clauses: immediately before, immediately after, etc. L. 676.

Nor indeed is it required that absolution be given. Gregory XV, Constitution *Universi Dominici gregis*, Aug. 30, 1622, section 4, says that one soliciting on the occasion of confession is to be denounced, even when confession itself did not follow.

1255. *Or before, or immediately after confession.* "That phrase *immediately before* is more commonly understood strictly, so that no interval intervenes." L. 677. Thus one who solicits a woman kneeling before his feet to confess, even if she has not yet armed herself with the sign of the cross, is said to solicit immediately before.

"That phrase *immediately after* is commonly understood by the doctors as when, after confession, neither the confessor nor the penitent turns aside to other matters, so that the solicitation occurs before any other action has intervened." Nevertheless, if some action intervenes, "it must be judged from the circumstances whether the solicitation was principally intended and the business as a means; or rather the business principally, and the solicitation accidentally." L. 677.

1256. *On the occasion or pretext of confession.* Occasion and pretext here signify two distinct things. To solicit on the occasion of confession is to take from a true confession the opportunity or motive of provoking. But one solicits on the pretext of confession who holds out confession as a pretext, or fictitiously incites to confession, so that he may provoke more freely. A pretext is a false cause, and to pretext is to bring forward some cause that is not true. Therefore a confessor of this kind is to be denounced, even if confession did not follow. *On the pretext*, that is, if the priest pretexts confession so that he may solicit the penitent, not if the penitent pretexts it so that he may solicit the confessor; nor if each does so by agreement in order to deceive others. L. 679.

One seems able to solicit on the occasion of confession in three ways:

1. When from an express or tacit petition for confession he takes a motive of soliciting. L. 677.
2. From the confession itself, that is, when by understanding, for example, in the confession itself the penitent's proclivity toward venery, he obtains the occasion of then provoking him to dishonest things; or by interrupting the penitent so that he may not begin confession, or may not continue it, meanwhile soliciting him, having taken the opportunity of confession.
3. When he uses the knowledge which he had from confession in order afterward to solicit the penitent. But this use of knowledge from confession must be sufficiently established from the circumstances in order to impose the obligation of denunciation. L. 678.

But there is a difficulty concerning the first mode, since then the confessor seems to solicit rather on the occasion of the petition for confession than on the occasion of confession, if, however, confession neither presently follows immediately nor ought to have followed. Pignatelli, consult. 104, n. 14. The same must be said concerning the promise of confession. Pignatelli, consult. 117, paragraph *Ratio autem*. There is likewise a difficulty concerning the third mode. For he does not seem to solicit on the occasion of confession who, having learned in confession the penitent's fragility, goes to him at home and urges him, since he takes knowledge from confession, and from the knowledge takes the opening for soliciting. Pignatelli, consult. 117, paragraph *Unde multo* and *Ratio autem*.

1257. *Or even outside the occasion of confession in the confessional.* "Whether a confessor who, sitting in the confessional, solicits a woman standing before the confessional without simulating confession is to be denounced? The Qualifiers judged that the negative opinion does not lack probability." Holy Office, Feb. 11, 1661, to the fifteenth.

Certainly this resolution is to be compared with the resolution of the same Sacred Congregation on the same day, to the fourth: "Whether a confessor who solicits a woman saying in the confessional that she wishes to confess tomorrow, and dissuades confession, is to be denounced? - If the solicitation is made outside the place of confession and without pretext of confession, the Qualifiers judged the negative opinion to be probable; otherwise in the confessional or in the place of confession."

1258. *Or in another place destined or chosen for hearing confessions, with simulation of hearing confession there.* Therefore a threefold place for hearing confessions is distinguished. The first is the ordinary confessional. The second is any other place distinct from the confessional where confessions are heard, for example, a kneeler which is in the sacristy, where confessions are received. The third is any place chosen for hearing confessions.

That clause, *with simulation of hearing confession there*, placed in the last place, is referred to all the antecedents, and therefore also to that first member, *or outside the occasion of confession in the confessional*, according to the common rule that a clause placed in the last place is referred to all connected antecedents.

The whole difference seems to be in this: as regards the first and second place, it is indeed required that both the confessor and the penitent be in the confessional or in another place in which

confessions are heard; but by this very fact, then, regularly speaking, there is a simulation of confession, and the obligation of denunciation presses, as is established from the cited response of the Holy Office to the fourth. But as regards the third place, it is not enough that the confessor and penitent are in the same place or speak together, but it is necessary that they positively simulate confession. Pignatelli, *Consultationes Canonicae Novissimae*, c. 117, paragraph *Tertio* ff.; E.M.

1259. *To dishonest and shameful things*, that is, obscene things, namely touches, looks, etc. Gregory XV adds in the cited Constitution, section 4, "whether to be perpetrated between themselves or with others in any way." Hence a confessor is to be denounced who solicits a penitent to induce some person to sin with him. L. 691. Likewise, from Benedict XIV, denunciation presses even if the solicitation by the confessor was carried out not for himself but for another person, section 2.

"Whether a confessor who solicits a penitent to illicit acts outside venereal acts is to be denounced? The Qualifiers judged the negative opinion to be probable." Holy Office, May 11, 1661, to the eleventh; L. 684; Benedict XIV, *De Synodo*, c. 11, n. 14.

1260. **Whether a confessor soliciting only to acts venially dishonest is to be denounced?** - "The more probable opinion denies it." L. 683. This is established from the whole tenor of the Constitution of Benedict XIV. *Venially dishonest*, namely outside the venereal matter.

Hence Holy Office, Feb. 11, 1661, to the third: "Whether a confessor soliciting because of smallness of matter is to be denounced. - Since in venereal matters there is no smallness of matter, and, if there were, there would not be in the present matter, the Qualifiers judged that he is to be denounced, and that the contrary opinion is not probable." But it must be carefully observed here that it is one thing to solicit to light acts, another to solicit to graver things by light acts; in which case, without any doubt, denunciation must be made, provided that the interior intention appears. Castro-Palao, tr. 4, d. 9, p. 3, n. 4.

1261. *They have attempted to solicit or provoke*, etc., *or with them have had illicit and dishonest conversations or dealings with rash daring*. Solicitation generally is a skillful inducement and motion of another's will toward doing or suffering something. Solicitation or provocation here is any invitation and incitement to venereal things made by a priest as confessor, or as quasi-confessor, even if he at once repented of the solicitation or stopped in the very solicitation. Holy Office, May 11, 1661, to the second. Hence it is said: *they have attempted to solicit or provoke*; namely priests abusing confession in whatever way toward the aforesaid effect.

To have dishonest conversations or dealings. This is an explanation of the preceding clause, and it is declared that solicitation or provocation to be denounced is had through any dishonest conversations or dealings between the confessor and penitent, whether the confessor begins first, or the penitent begins, so that each actually has those dishonest conversations and dealings, and they stop there, without proceeding further; for then there is mutual solicitation. Hence confessors are commanded that "they warn penitents whom they know to have been, as above, cf. 1253, solicited by others, of the obligation of denouncing those soliciting," section 2. But although the Supreme Pontiff openly adds there the case of mutual solicitation, nevertheless he adds nothing concerning the case of a

confessor who is merely passive with respect to the solicitation on the part of the penitent, though consenting to it.

1262. "Whether a confessor who gives the penitent a paper in confession, to be read afterward at home, in which he solicited to venery, is to be denounced? - The Qualifiers judged that he is to be denounced, and that the negative opinion is not probable." Holy Office, May 11, 1661, to the first. This is also established from proposition 6 condemned by Alexander VII, confirmed by Benedict XIV, section 1, together with proposition 7 concerning this same matter. The same thing, in exactly the same words, is found in the Constitution of Benedict XIV, section 1: "whether by writing, either then or afterward to be read." Cf. 1253.

1263. "Whether a confessor who, hearing confession, gives a gift to a woman, so that he may be said to have solicited her, is to be denounced? - The Qualifiers answered the same as to the twelfth." Holy Office, Feb. 11, 1661, to the sixteenth. Speaking in itself, to give something is not dishonest, nor does it tend to dishonest things, but to conciliating benevolence, or to satisfying gratitude for some benefit received.

Moreover these things are to the twelfth: "Whether a confessor, if he praises the penitent for beauty and gracefulness, is said to solicit her, and therefore is to be denounced? The Qualifiers judged that, if that praise is serious and savors of no depraved intention, the negative opinion is probable. But if otherwise, it is not probable." To praise the beauty of a woman, even in confession, is not in itself by its object a mortal sin, nor is it an act ordered of itself to solicitation to shameful things.

1264. **Whether a confessor is to be denounced if his solicitation is doubtful?** - "If it is doubted whether his deed or saying was true solicitation, then with the more common and truer opinion it must be said that there is no obligation of denouncing... The reason is both because doubtful things are to be taken in the better part, and in ambiguous words the more benign interpretation is to be made;... and because in doubt no one is to be deprived of the reputation which he possesses; and because the Bulls command those soliciting to be denounced; but he cannot be called one soliciting of whom it is doubted whether he truly solicited; for a doubtful crime is not a crime." L. 702.

If "the deed or saying is true solicitation, and it is only doubted whether that confessor or another did or said it, then it is to be denounced, because when the crime is certain, judges can duly proceed to inquire into the person about whom the doubt turns. Nevertheless I think this must be said only in the case in which judges can easily, by their diligence, become certain concerning the person soliciting; because otherwise that priest, since he may be innocent, would remain in some way defamed, and in doubt the reputation of the neighbor who possesses it must be preserved uninjured." L. 702. Concerning various cases of doubtful solicitation, and others in which the doctors more commonly judge that the confessor is to be denounced, cf. L. 704.

1265. **Whether confessors ought to warn penitents about making denunciation?** - Confessors are wholly obliged "diligently to warn their penitents whom they know to have been solicited by others, as above, according to the circumstances of occurring cases, concerning the obligation of denouncing to the Inquisitors or local Ordinaries the person who committed the solicitation... Let them also diligently beware lest they impart sacramental absolution to

penitents whom they know to have already been solicited by another, unless first, bringing the aforesaid denunciation to effect, they have indicated the delinquent to the competent judge, or at least promise and pledge that they will report him as soon as they can," section 2.

1266. *Their penitents solicited*, not others, not those not solicited; they ought to warn these latter not by a positive precept, but by force of the natural precept, insofar as this precept obliges in a particular case. Nor does the good faith of such penitents excuse from warning them. But a confessor is not bound to question penitents whether they have been solicited, and to warn them of the obligation of denouncing, unless from the confession heard he prudently judges that they have been solicited.

By others, not by himself; hence a confessor who has solicited is not bound himself to warn the solicited person of the obligation of denouncing, given the case that this penitent then confesses to him; because by natural law no one is bound to procure that his own shamefulness be revealed.

To warn; although indeed the confessor ceases to warn the penitent of the obligation of denouncing, still the obligation in the penitent does not therefore cease of denouncing him, or another confessor soliciting, if he knows from elsewhere that he is bound to this by pontifical law; just as the burden of restitution does not cease in the penitent because the confessor ceases to warn him of such an obligation, if he knows it from elsewhere and is not invincibly ignorant of it. Proposition 7 condemned by Alexander VII.

1267. **If a confessor certainly foresees that a penitent, existing in good faith, is not going to denounce, ought he nevertheless to warn him of his obligation and dismiss him if he does not wish to denounce?** - In the case of death, namely when the penitent's death is imminent, negatively. For no one is bound to do a useless and harmful thing. Moreover, according to the hypothesis, that warning is useless for procuring the common good, and harmful to the private good of the penitent, since then it casts him into bad faith and into eternal damnation. Besides, if the clause added by the same Benedict XIV has any force, namely of warning penitents according to the circumstances of occurring cases, cf. 1265 and 1278, there is not always and in every case an absolute obligation of warning. Therefore at least in the stated case, truly extreme.

Outside the danger of death, affirmatively. The first reason is that it can always rightly and deservedly be hoped that a penitent of this kind, with the confessor insisting and God's grace helping, will at least later do what today perhaps, terrified by the difficulty, he refuses to do. Hence also nothing then prevents the confessor, if the penitent is certainly going to return to him, from opportunely deferring absolution, or even granting it in a case of necessity, and waiting for a favorable occasion when he will be better disposed and will be foreseen as about to do what would fruitlessly be demanded from him today.

But if the penitent is not going to return to the same confessor, it is enough that he be warned of the obligation of speaking about such a matter with his ordinary or another confessor because of the difficulty of the matter still to be resolved, and meanwhile that he be ready in mind to fulfill the obligation, if perhaps there is one, and it is manifested to him by the same confessor. Besides, to this case also extends the aforesaid clause of Benedict XIV concerning warning the penitent according to

the circumstances of occurring cases, which is not to be restricted to the single extreme case of death. Cf. Benedict XIV, encyclical letter *Apostolica Constitutio*, n. 20.

Furthermore, the difficulty which can frighten the penitent in making the denunciation is certainly not such that it has no remedy, since the Sacred Congregation itself indicates various modes by which the fulfillment of this most grave obligation can be made far easier. Cf. 1270 and 1278.

1268. **Whether not only the one solicited, but also one who certainly knows the solicitation from elsewhere, is bound to denunciation?** - R. Affirmatively, "if he knows the crime from persons worthy of faith; otherwise, if he knew it from those unworthy of faith, or from frivolous women. But this must be said, not now from the Bull of Gregory, but from the Edict of the Holy Inquisition, Mar. 10, 1677, where it is said that a confessor who has known or heard that he solicited is bound to denounce." L. 695. These are the words of the Holy Office, May 11, 1661, to the fourteenth: "Whether someone is bound to denounce a confessor soliciting if he heard this not from persons worthy of faith, but only from frivolous persons? The Qualifiers judged that the negative opinion does not lack probability." Nevertheless it should be noted here that the affirmative resolution is inferred rather from the proposed question than from the response of the Sacred Congregation.

1269. **Whether one who knows the solicitation under a natural secret is bound to denunciation?** - R. Affirmatively, "because no one is bound to a secret, even one promised by oath, when the secret turns to common harm. But otherwise, if the solicitation is manifested in order to ask counsel; for the disclosure of the secret would then be against human intercourse, and also against the public good, which certainly intervenes in seeking counsels." L. 698. And this last point is besides founded on the decree of Alexander VII, July 8, 1660, which obliges regulars from whom counsel is sought concerning the obligation of denouncing only to this: that they warn and oblige to denounce.

1270. **Whether absolution is to be denied to a penitent who refuses to denounce a priest soliciting?** - R. Affirmatively. "Penitents who have been admonished and wholly refuse cannot be absolved; but those who for a just cause ought to defer denunciation, and seriously pledge and promise that it will be made as soon as they can, can be absolved... If necessity urges, the solicited person should conduct himself according to the counsels and warnings of his confessor," namely when there stands a grave difficulty of making the denunciation. Cited Instruction, nn. 5 and 7; L. 693.

1271. **Whether those omitting denunciation incur excommunication?** - From the Constitution *Apostolicae Sedis* of Pius IX, Oct. 13, 1869, they incur an excommunication *latae sententiae* reserved to no one: "Those neglecting or culpably omitting to denounce within a month confessors or priests by whom they have been solicited to shameful things, in any of the cases expressed by our predecessors Gregory XV, Constitution *Universi*, Aug. 20, 1622, and Benedict XIV, Constitution *Sacramentum Poenitentiae*, June 1, 1741."

Those neglecting or culpably omitting to denounce, and therefore when they could and ought to have done it.

Within a month, to be computed from this obligation once known; therefore after a month has elapsed they fall into excommunication. For the rest, if they have promised that they will denounce, and trust can be placed in them, they can be absolved, and not only from sins before a month has elapsed, which is expressly provided in the Constitution of Benedict XIV, cf. 1265 and 1270, but also from excommunication after the month has elapsed. For the present excommunication is not reserved.

Nor indeed does such a penitent seem to fall back into the same excommunication if afterward he breaks faith, since absolution here is granted absolutely; and when the Constitution *Apostolicae Sedis* willed otherwise, it expressed this openly.

By whom they have been solicited; therefore only penitents solicited are subject to this excommunication, by no means all whoever have learned of the solicitation. - Pignatelli, *Consultationes Canonicae Novissimae*, c. 117, paragraph *Terminus autem*.

1272. **What are the causes excusing from making denunciation?** - If grave harm to life, reputation, and temporal goods is truly and reasonably feared from denunciation, the penitent could be excused from denouncing. The reason is that there is a natural right to guard against these harms, against which the positive law of the Church does not prevail; for the Church is not accustomed to oblige further, with grave inconvenience, to the observance of its laws.

There is added that laws imposing denunciation by their nature do not oblige with grave inconvenience, because they do not have that joined to them by their nature, as, for example, precepts made to a soldier not to leave his station, or to a parish priest to assist the sick suffering from plague, have it. But when a law by its nature does not demand to be fulfilled with grave inconvenience, it ceases to oblige if that grave inconvenience supervenes, as is established concerning a law imposing fasting, the hearing of Mass, etc.

But denunciation must be made even with any harm whenever from that crime there would arise contempt of this sacrament and ruin of souls. Although this could perhaps not intervene when it was certainly known that someone solicited once, not from contempt of the sacrament, but from mere momentary lust, it would indeed happen when solicitation arose from making little of the sacrament, or if the one soliciting were a powerful man and solicited frequently. In these cases, therefore, the reason of the common good and of guarding against damage to religion outweighs any private harm whatever, and therefore denunciation would never be omitted. - L. 699; Pignatelli, *Consultationes Canonicae Novissimae*, c. 117, paragraph *Denique* ff.

1273. Note: Those who cannot denounce because of the aforesaid causes are still bound when those causes cease. Holy Office, Feb. 21, 1639; Giraldi, p. 640, note *qui*, p. 641. - E.M.

1274. **Whether a woman is bound to denounce a confessor soliciting, to whom she herself consented?** - R. Affirmatively. For Benedict XIV commands denunciation to be made "whether the penitent consented to the solicitation, or by no means furnished consent." The reason is that denunciation can be made without any danger to her own reputation, since she cannot be interrogated about this by the bishop, and therefore even if she is interrogated one can deny one's own consent. L. 700. In the cited Instruction, n. 6, it is said: "Care must also be taken that those denouncing are not asked whether they consented to the solicitation; and it would

be most fitting if, concerning consent of this kind, however much spontaneously manifested, nothing be noted in the records. From the declaration of Urban VIII, Thursday, Apr. 17, 1624."

1275. **Whether a woman established in good faith and simplicity, who did not understand the solicitation, ought to be warned about denunciation and ought to denounce?** - R. Negatively, by reason of scandal. Nevertheless "the Sacred Congregation, on May 11, 1707, declared that a girl solicited while established in simplicity and without knowledge of the dishonesty is bound to denounce the confessor soliciting after she has become master of herself and has acquired knowledge of the past solicitation." Giraldi, p. 641.

1276. **Whether the solicited person is bound to denounce a solicitation had a long time ago, or occult, or one which cannot be juridically proved?** - R. To the first, affirmatively, from the open declaration of Benedict XIV, Constitution *Sacramentum Poenitentiae*, section 2; L. 697.

To the second, it must be wholly affirmed; for otherwise that most grave law would be altogether useless, since this crime is of itself occult. L. 696.

To the third, "it must be wholly affirmed." L. 695. The reason is that juridical proof here is not necessary.

1277. **Whether a confessor soliciting is to be denounced if he has already been amended, or judged and punished, or dead?** - R. To the first, affirmatively. St. Alphonsus judges this absolutely more probable, and practically and regularly it seems to be held. For the primary and principal reason of the law of denunciation is not the amendment of the particular person, but the public security of the sacrament and of souls, by certain chastisement of so abominable a crime, and from the unavoidable fear of penalty, even for a single act, or one repeated only once; indeed also the safety of the Church, lest pests of this kind creep into public offices, than which nothing is more harmful to the common good of the Church. - Benedict XIV, *De Synodo*, l. 6, c. 11, n. 10.

To the second. It is certain that, if he himself offends again after he was punished in the first crime, he must again be denounced. And the same must be said if he was not fully convicted of solicitation, because then he would not have been punished. If he has already been sufficiently convicted and punished for the same solicitation, it must be affirmed as far more probable, L. 637, from the Holy Office, May 11, 1661, to the thirteenth: "Whether a confessor who on account of the solicitation of another abjured is to be denounced? - They judged (the Qualifiers) that the negative opinion is not probable, and therefore that he is to be denounced, which was also resolved on July 26, 1628."

Abjured, that is, one who on account of another preceding solicitation appeared before the Inquisitor and abjured, namely detested heresy; for since abjuration is the detestation of heresy, someone had to abjure insofar as he was a heretic or suspected of heresy; and such was the solicitor considered, who therefore had to abjure at least as a precaution. And if the suspicion of heresy was light, he was said to abjure *de levi*; if vehement, to abjure *de vehementi*.

Nevertheless it must be observed that in the preceding response the matter is about the solicitation of another penitent, because of which the confessor abjured, not of that same penitent because of whose solicitation he spontaneously appeared. But in another decree, July 26, 1628, cited in the

aforesaid response, as that decree is found in Albizzi, *De Inconstantia in Fide*, c. 35, n. 50, it is established generally that "the solicited person is bound to denounce the one soliciting, although he knows that he appeared in the Holy Office." The same decree is reported in the same general sense by Giraldi, p. 641.

To the third, negatively, because then the whole end of the law ceases, namely both the punishment and the amendment of the guilty party. Holy Office, Mar. 6, 1839; Sacred Penitentiary, Apr. 24, 1884; L. 692.

1278. **When, to whom, and how is denunciation to be made?** - Denunciation is to be made within a month from the time when its obligation became known. Holy Office, Mar. 10, 1677; L. 693. Cf. 1271.

It is to be made "to the Inquisitors or local Ordinaries," section 2. *Local*, that is, of the place in which the penitent is staying, even if the penitent and the confessor soliciting belong to another diocese. It pertains to the local Ordinary or Inquisitor to receive the sworn denunciation, and to transmit it to the bishop of the accused priest. In the cited Instruction, n. 1, it is said: "they ought to report the matter to the Holy See or to the local Ordinary." One satisfies the obligation who denounces delinquents of this kind to the Supreme Tribunal of the Sacred Roman and Universal Inquisition. Pignatelli, *Consultationes Canonicae Novissimae*, c. 117, paragraph *Ex parte vero*.

Vicars Apostolic also can receive denunciation, but they must send "the names of those soliciting to the Holy Office through the medium of the Sacred Congregation de Propaganda Fide, in a closed letter." Holy Office, June 20, 1882. As regards regulars, regular superiors cannot receive this denunciation, nor judge this cause. Decree of Alexander VII, *Licet alias*, July 8, 1660.

Cardinal Bishops and the Inquisitors themselves, who are truly delegates of the Apostolic See, in a case of solicitation, if it is to be denounced, are to be denounced not to the Inquisitor or Ordinary of the place, but to the Holy See, or to the Sacred Congregation of the Sacred and Universal Inquisition. "If they cannot, or do not wish immediately, to denounce them to the Supreme Tribunal, they are bound to denounce them to the Inquisitors or local Ordinaries, so that the delict may become known to the Holy Office; because the obligation of denouncing requires in the judge only the faculty of receiving juridical denunciations. For this suffices so that the delict may become known to the Sacred Tribunal, so that afterward according to its laws it may proceed against the delinquent." Pignatelli, *Consultationes Canonicae Novissimae*, c. 117, paragraph *Ideoque*.

Concerning the manner of making denunciation, these things are in the cited Instruction, nn. 6-8:

"6. Anonymous denunciations against those soliciting to shameful things have no force; for denunciations ought to be made in judgment, namely before the bishop or his delegate, with the intervention of an ecclesiastical man who holds the part of notary, and with oath, and with expression and subscription of one's own name; nor is it enough if it is made by receipts, or by letters without the name and surname of the author. For the rest, it is prohibited that in receiving denunciations, besides the judge and notary, each an ecclesiastical man furnished with the special deputation of the bishop drawn up in writing, witnesses be present."

"7. The burden of denunciation is personal, and is to be fulfilled by the solicited person herself. But if she is hindered by most grave difficulties so that she cannot accomplish this herself, then either by

herself, or by letter, or through another person well disposed toward her, let her approach her Ordinary, or the Holy See through the Sacred Penitentiary, or even through this Supreme Inquisition, with all the circumstances set forth, and then let her conduct herself according to the instruction which she will receive. But if necessity urges, let her conduct herself according to the counsels and warnings of her confessor. Yet if, held back by no impediment, she wholly refuses denunciation, in this case and the other cases mentioned the confessor is to be praised who has not denied his assistance to the penitent, and has consulted either the Ordinary or the Holy See for opportune provisions, with the name of the penitent nevertheless suppressed. The formulas to be used in these cases are handed down by approved authors, among whom are Pignatelli, *Consultationes Canonicae Novissimae*, t. 1, c. 104; Carena; Albizzi; etc."

"8. Not infrequently the case occurs that a confessor or another ecclesiastic is deputed by bishops (whose power this indeed is) to receive denunciations in a matter concerning the crime of solicitation, without the intervention of a notary. Those who are destined to this most grave office, men most suitable, ought to be instructed concerning the act of denunciation to be taken up in judicial manner, and warned that immediately after the denunciation has been received they should at once transmit it cautiously to the bishop himself by whom they were deputed, and retain for themselves no copy or any trace of the completed act. And in nearly this way the duty of denouncing is fulfilled without great difficulty. Certainly it must be effected by local Ordinaries that it not be necessary to apply to places subject to their jurisdiction what was declared for the missions of Pernambuco in America on June 22, 1627: namely, that solicited women are not bound to denunciation if the ministers of the Inquisition and the vicars of the bishop living in distant regions cannot be approached without grave inconvenience."

Therefore if a woman cannot even be induced to make denunciation in writing and with oath to a confessor deputed for this, recourse must be made to the Holy See for an opportune remedy, and in the meantime such a penitent is not to be absolved, as being indisposed. - L. 695; E.M.

1279. **What is to be said about the crime of false denunciation?** - "Since certain wicked men are found who, moved either by hatred, or anger, or another unworthy cause, or incited by the impious persuasions, or promises, or blandishments, or threats of others, or in any other way, with the dreadful judgment of God disregarded and the authority of the Church despised, falsely accuse innocent priests before ecclesiastical judges of solicitation: therefore, so that such wicked daring and so detestable a crime may be restrained by fear of the greatness of the penalty, whatever person has polluted himself with an execrable crime of this kind, either by himself impiously calumniating innocent confessors, or by wickedly procuring that this be done by others, let him perpetually lack the hope of obtaining absolution from any priest, furnished with whatever privilege, authority, and dignity, except from Us and Our successors, unless at the end of life and excepting the article of death; which hope of absolution We reserve to Us and the aforesaid successors," section 3.

The present reserved case is papal, but without censure. The reservation is penal. Moreover, that procurement must be efficacious, with the unjust denunciation having followed. The matter is not about any false denunciation whatever, but about juridical denunciation, that is, one made before ecclesiastical judges, namely before the Ordinary of the place or the Inquisitor. - L. 693.

1280. **What is to be said concerning absolution of an accomplice?** - In the same Constitution of Benedict XIV, *Sacramentum Poenitentiae*, the absolution of an accomplice is also treated: concerning its illicitness and invalidity, and concerning the excommunication imposed on the one absolving.

1281. **What is to be said concerning the illicitness and invalidity of absolution?** - These are the words of Benedict XIV in the cited Constitution, sections 4 and 5:

"To all and singular priests, both secular and regular, of whatever order and dignity, even if otherwise approved for receiving confessions, and supported by any privilege and indult, even one worthy of special expression and of a most special notation and mention, by apostolic authority and the fullness of Our power, We forbid and prohibit that any of them dare, outside the case of extreme necessity, namely in the very article of death, and when at that time any other priest who can perform the office of confessor is lacking, to receive the sacramental confession of a person who is an accomplice in a shameful and dishonest sin committed against the sixth precept of the Decalogue; for this reason any authority and jurisdiction for absolving any person from such fault having been removed from him by the law itself. Indeed, so much so that any absolution which he may have imparted is wholly null and void, as imparted by a priest who exists deprived of the jurisdiction and faculty necessary for validly absolving, which We intend to take away from him by these presents. And nevertheless, if any confessor has dared to do otherwise, he incurs by the fact itself also the penalty of major excommunication, from which We reserve the power of absolving to Us alone and only to Our successors.

"Declaring also and decreeing that not even by force of any Jubilee, or even of the Bull which is called that of the Holy Crusade, or of any other indult, can anyone receive the confession of the said accomplice of this kind and bestow sacramental absolution on him or her; since for this effect and in this case no confessor, as one who in this kind of sin and penitent lacks jurisdiction, as stated above, and exists deprived by Us of the faculty of absolving, is to be held as a legitimate and approved confessor. Notwithstanding Apostolic Constitutions and Ordinances, especially those which are called of the Holy Crusade or of the universal and plenary Jubilee, and also any statutes and customs, privileges, indults, and Apostolic Letters... To all of which... this time only We specially and expressly derogate, and to other contrary things whatever."

1282. **Whether the absolution of an accomplice is always illicit, and always invalid?** - The absolution of an accomplice will always be illicit outside the case of extreme necessity, namely in the very article of death and when at that time any other confessor who can perform the office of confessor is lacking. But it will always be invalid outside the article of death. In the article of death it will always be valid, even short of necessity. For thus Benedict XIV, in the Constitution *Apostolici muneris*, declared his mind concerning a case of necessity of this kind.

1283. The accomplice is forbidden and prohibited to be heard and absolved in the aforesaid article of death "so that, if some other priest is not lacking, even if by chance this other is only a simple priest, or otherwise not approved for hearing confessions, nevertheless that simple priest himself can receive the confession and impart absolution."

1284. "If the quality of the urgent case and the concurrent circumstances which cannot be avoided are such that another priest cannot be called or approach to hear the confession of the person

constituted in the said article without some grave infamy or scandal about to arise, then another priest can be held and judged the same as if he were really absent and lacking; and therefore, in that state of affairs, the priest who is a partner of the crime is not prohibited from imparting absolution to the penitent also from that crime. But let the priest who is an accomplice of this kind know, and seriously consider, that he will in reality be guilty before God, who cannot be mocked, of grave disobedience against the aforesaid Our Constitution, and liable to the penalties carried in it, if he himself freely imagines for himself the aforesaid dangers of infamy or scandal where they do not exist; indeed let him understand that he is gravely bound, so far as it is in him, to forestall or remove dangers of this kind by using opportune means, whence it may come about that a place is open to any other priest for hearing that confession without anyone's infamy or scandal."

1285. "But if the same priest, either in any way has inserted himself compelled by no grave necessity, or, where danger of infamy or scandal is feared if the work of another priest must be sought, he has deliberately neglected to use suitable means for averting that danger, and thus has presumed to receive the sacramental confession of a person who is an accomplice in the said crime, and constituted in that article, as stated above, and to grant absolution from that crime, with no necessary cause compelling, as is premised; although an absolution of this kind will be valid, provided that on the part of the penitent the dispositions required by Christ the Lord for the value of the sacrament of penance have not been lacking; for We do not intend, for the fearful article of death, to take away from the same priest, however unworthy, the necessary jurisdiction, lest by this very occasion someone perish: nevertheless the priest himself will by no means escape the penalties of the law violated by rash daring of this kind; and for this reason he incurs the major excommunication carried in the said Constitution, and reserved to Us and to this Holy See in exactly the same manner as is decreed there."

1286. **If a priest who is an accomplice, while the necessity stands, begins to hear the confession of the accomplice in the article of death, and another priest arrives, can he complete the confession begun?** - R. Affirmatively. "The reason is that when he began to hear, this was licit through the Pontiff giving him jurisdiction; but this jurisdiction does not expire by the arrival of another, because, namely, the confession for which jurisdiction was conferred, since it is posited as only begun, is not yet whole or perfect." Ithurriaga, case 49, n. 17.

1287. **If a priest who is an accomplice begins to hear the confession of the accomplice in the article of death, while the necessity stands, can he afterward, once the danger of death has passed, complete the confession and absolve?** - R. Affirmatively. The reason is the same as in the preceding case. For jurisdiction valid at the time of the confession begun is judged to remain as long as the confession begun has not been completed by absolution. For confession is ordered to this, and in this it has its completion. - Ithurriaga, case 49, nn. 21, 22, 23.

1288. **After the accomplice has been absolved in the article of death, with necessity urging, can the priest who is an accomplice afterward complete that person's confession by reason of integrity, when that danger has passed?** - Either the penitent sufficiently expressed by nods all the sins of complicity, or not. If the first, the priest who is an accomplice can complete the confession by reason of integrity; otherwise he cannot. The reason for the

first is that through valid absolution the sins of complicity have been directly remitted, and therefore the complicity itself has been directly destroyed, and the priest who is an accomplice can absolve from other sins just as any other can. For those sins are no longer necessary matter of confession, but only free matter, like venial sins, or mortal sins already disclosed.

The reason for the second is that then the bond of complicity still endures; for the remaining sins have been remitted only indirectly, as omitted in confession. Therefore those sins remain necessary matter of confession. - Ithurriaga, case 49, nn. 19, 20.

1286. **Whether an accomplice can absolve the accomplice not only in the article, but also in the danger of death?** - The article of death is distinguished from the danger of death in this: that the article of death denotes certain nearness, while danger denotes probable imminent death.

R. Affirmatively. The extrinsic reason is that the article of death and the danger of death, by canon law, the most common opinion of theologians, and the practice of confessors, are altogether equated in order to receiving the sacraments of penance, Eucharist, and extreme unction. But the intrinsic reason is that, morally speaking, the necessity of the sick person is almost the same; hence, lest he perish, the Church confers jurisdiction on all priests for the article of death, even if the matter is about a priest who is an accomplice absolving an accomplice, as is openly established from the Constitution *Apostolici muneris* of Benedict XIV. Ithurriaga, case 49, nn. 4-10.

1287. Note: The same must be said even if the danger of death was prudently indeed, but falsely, judged to exist. Ithurriaga, case 49, nn. 11-15. For since it is sometimes difficult to distinguish true and real danger from danger only judged and apparent, jurisdiction is given absolutely to all for the article or danger of death prudently judged, lest anyone perish.

1288. **What if the dying person does not wish to confess to anyone other than the priest who is a partner of the sin?** - In that case he or she can be absolved by the priest who is an accomplice, if otherwise disposed, lest namely he or she perish, or be endangered. Gousset, *Theologia Moralis*, vol. 2, n. 489. - The same must be said if another priest who has been called does not wish to come, or, already present, does not wish to hear the confession. The reason is that then it is the same as if there were no supply of another confessor.

1289. **When is there complicity here?** - Complicity here is had when there is present an exteriorly, reciprocally or mutually declared consent, concord, or conspiracy of two or more persons in a shameful and dishonest sin, indeed a mortal one, against the sixth precept of the Decalogue, although not consummated by intercourse. *Exteriorly*, for complicity certainly cannot be had without an external act. *Mortal*, for the Supreme Pontiff speaks of a sin which must necessarily be destroyed by sacramental absolution. Moreover, mortal is understood both by reason of the internal act and by reason of the exterior work. Therefore the aforesaid law does not have place where the matter is about sins that are only grave but doubtful, whether the doubt is of law or of fact, or about sins simply venial, or about sins venial only as to the external act, although one or the other, or both, have sinned gravely internally.

But how great is the imprudence and rashness, because of the danger of scandal, of approaching a confessor who is an accomplice, even if the matter is only about venial sins in this matter to be manifested to the same confessor who is an accomplice, there is no one who does not see.

Reciprocally or mutually. Therefore "1. if a priest, having gotten the occasion from sleep or drunkenness, were to use some woman for satisfying lust, he would not on that account lose jurisdiction for absolving her; because since both the drunken woman and the sleeping woman are unequal to sinning, neither would formally be considered an accomplice, although each could materially be called a partner of the crime in the sin against the sixth precept perpetrated by the priest... 2. If some priest by the greatest wickedness were to lead a woman to believe that it was altogether free from sin if she allowed herself to be touched shamefully by him, and she, deceived by him, in good faith allowed herself to be touched shamefully by him, without admitting formal sin in herself, she would not be an accomplice, and could subject herself to the sacramental judgment of the same priest for obtaining absolution, not from a venereal sin, from which we suppose her immune, but from other sins." Ithurriaga, case 41, nn. 25, 26.

Likewise the complicity about which this law speaks is not present if the woman with whom the priest sins, although she consents internally, nevertheless resists externally. But under the name of shameful sin comes every grave external sin against the sixth precept, even if it is only touch, or look, or conversation. The reason is that the words of the Bull, *in a shameful and dishonest sin against the sixth precept*, without doubt comprehend whatever shameful sins. Holy Office, May 28, 1873; L. 554.

1290. **Whether the aforesaid complicity comprehends a shameful sin of the confessor with a partner of the crime, committed even before he had been initiated in sacred orders?** - R. Affirmatively. The reason is that the Supreme Pontiff speaks altogether indefinitely of a sin committed with an accomplice, and does not restrict it to a sin committed by the confessor himself when he already had the faculty of hearing confessions, or when he had already been constituted in sacred orders. Ithurriaga, case 47, nn. 2-6.

1291. **Whether absolution is valid at least of the other sins, if the penitent was in good faith, as happens whenever the matter is about reserved sins?** - R. Affirmatively. The reason is that in the Bull jurisdiction is indeed taken away from the confessor, but from the confessor who is an accomplice, with respect to the penitent who is an accomplice, and, what is most important, from this kind of fault, in this kind of sin. Therefore not from other sins, not in other cases. Sacred Penitentiary, May 16, 1877.

1292. **Whether the error of the penitent supplies jurisdiction when absolution is improperly imparted to an accomplice?** - R. Negatively. The reason is that the Church, supplying jurisdiction in a case of error, intends to consult not only for some persons who, deceived, would think that jurisdiction was present in this priest, but for a multitude of persons who by a common persuasion falsely judge the same thing. Hence error supplying jurisdiction regards the multitude, to which the Church intends to show favor; but it does not regard a few. But where the matter is about an accomplice to be absolved, only two persons are involved, namely the confessor and the accomplice, whom the Benedictine Constitution wills to punish. Therefore error can avail nothing at all for the validity of absolution imparted by an accomplice. Ithurriaga, case 51, n. 26; case 47, nn. 10, 11.

1293. **What if a confessor inadvertently absolved an accomplice?** - Many affirm that the absolution is valid. The reason is that the Constitutions of Benedict XIV require rash daring and presumption.

On the other hand, many deny that the absolution is valid. For two things are to be distinguished in the Constitution of Benedict XIV: the taking away of jurisdiction and the penalty of excommunication. The latter indeed, both in the Constitution *Sacramentum Poenitentiae* and in the Constitution *Apostolici regiminis*, is carried against those daring and presuming; but the former is simply taken away from the confessor who is an accomplice, as is established from the very tenor of the Bull. Hence it is established that the taking away of jurisdiction is constituted not properly as a penalty, but as an invalidating law for averting danger, lest a priest who is an accomplice dare to absolve an accomplice, and for removing from the sanctity of the sacred tribunal every occasion of shamefulness and contempt of the sacraments, as is said there at the beginning of section 4.

Hence the absolution will be invalid with respect to the sin of complicity itself, but valid with respect to other sins, if the penitent is in good faith. Cf. 1291.

1294. **Whether a priest doubting whether the penitent is his accomplice can absolve him or her?** - R. Affirmatively. Gury, case 619. The reason: because it is not to be presumed that a prudent legislator willed to deprive the confessor of jurisdiction with so great a doubt about the matter on the one side, and with so great a detriment to reputation and perhaps new scandal on the other. Therefore the present case seems to fall back into the question of probable or doubtful jurisdiction, in which, when a grave cause stands, it is more probable that it is licit to absolve. Cf. 770.

1295. **Whether a priest who is an accomplice has jurisdiction over a sin of complicity destroyed by perfect contrition, or remitted only indirectly through the keys?** - R. Negatively. The reason is that from Benedict XIV the confessor is deprived simply of the jurisdiction necessary for the remission of the sin of complicity, which must necessarily be obtained through the keys. Ithurriaga, case 48, nn. 2, 7, 8, 11-16.

1296. **Whether a priest who is an accomplice lacks jurisdiction over a sin of complicity even when it has already been directly remitted?** - R. Negatively. The reason is that that sin is no longer necessary matter of confession, but free matter. Holy Office, May 29, 1867.

1297. **Whether a confessor who is an accomplice can absolve the accomplice at least by force of some privilege or Jubilee?** - R. Negatively. This is established from the Constitution of Benedict XIV, section 5. But it must be noted here that he invalidly absolves a penitent who by force of a privilege could be absolved from any sin reserved to the Supreme Pontiff, because this sin is not reserved, since any confessor who is not an accomplice can absolve from it. From this it follows that a confessor having power of absolving from cases reserved to the Supreme Pontiff cannot absolve an accomplice.

1298. **Whether a priest asking for the faculty that some priest may absolve an accomplice can himself absolve his own accomplice? - Whether a bishop can concede this faculty of absolving one's own accomplice?** - R. To the first, affirmatively. The reason is that the faculty

of absolving an accomplice was requested in general for some priest. Therefore it ought to be valid as much for the petitioner himself as for another.

R. To the second, negatively. The reason is that the law prohibiting a priest from absolving an accomplice is a general law of the Church and of most grave moment. Moreover, bishops cannot dispense in general laws of the Church by their own authority, except in cases of lesser moment and occurring frequently in practice. This is also established both from the practice of the Church, which is accustomed to concede by particular indult, for a few cases in number, to bishops requesting the faculty of absolution of an accomplice; and especially from the Constitution *Apostolicae Sedis*, by which that case is reserved to the Pope in a special manner, indeed, according to the decree of the Holy Office, Jan. 17, 1866, in a most special manner.

1299. **What is to be said concerning the excommunication?** - The excommunication constituted by Benedict XIV, cf. 1281, is retained in the Constitution *Apostolicae Sedis* and is amplified. For the excommunication is not carried against those daring to absolve, but against those simply "absolving an accomplice in a shameful sin, even in the article of death, if another priest, even one not approved for confessions, can receive the confession of the dying person without some grave infamy and scandal about to arise."

Absolving; therefore it is not enough merely to hear the confession, unless absolution is given. Nevertheless confessors who feign and simulate the absolution of an accomplice in a shameful sin do not escape the excommunication. Sacred Penitentiary, Mar. 1, 1878; Holy Office, Dec. 5, 1883.

Absolving, even with crass or supine ignorance. Holy Office, Jan. 13, 1892.

An accomplice, namely a formal one, and therefore by mutual consent externally manifested on each side.

In a shameful sin, namely 1. against the sixth precept of the Decalogue; 2. formal, for if either party sinned only materially, that person cannot be called an accomplice; 3. external; 4. grave on each side, not only in the respect of the internal act, but also in the respect of the external act; 5. not already directly absolved by another confessor.

Even in the article of death, therefore all the more outside it.

If another priest, even one not approved, that is, not "when at that time any other priest who can perform the office of confessor is lacking." Cf. 1281. Hence, speaking in itself, one suspended, or even excommunicated, is to be preferred to the accomplice; otherwise, if infamy and scandal would follow.

In the article of death, or danger, cf. 1286.

This case is so held as reserved that even in the general and most ample concession of faculties which is granted by the Holy See for various places, of absolving from all cases even under censure reserved in a special manner, it is expressly excepted. Holy Office, Apr. 4, 1871. Cf. 1298. Its absolution belongs privatively, and only in the internal forum, to the Sacred Penitentiary, to which recourse must be made. - E.M.

1300. **Whether a priest who is an accomplice escapes the censure if, short of necessity, he hears the confession of the accomplice in the article of death, if before he absolves he**

repents of the deed, and then absolves because of the circumstance of the confession already begun? - The author of *Casi di Coscienza* of Bologna, year 1759, month of May, case 2, and others deny it. The reason is that at the beginning of the confession there was no jurisdiction of the confessor, since it was not juridically begun, and none remains in its prosecution. Nor indeed is there any other necessity of imparting absolution than the article of death, with another confessor lacking, or when danger of scandal and infamy urges.

But others affirm it. For "1. He does not incur the penalty for the confession only begun, because that penalty is not incurred unless the confession is completed by absolution. 2. Nor would he incur it by absolving after his will had been changed for the better, and contrition elicited concerning that sin; for no one incurs excommunication through an act which on the one hand can no longer be omitted, and on the other hand lacks every fault, indeed has become obligatory. For excommunication is then incurred when, without any necessity (of avoiding scandal and infamy), absolution is imparted by the accomplice. But the confessor, once the penitent's confession has been heard, is compelled to absolve him; therefore he does not incur excommunication." Gury, case 628; Ithurriaga, case 50, nn. 25, 26. As regards the reason of the first opinion, cf. 1282.

CONCERNING THE CONSTITUTION *OFFICIORUM AC MUNERUM*

1301. **What prohibition of books is present?** - The prohibition of books is one thing by natural law, another by positive law. The reading of books, for example, which hand down a false religion, superstitious or lascivious matters, and which attack any virtue whatever or defend vice, speaking in itself, is prohibited by natural law. The reason is that the reading of these books, speaking in itself, has attached to it the danger of perversion. Therefore unless such reading is done by learned men, and from an honest intention of opposing, extirpating, etc., these books, it will be sinful according to the measure of the danger of perversion.

As regards positive law, there is no doubt that the Church has the power of prohibiting harmful books. Now "to prohibit books throughout the whole world belongs to the Supreme Pontiff, and for him to the Sacred Congregation. But bishops and Inquisitors can prohibit books in their own territory," even under penalty of a censure to be undergone. L. 290.

"Ordinaries," says Leo XIII in the cited Constitution, section 29, "also as Delegates of the Apostolic See, should strive to proscribe books and other harmful writings published or spread in their diocese, and to remove them from the hands of the faithful. Let them refer to the apostolic judgment those works or writings which require more subtle examination, or in which the judgment of supreme authority seems to be required for obtaining a salutary effect."

Therefore the obligation is present for Ordinaries to proscribe not all harmful books and writings, but only those published or spread in their diocese, and therefore in some regular number of copies. But other books or writings needing deeper examination, or requiring the judgment of higher authority, are all to be denounced.

Moreover, as regards the common law now in force, one must stand at present by the Index of prohibited books, which is again now being revised by order of Leo XIII and afterward to be published; and also by the General Decrees already established by the same Leo XIII in the cited

Constitution. These alone have the force of law, "the Rules published by order of the Holy Synod of Trent, Observations, Instruction, Decrees, Warnings, and any other statute and command of Our predecessors on this matter having been abrogated, with the single exception of the Constitution *Sollicita et provida* of Benedict XIV, which, just as it has been in force thus far, so We will to remain wholly in force hereafter." Paragraph *Itaque*.

The Rules having been abrogated, etc., simply, and therefore as regards obligations and as regards penalties. Contrary customs likewise remain abrogated, although in the cited Constitution there is not a clause abrogating them. For this is openly deduced from the purpose of this Constitution, namely that provision be made for the needs of the present time. The Constitution *Sollicita et provida* of Benedict XIV prescribes the method to be observed in the examination and proscription of books in the Sacred Congregations of the Holy Office and of the Index.

1302. **What does the prohibition of books import?** - It imports that the reading, retention, defense, printing, publication, sale, and donation of the same books are prohibited. For books proscribed by the cited Constitution are simply prohibited.

"Whoever are sellers of books, especially those who glory in the Catholic name, are neither to sell, lend, nor retain books treating professedly of obscene matters; they are not to have other prohibited books for sale unless they have obtained permission from the Sacred Congregation of the Index through the Ordinary, nor are they to sell to anyone unless they can prudently judge that they are legitimately sought by the buyer." Section 46.

By reading or retaining prohibited books, excommunication is incurred only in the two cases already reported above, sections 47 and 48. Cf. 1165 and 1212.

Absolutely, the book is to be handed over to the Inquisitors or to the Ordinary. The reason is that superiors may know what poisons are being offered to the faithful and may prepare an antidote. But as today is the practice of many places, so that such books may be more safely and quickly extirpated, they can also be burned. But they cannot be torn up so that things may afterward be wrapped in their leaves. To wait a few days either for handing the book over to the superior or for asking permission is not grave, and consequently is not liable to censure. - Sanchez, *In Decalogum*, II, 10, n. 56; La-Croix, 349; Laymann, *De Fide*, XV, 7.

1303. **Whether harmful books are to be denounced?** - "Although it belongs to all Catholics, especially those who excel in doctrine, to denounce pernicious books to bishops or to the Apostolic See, nevertheless this pertains by special title to Nuncios, Apostolic Delegates, local Ordinaries, and Rectors of Universities flourishing by praise of doctrine." Section 27.

It belongs to all Catholics, that is, from charity obliging, when grave danger is present, and denunciation is not made by others, and can be made without grave inconvenience.

Pernicious, as regards faith or morals.

To the Apostolic See, that is, to the Sacred Congregation of the Index, or the Holy Inquisition, or Propaganda Fide, or Extraordinary Ecclesiastical Affairs.

By special title of office and justice; hence the aforesaid obligation presses those named more gravely.

1304. **What is to be said concerning editions of the original text, and non-vernacular and vernacular versions of Sacred Scripture?** - "Editions of the original text and of ancient Catholic versions of Sacred Scripture, even of the Eastern Church, published by any non-Catholics whatever, although they appear to have been published faithfully and integrally, are permitted only to those who devote themselves to theological or biblical studies, provided, however, that dogmas of the Catholic faith are not attacked in the prolegomena or annotations." Section 5.

Of ancient versions; here the matter is only about ancient versions, not about more recent ones.

By non-Catholics; therefore editions of the original text and of ancient Catholic versions of Sacred Scripture published by Catholics are permitted to all.

Only to those; therefore they are not permitted to others.

To attack is not properly simply to deny, but to deny with a reason for the denial added.

Dogmas of the Catholic faith, not any opinions and views whatever of theologians.

"In the same way and under the same conditions, other versions of the Sacred Bibles, whether Latin or in another non-vernacular language, published by non-Catholics, are permitted." Section 6.

In the same way, etc.; namely any other non-vernacular versions made by non-Catholics are permitted only to students of theological or biblical matters, provided, however, that the dogmas of faith are not attacked in the prolegomena or annotations.

"All versions in the vernacular language, even those made by Catholic men, are wholly prohibited unless they have been approved by the Apostolic See, or published under the vigilance of bishops with annotations drawn from the holy Fathers of the Church and from learned and Catholic writers." Section 7.

Unless they have been, etc.; therefore vernacular versions without notes ought to be approved only by the Apostolic See; with notes they can also be approved by bishops.

"All versions of the Sacred Bibles, in whatever vernacular language, made by any non-Catholics whatever, are forbidden, and especially those which are spread by Bible Societies condemned more than once by the Roman Pontiffs, since in them the most salutary laws of the Church concerning the publication of divine books are utterly disregarded. Nevertheless these versions are permitted to those who devote themselves to theological or biblical studies, with those things being observed which have been established above." Section 8.

With those things observed; namely provided that dogmas of the Catholic faith are not attacked in the prolegomena or annotations. - E.M.

1305. **What is to be said concerning the books of apostates, heretics, schismatics, and other writers?** - "All books which before the year 1600 either the Supreme Pontiffs or Ecumenical Councils condemned, and which are not listed in the new Index, are to be held condemned in the same way as they were formerly condemned, with the exception of those which are permitted by these General Decrees." Section 1.

Before the year; for in the Index of prohibited books, almost only books condemned afterward are inserted. Examples of those condemned books are found in the same Constitution at the beginning, paragraph *Praecipue vero*.

In the same way; for the prohibition of many ceases to be in force both because of the age of the errors, about which no one any longer cares; and because of the sufficient knowledge already propagated and becoming strong concerning those same errors, whence they have ceased to harm; and because of the usefulness which is had from reading such books, from which many things can be established that pertain to the practice and doctrine of the Church. Of this kind are, for example, the books of Tertullian, Origen, etc.

With those excepted, cf. sections 5, 6, 8, 10.

"Books of apostates, heretics, schismatics, and of whatever writers, defending heresy or schism, or in any way overthrowing the very foundations of religion, are wholly prohibited." Section 2.

Books, not all, but those defending heresy or schism, not merely containing it, but defending it with proofs added.

Of whatever writers, even Catholics.

The foundations of religion, namely the motives of credibility of religion and its fundamental truths, such as Sacred Scripture, the Divinity of Jesus Christ, the Catholic Church, the Roman Pontiff, etc.

In any way, whether by false proofs, or even by ridicule or another manner; whether by writing or by images.

"Likewise prohibited are books of non-Catholics which professedly treat of religion, unless it is established that nothing is contained in them against the Catholic faith." Section 3.

Of non-Catholics, namely of those not belonging to the Catholic religion: heretics, schismatics, Jews, infidels.

Professedly, not incidentally and in passing.

Of religion, that is, of sacred matters: of the Sacred Books, of the mysteries of faith, of dogmatic or moral theology, of the rites or canons of the Church, of the cult of the Saints, etc.

Against the Catholic faith; hence books on Roman antiquities and others of that kind are not prohibited.

"Books of the same authors which do not professedly treat of religion, but only incidentally touch truths of faith, are not to be held prohibited by ecclesiastical law until they have been proscribed by special decree." Section 4.

Of the same authors, non-Catholics.

Professedly; therefore books of heretics which do not treat of religion by design, but only incidentally, although perhaps they err concerning Catholic doctrine, are not positively prohibited, and much more if they contain nothing at all concerning religion.

1306. **What is to be said concerning liturgical and prayer books?** - "In authentic editions of the Missal, Breviary, Ritual, Ceremonial of Bishops, Roman Pontifical, and other liturgical books

approved by the Apostolic See, let no one presume to change anything; if it has been done otherwise, these new editions are prohibited." Section 18.

If otherwise, namely if anything has been changed from the typical and approved editions, whether there is approval or there is not approval; if this is lacking, the book is not by that very fact prohibited.

"All litanies, besides the most ancient and common ones which are contained in Breviaries, Missals, Pontificals, and Rituals, and besides the Litanies of the Blessed Virgin which are customarily sung in the sacred House of Loreto, and the Litanies of the Most Holy Name of Jesus already approved by the Holy See, are not to be published without the revision and approval of the Ordinary." Section 19.

Are not to be published; here only the publication of those litanies is prohibited. But by force of the following paragraph, the books themselves containing them are prohibited when published without legitimate approval.

"Let no one publish books or booklets of prayers, devotion, or religious, moral, ascetical, mystical doctrine and instruction, and other things of this kind, although they may seem to conduce to fostering the piety of the Christian people, apart from the license of legitimate authority; otherwise, let them be held prohibited." Section 20.

Publish: otherwise. Therefore all books listed in this paragraph, when now to be published without authentic approval of the Ordinary, are to be held as prohibited.

1307. **What is to be said concerning obscene books?** - "Books which professedly treat, narrate, or teach lascivious or obscene matters are wholly prohibited, since account must be taken not only of faith, but also of morals, which are commonly easily corrupted by the reading of books of this kind." Section 9.

Lascivious or obscene matters; therefore the matter is not about the "loves," as they call them, on the narration of which merely erotic novels dwell.

Professedly, that is, not lightly, but by design.

Treat, that is, by disputing, defending, insinuating, or simply discoursing about matters of this kind, so that they are either the object of the whole book or the special argument of only some chapter.

Narrate, by relating deeds, histories, or fables.

Teach, by explaining, declaring, etc., the nature of lascivious things to be done.

"Books of authors whether ancient or more recent, which they call classics, if they are infected by this very stain of shamefulness, are permitted, because of elegance and propriety of speech, only to those whom the reason of office or teaching excuses; nevertheless in no way are they to be handed over or read aloud to boys or adolescents, unless they have been expurgated with diligent care." Section 10.

They are permitted, unless, however, they are listed by name in the Index.

The reason of office or teaching excuses. Therefore professors of humane letters and others can read these books insofar as this is demanded by the reason of office or teaching, namely insofar as it is therefore

necessary or useful to them. But they are in no way permitted to students unless they have been expurgated of that stain of shamefulness.

1308. **What is to be said concerning other books of special subject matter?** - "Books are condemned in which God, or the Blessed Virgin Mary, or the Saints, or the Catholic Church and its worship, or the sacraments, or the Apostolic See is disparaged. Works in which the concept of inspiration of Sacred Scripture is perverted, or its extension is too much narrowed, are subject to the same judgment of reprobation. Books also are prohibited which deliberately afflict the ecclesiastical hierarchy, or the clerical or religious state, with reproaches." Section 11.

Books of any authors whatever, whether non-Catholic or Catholic.

They disparage, namely they speak ill, although not professedly, but in grave matter.

Of the inspiration of Sacred Scripture, which, "having been written by the inspiration of the Holy Spirit, has God as its author." Vatican Council, Constitution *Dei Filius*, c. 2.

Is perverted, if, for example, the concept of inspiration were constituted in the subsequent approval of the Sacred Books by the Church; or in a certain concomitant direction of the Holy Spirit, if necessity demands; or in divine assistance for guarding against errors.

Is narrowed, namely to only some books of Sacred Scripture, not to all; or to only some part of the books, not to whole books; or to dogmas of faith and morals only, not also to the rest, to historical matters, to profane matters, to matters pertaining to the natural sciences; or only to the matters about which they treat professedly, not also to others said only incidentally.

Deliberately; and therefore not if there is only some injurious expression, but if either the whole book, or a notable part of it, or some entire chapter afflicts with reproaches the ecclesiastical hierarchy, or the clerical or religious state; not some private person, unless from that the blame is turned against the hierarchical order itself, or a part of it, or against the clerical or religious state itself.

"Let it be unlawful to publish, read, or retain books in which sortilege, divination, magic, evocation of spirits, and other superstitions of this kind are taught or commended." Section 12.

Are taught and commended; not if they merely narrate superstitious facts, or treat or discourse about them in order to disapprove them and show their malice and danger.

"Books or writings which narrate new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even under the pretext that they are private, if they are published without legitimate license of the superiors of the Church, are proscribed." Section 13.

Without legitimate, etc. All books indeed concerning sacred matters and concerning morals must be subjected to ecclesiastical censure so that they may be licitly published; but not for that reason are all prohibited if they have been published without legitimate approval, section 41; while, on the contrary, books about which this paragraph treats, when published without license of the superiors of the Church, are proscribed, and consequently can neither be read nor retained. Cf. 1306.

"Likewise prohibited are books which establish duel, suicide, or divorce as licit; which treat of Masonic sects or other societies of the same kind, and contend that they are useful and not

pernicious to the Church and civil society; and which defend errors proscribed by the Apostolic See." Section 14.

Books of whatever authors, non-Catholic or Catholic.

1309. **What is to be said concerning newspapers, sheets, and periodical booklets?** - "Newspapers, sheets, and periodical booklets which deliberately attack religion or good morals are to be held proscribed not only by natural law, but also by ecclesiastical law. Let Ordinaries, where there is need, take care opportunely to warn the faithful concerning the danger and harm of reading of this kind." Section 21.

Deliberately, that is, by design, professedly, and therefore not incidentally, not lightly, but habitually they gravely attack religion and good morals, by whomever they are written, whether by Catholics or all the more by heretics.

Are to be held proscribed; and therefore it is not licit to read them, retain them, or subscribe to them.

"Let no one of the Catholics, especially of ecclesiastical men, publish anything in newspapers, or sheets, or periodical booklets of this kind, unless a just and reasonable cause counsels it." Section 22.

Anything, whether it is an article, as it is called, or even a simple notice of some matter.

"Men from the secular clergy are prohibited from undertaking the direction of newspapers or periodical sheets without prior permission of the Ordinaries." Section 42.

To be directed; therefore the permission of the Ordinary is required only for the direction of the newspaper, not for the writing of some article, or, as it is said, for collaboration.

1310. **What is to be said concerning images and indulgences?** - "Images in whatever way printed of Our Lord Jesus Christ, of the Blessed Virgin Mary, of the Angels and Saints, or of other Servants of God, differing from the sense and decrees of the Church, are wholly forbidden. But new ones, whether they have prayers attached, or are published without them, are not to be published without the license of ecclesiastical power." Section 15.

In whatever way printed, for they can be printed in various ways.

Already printed; they are forbidden if they differ from the sense and decrees of the Church. Cf. Trent, sess. 25, *On Sacred Images*; Benedict XIV, Constitution *Sollicitudini*, Oct. 1, 1745.

Wholly forbidden; therefore they can neither be publicly exposed nor privately retained.

New, or to be printed hereafter, cannot be printed and published without the license of ecclesiastical power. Without it they were indeed published illicitly, but they are not proscribed unless they differ from the sense and decrees of the Church.

"It is forbidden to all to spread in any way apocryphal indulgences and those proscribed or revoked by the Apostolic See. Those which have already been spread are to be removed from the hands of the faithful." Section 16.

Apocryphal, namely false. Cf. true indulgences in the authentic Collections of Indulgences approved by the Sacred Congregation, *Raccolta delle Indulgenze*, etc.

Proscribed by the Apostolic See, cf. Ferraris, v. *Indulgentia*, a. 4.

"All books of indulgences, summaries, booklets, sheets, etc., in which their concessions are contained, are not to be published without the license of the competent authority." Section 17.

Of the competent authority, namely either of the Sacred Congregation of Indulgences or of the bishop, according to the norms established before the new Constitution *Officiorum ac munerum* by the Sacred Congregation of the Index, Aug. 7, 1897. Cf. E.M.

License; without it they are illicitly published, but once published they are not by that fact proscribed.

1311. **What is to be said concerning the faculty of reading and retaining prohibited books? -** "Books proscribed either by special decrees or by these General Decrees, only those will be able to read and retain who have obtained opportune faculties from the Apostolic See, or from those to whom it has delegated its place." Section 23.

By special decrees, namely those inserted in the Index of prohibited books.

By General decrees, namely those proscribed by these General Decrees.

"The Roman Pontiffs have placed the Sacred Congregation of the Index over the granting of licenses to read and retain any prohibited books whatever. Nevertheless, the Supreme Congregation of the Holy Office and the Sacred Congregation de Propaganda Fide for regions subject to its governance enjoy the same power. For the City alone, this faculty also belongs to the Master of the Sacred Apostolic Palace." Section 24.

Since those who are referred to in this paragraph enjoy ordinary power in the case, they can delegate it to others.

"Bishops and other prelates possessing quasi-episcopal jurisdiction can grant license for individual books, and only in urgent cases. But if the same have obtained from the Apostolic See a general faculty so that they may be able to impart to the faithful license of reading and retaining proscribed books, let them grant it only with selection and from a just and reasonable cause." Section 25.

Therefore those mentioned have ordinary and delegated power in the case. By ordinary faculty they can permit the reading of individual books, and in an urgent case in which recourse cannot be had to the Roman Pontiff or to another having power from him. But by delegated faculty, when they have obtained it, they can generally permit prohibited books.

With selection, that is, nevertheless not indeterminately and indefinitely for any book whatever, but with an individual, or at least specific, indication of the books made, the more pernicious ones being excluded.

From a just and reasonable cause, for example, by reason of studies, of a book to be written, etc.

"All who have obtained an apostolic faculty of reading and retaining prohibited books cannot for that reason read and retain any books whatever, or journals proscribed by local Ordinaries, unless in the apostolic indult express power has been given them of reading and retaining books condemned by any persons whatever. Let those who have obtained license of reading prohibited books also remember that they are held by a grave precept to guard books of this kind so that they do not come into the hands of others." Section 26.

Do not come; therefore they cannot give them to others.

1312. **What is to be said concerning prior approval of books?** - "All the faithful are bound to subject at least those books to prior ecclesiastical censure which regard the divine Scriptures, sacred theology, ecclesiastical history, canon law, natural theology, ethics, or other religious or moral disciplines of this kind, and generally all writings in which religion and the honesty of morals is specially concerned." Section 41.

All the faithful, namely those who print a thing or cause books to be printed, such as printers and publishers or the authors of books themselves.

All the faithful; but "if an author living in Rome wishes to print a book not in the City, but elsewhere, besides the approval of the Cardinal Vicar of the City and of the Master of the Sacred Apostolic Palace, no other is required." Section 37.

Those books, etc.; therefore those books which do not treat of religion and morals, such as, for example, literary books, books of profane history, of the mathematical sciences, etc., can be published freely.

Books, namely those which are published and spread by type or by another mode.

All writings; therefore not only books, but also booklets, journals, and flying sheets.

Specially; therefore it is not enough that there be only some allusion to religion and morals, unless they properly treat of arguments of this kind.

"Men from the secular clergy are not to publish even books which treat of merely natural arts and sciences without consulting their Ordinaries, so that they may furnish an example of an obedient mind toward them." Section 42.

Men from the secular clergy, not others.

Men from the secular clergy. "Let regulars remember that, besides the license of the bishop, they are held by decree of the sacred Council of Trent to obtain from the prelate to whom they are subject the faculty of bringing the work to light. But each concession is to be printed at the beginning or at the end of the work." Section 36. Cf. Trent, decree *On the Edition and Use of the Sacred Books*.

Not even books, etc.; therefore all, both those concerning sacred matters and morals, and those concerning merely natural matters.

What is had concerning newspapers in particular, cf. 1309.

Without consulting their Ordinaries; therefore permission is to be had from one's own Ordinary, and this is distinct from the ecclesiastical censure which the book must undergo from the Ordinary of the place in which the book is published, section 41; which censure reaches only books treating of religion and morals, section 41.

Once books have been subjected to prior ecclesiastical censure, and "the examination has been completed, if nothing seems to stand in the way of publication of the book, let the Ordinary concede to the author in writing, and entirely gratis, the license of publishing it, to be printed at the beginning or at the end of the work." Section 40.

"No book subject to ecclesiastical censure is to be printed unless at the beginning it bears the name and surname both of the author and of the publisher, and also the place and year of printing and publication. But if in some case, for just causes, the name of the author seems to need silence, let the power of permitting this belong to the Ordinary." Section 43.

"Let printers and publishers of books know that new editions of the same approved work require new approval; furthermore, that approval given to the original text does not avail for its version into another language." Section 44.

"Books condemned by the Apostolic See are to be judged prohibited everywhere among the nations, and into whatever language they may be translated." Section 45.

By the Apostolic See, not by local Ordinaries.

1313. **Who can approve books?** - "In whose power it is to approve or permit editions and versions of the Sacred Bibles is clear from those things which have been established above, section 7." Section 30.

In whose power, namely in the power of the Holy See or bishops. The aforesaid editions and versions are to be approved by the Holy See. But if annotations drawn from the holy Fathers and other Catholic writers are added to them, they can also be approved by bishops. Cf. 1304.

"Let no one dare to bring again to light books proscribed by the Apostolic See; but if for a grave and reasonable cause some singular exception in this matter seems to be admitted, this will never be done unless license of the Sacred Congregation of the Index has first been obtained, and the conditions prescribed by it have been observed." Section 31.

This will never be done, etc.; therefore it is not enough to correct books and bring them again to light without the aforesaid permission.

"Those things which in any way pertain to causes of beatifications and canonizations of the Servants of God cannot be published without the good pleasure of the Congregation set over protecting the Sacred Rites." Section 32.

In any way pertain, namely as regards procedural acts.

"The same must be said concerning Collections of Decrees of individual Roman Congregations: namely, these Collections cannot be published unless license has first been obtained and the conditions prescribed by the moderators of each Congregation have been observed." Section 33.

Concerning Collections, not concerning individual Decrees, which are customarily published by special journals, for example, by the *Acta Sanctae Sedis*.

"Vicars and Apostolic Missionaries are to observe faithfully the Decrees of the Sacred Congregation set over Propaganda Fide concerning books to be published." Section 34.

The Decrees, etc., cf. E.M.

Are to observe faithfully; but as regards the penalties inflicted in them, at present one must stand by the Constitution, section 47 ff.

"Approval of books whose censure by force of the present Decrees is not reserved to the Apostolic See or to the Roman Congregations belongs to the Ordinary of the place in which they are made public." Section 35.

In which, etc.; not where they are printed.

As regards regulars, and authors living in Rome, cf. 1312.

ON IRREGULARITY

1314. **What is irregularity?** - Irregularity is defined: a canonical impediment by which someone is directly and primarily forbidden from receiving orders and consequently from using them.

Impediment, that is, a certain inability for receiving and exercising orders with due honor and reverence. St. Thomas, supplement, q. 39, a. 4, ad 2. Therefore irregularity is not a censure. For it is not properly a penalty, but merely an impediment and inability. And if at times it is also carried by way of penalty, it is not medicinal, but merely punitive. C. *Quaerenti* 20, *De verborum significatione*; L. 341.

Canonical; for impediments which prohibit someone from orders are some by natural law, as in the mute; some by divine law, as in women; and some finally by canon law, as in the illegitimate. Now irregularities properly consist not from the former, nor from the latter, but from these. C. *Is qui* 18, *De sententia excommunicationis*, in the Sixth. From the former rather impotence and incapacity are had than impediment. Nevertheless irregularity is often taken more broadly also for inability properly so called.

By which someone is directly and primarily forbidden from receiving orders; hence irregularity is distinguished from excommunication, which directly deprives one of the communion of the faithful; from interdict, which directly deprives one of divine offices; from suspension, which directly deprives one of the functions of order.

He is forbidden from receiving, that is, only from the licit reception of orders; therefore orders conferred are valid. C. *Innotuit nobis* 3, *De eo qui furtive ordinem suscepit*.

Consequently it prohibits from using them, namely from the exercise of major orders. C. *Henricus* 2, *De clerico pugnante*; C. *Quaesitum* 17, *De temporibus ordinationum*. And indeed it would be absurd to exercise with impunity an order which someone is prohibited from receiving. *Of major orders*, because today minor orders are customarily exercised also by laypersons. L. 342. - St. Thomas, supplement, q. 39, a. 1; Suarez, *De censuris*, disp. 40, sect. 1, n. 2.

1315. **You will resolve:** 1. Irregularity of itself keeps one away from the clergy; and therefore, if it cannot effect this, it then keeps one away from the exercise of clerical ministry, namely so that the irregular person is kept away from the clergy at least insofar as he does not conduct himself as a cleric.

1316. As with other invalidating laws, so irregularity renders one incapable by the law itself and before every sentence of a judge, even if it seems to have been carried in words of the future tense, for example, "he will be irregular." But if the words require the office of a judge,

suspension rather than irregularity is understood. Likewise, whenever in canon law someone is only prohibited from the use and exercise of orders, suspension rather than irregularity is understood.

1317. "It is certain that no irregularity is incurred unless it is expressed in the law. C. *Is qui*, *De sententia excommunicationis*, in the Sixth.... But under the name of this law come only decrees of the Pontiff, or of a Council approved by the Pope, not those of others; nor does custom come under it... Hence it is inferred that for incurring irregularity an argument from similarity, nor from the greater to the less, has force, as they commonly teach." L. 345.

Therefore irregularity properly is only that which is constituted from positive law. That which is from natural law is rather a certain natural unworthiness and inability than irregularity. Nevertheless they are often used promiscuously by the doctors. Likewise there are not lacking irregularities which by the common opinion of the doctors are constituted without express law, perhaps confirmed by use and custom.

4. An irregular person, although illicitly, nevertheless validly absolves. Illicitly, because he exercises an order from which he is prohibited; validly, because to absolve is an act of jurisdiction, which irregularity does not prohibit of itself. "Irregularity in no way deprives one of those actions which do not require the exercise of order and which even laypersons can exercise, such as receiving the sacraments, singing the offices, as also conferring benefices, because these pertain to the use of jurisdiction, not of order; likewise assisting at marriage, or furnishing another with license of assisting, dispensing in vows, absolving from censures, giving the faculty of hearing confessions." L. 342.

5. "He sins gravely who in irregularity exercises an act of order or receives one, although the orders conferred on him are valid... And thus also an irregular person receiving first tonsure sins gravely." L. 342. For irregularity renders one incapable even for first tonsure. For he is prepared for orders in vain who is prohibited from orders.

6. **How many kinds of irregularity are there?** - Irregularity is twofold: one which proceeds from delict; another from some inculpable defect. Likewise one is total, which impedes every order to be received and every exercise of an order already received, as homicide and bigamy; another is partial, which prohibits only from some ministry of order, or from ascent alone to a higher order. Besides, one is temporary, which ceases of itself; another perpetual, which can be taken away only by dispensation.

Moreover, that irregularity which is total and perpetual is properly irregularity. For irregularity of itself keeps one away from the clergy. But that which is partial or temporary is only improperly irregularity, for it does not keep one away from the clergy simply. Cf. 1214. - L. 341, 1318.

1317. **Whether irregularity also deprives one of benefices?** - R. Negatively as regards a simple benefice which imports no exercise of sacred order; for then no reason of privation is present.

Affirmatively as regards a benefice to be obtained to which an office is attached that it is not licit for an irregular person to discharge. For a benefice is given on account of the office; but an irregular

person is incapable of the office, since he cannot exercise order. Therefore at least licitly he cannot receive the benefice.

At least licitly, for if it has been conferred on him, it is probable that the collation is valid, and therefore after the irregular person has begun possession of it, if he fulfills the burdens of the benefice through another, he makes the fruits his own; and even Suarez himself and St. Alphonsus, patrons of the contrary opinion as the more probable one, do not deny this. The reason is that penalties are not to be imposed unless they are clearly expressed in the law; but nowhere is it had as expressed that irregularity renders a man incapable of a benefice. Nevertheless others press the place of Trent, sess. 22, c. 4, *De reformatione*. L. 343.

But as regards a benefice already obtained before the irregularity, which requires the exercise of sacred order, if the irregularity proceeds from a defect of infirmity, there is no doubt that the benefice can be retained, if the burdens are fulfilled through another. C. *Ex parte*, *De clerico aegrotante*. But if it is from delict, the irregular person ought to be deprived of it by sentence of the judge; and although he is not deprived by the fact itself, C. *Ex litteris*, *De excessibus praelatorum*, nevertheless he is bound to seek dispensation. But if he does not seek it, or cannot obtain it, he is bound to resign the benefice. The reason is that if he cannot licitly satisfy the burdens of the benefice, neither can he licitly retain it. Yet he will be able to defer this resignation if he labors under great want and has already delegated another for fulfilling the burdens of the benefice. Thus the law is commonly interpreted. L. 342, 343.

1318. **What is to be established concerning one who doubts about an irregularity incurred?** - He is bound under grave obligation first to investigate the matter, unless perhaps grave damage could follow from the delay of inquiring. For the matter is about a grave law of the Church because of the honor and reverence owed to the sacrament of order.

Once due diligence has been used, if the doubt still persists, generally speaking, he is not to be held as irregular, whether the doubt is negative or positive, whether it is of fact or of law. C. *Is qui* 18, *De sententia excommunicationis*, in the Sixth. The reason is that odious things are to be restricted, and no one in doubt is to be despoiled of his right.

Generally speaking, because, as St. Alphonsus affirms with the common opinion that it must be held as truer, a doubt about homicide is excepted (not about mutilation); for such a case is expressly declared in the law. Nevertheless understand this if someone is certain that homicide followed, and only doubts whether by his action he was its cause. Indeed they observe that this has force only for clerics; and according to many, for priests alone, and only as regards the celebration of Mass, because the law speaks only of this, lest if perhaps afterward he is certainly known as a homicide, he be found to have celebrated with scandal of the people. CC. *Ad audientiam* 12, *Significasti* 16 and 18, *Petitio tua* 24, *De homicidio*; L. 346, 347, 371.

1319. **How is irregularity removed?** - Irregularity can be removed in four ways:

1320. Through cessation of the cause, if the irregularity is less properly and perfectly such, from a defect, for example, of age, ignorance, etc.

1321. Through baptism, if the irregularity is from delict. But baptism rather prevents irregularity than removes it. For an infidel is not irregular, since he is not subject to the law of the Church.

1322. Through dispensation. And this is the proper mode of removing irregularity. For irregularity is constituted by canon law. Therefore its removal, since it is a grace, is verified only by dispensation.

1323. Through religious profession, which takes away not every irregularity, but only one, which is from defect of birth. But this privilege conceded to religious profession is equivalent to a dispensation.

Irregularity is removed by this or a similar form: "I dispense with you concerning the irregularity, or irregularities, if there are several, into which, on account of such a cause or such causes," expressing them, "you have incurred," etc. Cf. Roman Ritual, *De sacramento poenitentiae*, etc.

A confessor can dispense in no irregularities unless he has a special faculty. A bishop can from Trent, sess. 24, c. 6, dispense in irregularities proceeding from occult delict, unless, however, it is voluntary homicide. Regulars generally can, from various privileges, dispense in the same irregularities in which bishops can dispense. The Supreme Pontiff dispenses in every irregularity of ecclesiastical law. For the external forum recourse is to be made to the Sacred Dataria; for the internal forum, to the Sacred Penitentiary. Benedict XIV, Constitution *Pastor bonus*, Apr. 13, 1744. - L. 352-355, 396, 469.

1320. **What is required for incurring irregularity from delict?** - In order that irregularity from delict be incurred, the act must be a human act:

1321. External; for this irregularity is a penalty in the external forum.

1322. Mortally evil; because it is a grave penalty, to which light fault is not congruous.

1323. Fully consummated; for odious things are to be restricted. L. 348.

But it is by no means required that the crime be public. Rather, irregularity is incurred even on account of an occult crime. Trent, sess. 24, c. *Liceat* 6; L. 349. But is knowledge of the law of the Church prohibiting required? The most common and more probable opinion affirms it. L. 350. Is knowledge of the penalty, or irregularity, also required? It is disputed; and quite probably it must be affirmed. L. 351; l. 6, n. 705.

Irregularity, however, is not had from any delict whatever, although enormous, but only from delicts constituted in law, namely from the following:

1321. From bad reception of baptism he is irregular who is baptized by a declared heretic without any necessity; for he seems to communicate in his error. C. *Ventum est* 18, caus. 1, q. 1; C. *Qui in qualibet* 10, caus. 1, q. 7. This irregularity impedes the reception of all orders and consequently their exercise.

Moreover, he is irregular who defers being baptized until danger of death, for it is a sign of weak faith; hence it is rather an irregularity from defect. C. *Si quis* un., dist. 57.

1322. From the repetition of baptism, he becomes irregular who is rebaptized, C. *Confirmandum* 65, dist. 50; an acolyte who ministers to one rebaptizing, C. *Ex litterarum* 2, *De apostatis*; and therefore also one who rebaptizes, as the common opinion holds. L. 356.

But there is need of baptism:

1. True and perfect; therefore it is not contracted if something is lacking to it, whether matter or form, or the intention of the one receiving or conferring. And therefore not even if either party has added the condition, "if I am not," or "if you are not baptized," although the one who uses the condition does not ignore that baptism was really conferred and rightly conferred; because in this way he is not really rebaptized. Nevertheless others deny this, because the condition is added in fraud of the law and therefore is held as not added. The Roman Catechism also holds this, *De sacramento baptismi*, n. 57.
2. Notorious, both the one given and the repeated one, and solemn, C. *Ex litterarum* 2, *De apostatis*; for there it is said, "If what is proposed is public." Many interpret *public* as notorious, many as solemn. Therefore the matter is doubtful as long as each has not been present.

But this irregularity prohibits only from the reception of orders; it does not prohibit from the exercise of those already received. Nevertheless others extend it also to exercise. But culpable ignorance does not excuse from it, C. *Qui bis* 107, *De consecratione*, dist. 4; otherwise if it is inculpable. - L. 556; l. 6, n. 122; Benedict XIV, instruction 84, n. 14 ff.

1323. By reason of exercise of order, a cleric becomes irregular who knowingly and solemnly exercises a sacred order which he does not have. C. *Si quis* 1; C. *Ex litteris* 2, *De clericis non ordinatis ministrantibus*.

One who has exercised an order which he does not have is irregular as regards receiving that order, and is suspended for two or three years, at the judgment of the bishop, from the exercise of the principal order which he has; and the bishop will be able to dispense in the benefice. Cited c. 2.

Therefore a cleric who is not a deacon incurs this irregularity by singing the Gospel with stole, or if one who is not a priest absolves sacramentally, etc. On the contrary, a layman exercising an act of order which he does not have does not incur irregularity. Nor does a simple priest incur irregularity by receiving confessions, because here he really exercises an act of order which he already has, although he lacks jurisdiction. Hence he sins, but does not incur irregularity. For the same reason, a deacon without delegation of the priest, outside a case of necessity, solemnly baptizing indeed sins, but does not incur irregularity. L. 359; l. 6, n. 116.

1324. From bad reception of orders, several irregularities are indeed listed by theologians and canonists. Namely, those are irregular:

1325. Who are ordained by a bishop who is excommunicated, suspended, interdicted, heretical, schismatic, or simoniacal. L. 358.

1326. Who receives order from a bishop who has renounced the episcopate as regards place and dignity. Navarrus, *Manuale Confessariorum*, 241.

1327. Who receive order while liable to censure. Cf. L., l. 6, n. 799, paragraph *Utrum*.

1328. Who after contracting marriage before consummation receives sacred order when the wife is unwilling. L. 361.

1329. Who is ordained by his own bishop in another diocese.

1330. Who is ordained furtively, namely with the bishop not knowing, not approving, and without being examined by him. L. 361.

1331. Who is ordained by leap, or before the legitimate age. Cf. L. 560.

1332. Who receives major orders without a title.

1333. Who on one and the same day receives several orders, of which one is sacred. L. 361; l. 6, nn. 796, 797; Navarrus, loc. cit.

But here canonists and theologians mix irregularity with suspension. Insofar as suspension, constituted by the ancient law, is had, it is not in force at present unless it is found renewed in the Constitution *Apostolicae Sedis* on censures. But as regards irregularity, since it is at least very doubtful, and as regards penalties in obscure matters the minimum is to be held, and as regards irregularities they ought to be certain by law, it certainly is not to be affirmed. Cf. Suarez, disp. 31, sect. 1; disp. 42, sect. 3.

Nevertheless, among the penalties against those ordained simoniacally there was formerly also inability, or suspension from hope of ascending to higher orders. Constitution of Sixtus V *Sanctum et salutare*, section 3. But this suspension from hope of ascending to higher orders is indeed not a censure, but rather an irregularity. From this irregularity, if the crime is occult, the bishop cannot dispense by force of the Constitution *Liceat* of Trent, since Sixtus V derogated from this faculty as regards the crime of simony.

1325. By reason of violation of censure, he becomes irregular who exercises a sacred order which he has while he is bound by major excommunication, or interdict, or suspension, by which he is prohibited from the exercise of orders, provided, however, that he does this knowingly and seriously and solemnly. CC. 1, 18, 20, *De sententia excommunicationis*, in the Sixth.

A priest who celebrates Mass in an interdicted place also incurs this irregularity. C. *Is qui* 18, *De sententia excommunicationis*, in the Sixth, section 1.

By the common opinion, a censured bishop or priest forcing another to celebrate before him also incurs this irregularity, from C. *Tanta* 18, *De excessibus praelatorum*, and from C. *Illud* 5, *De clerico excommunicato minore*; L. 175, 358; Suarez, disp. 12, sect. 1, n. 5 ff. Nevertheless others deny this irregularity. Diana, part 4, tr. 2, resolution 57; Suarez, disp. 34, sect. 4, n. 17.

Approved confessors having the schedule of the Sacred Penitentiary can dispense from this irregularity. Cf. this schedule.

1326. **You will resolve:** This irregularity is not incurred by one who exercises an act of major orders, but not solemnly, that is, a deacon without stole, a subdeacon without maniple; nor by one who exercises an act of minor orders, even if by office and solemnly; nor by one who preaches, or exercises an act of jurisdiction, as if a bishop excommunicates and a parish priest assists at marriage, but otherwise if he were solemnly to bless the marriage. Likewise it is not incurred by one who celebrates in a polluted church, nor by one who sings the office in choir, unless he

is the weekly canon solemnly singing *Dominus vobiscum* in choir. L. 358. Cf. Benedict XIV, Constitution *Inter praeteritos*.

1327. From unjust mutilation of a member, irregularity is had, namely if someone with grave fault mutilates either himself or another. C. 3, 4, 5, *De corpore vitiato*; Clementina *Si furiosus* un., *De homicidio*; L. 365, 379, 388.

Most commonly and more probably they say that by the name of member are understood only those parts of the body which have a proper office distinct from others, such as the hand, foot, eye. But mutilation is understood here when the aforesaid member is separated from the body. L. 365, 379.

In this irregularity on account of mutilation, bishops can well dispense, if it is occult and from delict, from the faculty of Trent, sess. 24, c. *Liceat* 6, where only irregularity on account of voluntary homicide is excepted. L. 381, *De privilegiis* 51; Suarez, disp. 44, sect. 2, n. 4.

1328. **You will resolve:** 1. One does not become irregular who in a brawl cuts off another's finger, thumb, nail, teeth, beard, or hair, because these are not properly members. L. 378, 379.

1329. Nor does one become irregular who blinded a man by depriving him only of sight, but not by extracting the eye; nor one who only weakens a member and does not cut it off, because it is not mutilation. L. 380, 382.

1330. One who cuts off something only from himself becomes irregular on account of cruelty, even if he has cut off a part of a member, for example a finger, indeed part of a finger. C. *Si quis* 4, 7; C. *Qui partem* 6, dist. 55; C. *Ex parte* 3; C. *Significavit* 4; C. *Ex parte* 5, *De corpore vitiato ordinando vel non*; L. 365, 379, 415-419.

1331. From homicide, irregularity is incurred. In this matter homicide can happen in a threefold way: justly, accidentally, unjustly.

For just homicide no irregularity is incurred, since then no fault is had. L. 382, 388, 389.

For accidental homicide likewise no irregularity is incurred, whether it happens by giving work to a licit thing or to an illicit thing. The reason is that such homicide is then not voluntary. For the laws establishing irregularity from homicide intend to punish those truly delinquent by fault of homicide. Clementina *Si furiosus* un., *De homicidio*.

Make exception first if the action is licit, but the effect is foreseen, and sufficient diligence is not used for guarding against it, namely such diligence as would excuse from grave sin. L. 366, 377, 382, 383-386. Second, if the action is illicit and commonly dangerous of death, although every diligence is used so that the foreseen death does not follow, because since the work is of itself proximately dangerous, no diligence can make it not dangerous. L. 386, 387; l. 3, n. 398.

If the homicide is unjust, whether directly willed in itself, or indirectly willed in a cause inseparably and proximately connected with homicide, irregularity is incurred. C. *Si quis* 1, *De homicidio*; Trent, sess. 14, c. 7, *De reformatione*; L. 365; l. 3, n. 628.

All who by their own action kill a man incur irregularity. C. *Si quis* 1, *De homicidio*; Trent, sess. 14, c. 7; L. 367, 368, 369. Likewise all who mandate homicide, or counsel it, truly influencing homicide, and

others in whatever way effectively and positively cooperating incur irregularity. C. *Si quis viduam* 8, dist. 50; C. *Significasti* 18, *De homicidio*; C. *Sicut* 6, same title; L. 370-376.

Irregularity contracted through homicide is removed through baptism; or rather, with the sin deleted through baptism, irregularity is not had, C. *Si quis*, dist. 50; and through dispensation of the Supreme Pontiff, L. 390. But bishops, if the homicide was voluntary, can in no way dispense in irregularity, even if it was occult. Trent, sess. 24, c. *Liceat* 6; sess. 14, c. 7; L. 391, 392.

But if the homicide was accidental, it is very probable that bishops can dispense in irregularity contracted from it when the crime was occult, since the Council in the said chapter *Liceat* denies to bishops the faculty of dispensing only if the homicide was voluntary, by distinction from accidental homicide. L. 393. Besides, they very commonly teach that bishops can dispense in irregularity from accidental homicide, even notorious, for receiving minor orders and simple benefices, because bishops could already do this by ancient law. But Trent reserved only irregularity from voluntary homicide, not from public accidental homicide. L. 393, 394, 395; *De privilegiis* 51, 52; l. 3, n. 397. As regards regular prelates, cf. L. 396. - St. Thomas, II-II, q. 64, a. 8; supplement, q. 39, a. 4.

1330. **You will resolve:** 1. "It is certain that if someone wounds another however lethally, if death does not follow, he does not incur irregularity; because none is assigned in the law on account of attempted killing, but only on account of homicide or mutilation." L. 368.

1331. One mandating or counseling, in doubt whether the mandate or counsel was or was not an efficacious cause of the homicide, does not incur irregularity, because irregularity is not incurred unless it is expressed in the law. But the laws speak of those who are certainly the cause of homicide by mandating or counseling, or who doubtfully commit homicide, not of those who only doubtfully concur in it. L. 371.

1332. "One who kills another for defense of himself with moderation of blameless defense is certainly excused from irregularity, as is clear from C. *Significasti* 18, final section, *De homicidio*, and from Clementina *Si furiosus*, same title. One who kills an unjust invader of another innocent person is also excused from irregularity... because irregularity from private homicide is not incurred except with mortal sin." L. 388. Hence irregularity is not incurred if another is justly killed for defense of liberty, honor, chastity, or temporal goods with moderation of blameless defense. L. 389. Nor does a physician become irregular if by chance the sick person dies from the medicine furnished, without grave negligence of the physician. C. *Ad aures*, *De aetate et qualitate ordinandorum*; L. 384.

1333. They become irregular: "all who excite themselves to homicide, although only one kills; all who fight in an unjust war, if someone is killed in it, even if they do not intend this, for then they incur at least the irregularity of accidental homicide; all who minister arms or money for perpetrating homicide or unjust war; all who unjustly accuse, or testify, or judge so that a man is killed; all who accompany the killer by increasing his courage." L. 374, 459.

1334. He becomes irregular who procures the abortion of a fetus animated with a rational soul; otherwise if it is not animated, or if it is doubtful whether the fetus is animated, since in this case irregularity is found expressed nowhere. C. *Maiores* 32, q. 2; L., l. 3, nn. 395, 396. - Benedict XIV, instruction 101, n. 8.

1335. **What is to be said concerning irregularity from defect?** - Since irregularity of this kind is drawn not from delict, but from defect, it makes no difference whether it arises from one's own fault or another's, committed spontaneously or from fear, before or after baptism, with knowledge or with positive ignorance of the law of the Church, or even has been contracted short of every fault. But not every defect, but only defects noted in the law, induce irregularity; and these are the following:

1336. From defect of birth, all illegitimate persons are irregular, those who are established as illegitimate, because by reason of origin they are regarded as base. Therefore exposed children are not irregular, nor illegitimate persons born in marriage, concerning whom illegitimacy is not established by law. L. 432; A.S.S., vol. 1, p. 352; C. 1 and final, *De filiis presbyterorum*; Trent, sess. 25, c. 15, *De reformatione*.

But such persons are legitimated by common law, first, through a subsequent marriage between their parents, provided these were able validly to contract marriage at the time of conception, and very probably at the time of birth. C. *Tanta*, *Qui filii sint legitimi*; L. 420-423.

Children born from a marriage void because of some occult impediment, nevertheless thought valid by at least one of the spouses, are judged legitimate. C. *Cum inter* 2, *Qui filii sint legitimi*; C. *Ex tenore*, same title. But otherwise, if both parents at the time of marriage were in bad faith. C. *Cum inhibitio* 3, section *Si quis*, *De clandestina desponsatione*. Likewise illegitimate are children born before an invalidly contracted marriage, although both parents thought it valid, because they are approved as legitimate by no law. L. 424. Children also born from a null, clandestine marriage, that is, one entered without denunciations and without license of the bishop, though before the parish priest and witnesses, are reputed illegitimate, even if the parents contracted in good faith, from the same section *Si quis* of the said c. 3. L. 425.

They are legitimated secondly through religious profession as regards orders only, not as regards prelacies. C. 1, *De filiis presbyterorum*. But from other privileges regular prelates can dispense in irregularity with their illegitimate subjects. L. 354, 426.

They are legitimated thirdly through pontifical dispensation. But if the matter is about minor orders, and about benefices not having care of souls attached, the bishop can by his own authority dispense with an illegitimate person. C. *Is qui* 1, *De filiis presbyterorum*, in the Sixth; L. 427, 428; *De privilegiis* 49; Benedict XIV, *De synodo*, l. 13, c. 24, n. 11 ff. - St. Thomas, supplement, q. 39, a. 5; q. 68; Lugo, *Responsa moralia*, l. 6, d. 2, nn. 4, 5.

1333. From defect of liberty, slaves are irregular, where servitude is still in force, unless their masters have consented to ordination. C. 1 ff., *De servis non ordinandis*; C. *Nulli* 2; C. *Si servus* 20, dist. 54. Married men are irregular unless their wives consent and vow chastity, cf. 899; curials, that is, those obliged to a secular court by an oath given, such as judges, advocates, etc., as long as they have such offices; soldiers, as long as they are held by oath; treasurers, public depositaries, and those who administer the republic; apparitors, and those who have exercised cruel and shameful things, or have ministered in a cause of blood. C. 1, 2, 3, 4, dist. 51; C. *Magnus* un., *De obligatione ad rationem ordinis*; L. 455, 456; l. 3, n. 838. - St. Thomas, supplement, q. 39, a. 3; Pichler, l. 1, t. 17, n. 4 ff.; Schmalzgrueber, l. 1, t. 17, n. 2 ff.

1334. From defect of body, irregularity is had either because it impedes fitting exercise of order, or because it brings notable indecency or horror. Title *De corpore vitiato ordinando vel non*; L. 403; St. Thomas, supplement, q. 39, a. 6.

1335. **You will resolve:** By reason of impediment of exercise, the following are irregular:

1336. The blind person who wholly lacks sight. C. final, dist. 55. But if someone is already a priest, and it is established that he cannot err, he will be able to obtain dispensation from the Supreme Pontiff. Then, however, he must use the assistance of another priest. Sacred Congregation of Rites, Apr. 12, 1823; L., l. 6, n. 390. If someone lacks sight in the right eye, he is not irregular; otherwise if in the left, unless he can read the Canon with the right eye without great deformity. If someone is not wholly blind, but so dim-sighted that he cannot read in the Missal, he is also irregular for receiving orders. But as regards exercising them, "Lugo, Palaus, etc., probably say that a priest licitly celebrates who, because of weakness of sight, recites the Mass from memory, provided he distinguishes the chalice and host sufficiently to avoid irreverence, and provided that to escape notice he has the Missal on the altar, or another book in place of it." But he needs an apostolic indult in order to celebrate a votive Mass of the Blessed Virgin or of Requiem. L., l. 6, n. 390. One who is weak in sight, so that he needs eyeglasses, or who looks obliquely, is not irregular. L. 404. Cf. Navarrus, c. 27, n. 199; Laymann, l. 1, tr. 5, c. 7, n. 2; Pirhing, l. 1, t. 20, n. 6.

1337. The deaf person who hears nothing at all with either ear, because such a priest, since he cannot hear the voice of the minister, cannot celebrate without indecency. Yet if deafness supervenes after the priesthood has been received, celebration is not forbidden to the priest; for a defect supervening in one already promoted is more easily tolerated than in one to be promoted, as was said concerning one growing dim-sighted. But one somewhat deaf, or hearing with difficulty, is by no means irregular. L. 405.

1338. The mute person who cannot speak or pronounce whole words, so that he cannot pronounce any word without omitting something, or except with great difficulty. But stammerers, or those who stutter, or those lacking teeth, are not irregular, even if they pronounce words with some difficulty, unless they bring about a cause of laughter or contempt. L. 406.

1339. The lame person who cannot go to the altar without a staff, C. *Nullus episcopus* 57, *De consecratione*, dist. 1, if he cannot support himself at the altar without a staff. The lame person who does not need a staff is by no means irregular; likewise not even one who has distorted legs, because such a defect can easily be covered by the cassock; otherwise if there were great deformity in this. But if someone is furnished with a wooden foot, he is irregular because to celebrate with a wooden foot has great indecency. But if the defect is moderate, and the indecency can be repaired in some way, celebration can be permitted by the judgment of the bishop. L. 407.

1340. One who lacks a hand, or all the fingers, or the thumb, is irregular. C. final, *De corpore vitiato*. They say the same concerning one who lacks the index finger, or part of the thumb or index finger, or who has them so weak that he cannot elevate or break the host. Otherwise if someone lacks the nail of the thumb or index finger, as is said in the said final chapter. But if someone has already been ordained and has the thumb impeded, in a case of necessity he

could probably minister the eucharist with the later fingers. If someone lacks the three later fingers, he is also irregular. But if he lacks only one lesser finger, he is not irregular, and the same if he lacks two. Nor likewise is one irregular who has six fingers, provided the sixth finger does not impede the use of the others. L. 408.

1341. No disease induces irregularity unless it either impedes the exercise of order, or brings notable indecency and scandal. Hence one is irregular who suffers from paralysis or cough in such a way that because of trembling of the hands there is danger of spilling the chalice or casting out the Eucharist. Likewise an abstemious man is irregular who cannot take wine except with danger of vomiting. L. 409. Cf. A.S.S., vol. 7, p. 80 ff.

But by reason of deformity the following are irregular:

1. Those to whom some member is lacking, namely those who lack a nose, or have it excessively deformed; those whose eye has been torn out, unless it can be repaired by a glass eye; those who lack ears, unless such a defect can be concealed by hair.
2. Lepers, C. *Tua nos*, *De clerico aegrotante*, unless scandal is absent, for example, if they celebrate in a private place; those who have lips corroded or cut off, or a very stained face.
3. Monstrous persons, namely those who have an enormous hump; pygmies or dwarfs, so short in stature that they move to laughter, or cannot extend the arms sufficiently for the ministry of the altar; giants, who by very great stature excite a certain terror; Ethiopians, who would beget horror if they habitually exercised ministry among us; hermaphrodites, although the male sex prevails; eunuchs, who culpably, by themselves or through others, have had their testicles amputated, even from zeal for chastity. But those who are of darkish or reddish color are not irregular. - C. 2-5, this title; L. 410-412, 416.
4. Note: If some one of the aforesaid defects of body supervenes after orders have already been received, the priest is not impeded from acts of that order which he can exercise without incongruity and indecency, so that a blind or lame priest can well receive confessions, sing the Gospel, etc. C. 7, *De clerico aegrotante*. But if such a defect comes before orders, it absolutely induces irregularity, not only for that order whose exercise it impedes, but for all others. The reason is that, since all orders look to the priesthood, one excluded from the priesthood is judged also repelled from all orders. L. 413. Nevertheless others opine otherwise. And thus minor orders, indeed even the subdiaconate and diaconate, could be conferred on an abstemious man, so that he can, for example, obtain a benefice and relieve his own poverty. Navarrus, *Manuale*, c. 27, n. 204.
5. In this irregularity proceeding from defect, the Pope alone can dispense. Bishops can, in doubt, declare and judge whether the defect of body notably impedes the exercise of order, or whether it brings great indecency. Regular prelates can likewise judge concerning this; indeed, "they can also well dispense in irregularity of this kind." L. 414. Cf. vol. 1, n. 278; C. 2, this title.
6. From defect of age, irregularity for a time is customarily listed. But this is not properly irregularity, since without dispensation it ceases by the fact itself. Cf. 1324; L. 434.

7. From defect of mind, irregularity is had; namely from defect of the use of reason, of knowledge, and of faith.

From defect of the use of reason, the following are irregular:

1. The insane. Such a defect of the soul either arises in a man after ordination or before. If after, once the defect has ceased for a long time, by judgment of the Ordinary, or of the prelate if he is a regular, he will be able again to exercise the order received. If before, it must be seen whether the defect depends on a permanent and habitual cause, for example, on injury of the organs; and then he will not be able to be promoted further to orders, because those laboring in such a way easily relapse into the same disease, C. *Maritum* 2, dist. 33; or whether it depends on a transitory and accidental cause, for example, on fever or a wound, and then indeed he will be able to be promoted. L. 398.
2. Epileptics and demoniacs. If epilepsy precedes ordination, they are perpetually irregular; nevertheless, if someone was affected by this disease before puberty and afterward is perfectly freed, with long experience added, he is not judged irregular. But if one already ordained labors under such a disease, although he is not wholly free, provided he rarely suffers an attack of the disease and is not accustomed suddenly to fall to the ground, and to break out into loud cries and vomit foams, he will be able to celebrate privately, with a fasting priest joined to him, who in the case of an attack of the disease may complete the Mass. And if he is wholly free, then by judgment of the bishop he will be able to return altogether to the exercise of order. C. *Communiter* 3; C. *Clerici* 4, dist. 33; L. 399.

In this irregularity, while the defect endures, not even the Pope can dispense, because those laboring under it are incapable by divine law. L. 400. - St. Thomas, supplement, q. 39, a. 2.

1340. From defect of knowledge, the unlettered are altogether irregular. "Those who are so rude that they are ignorant even of the first rudiments of grammar, so that they do not know how to perform those things which pertain to the exercise of order, for which knowledge of the Latin language is certainly required, are themselves altogether irregular, and sin gravely both by receiving orders and by exercising them... C. *Illiteratos*, dist. 36.... This irregularity, once the cause of ignorance has been removed, of itself is removed without dispensation." L., l. 6, n. 791; Trent, sess. 23, c. 4, *De reformatione*; C. *Illiteratos* 1, dist. 36.

1341. From defect of faith, neophytes, or those recently converted to the faith, contract irregularity; they need apostolic dispensation. But it is disputed by the doctors how long one converted to the faith is called a neophyte, whether up to one year, two, or ten. Benedict XIV, *De synodo*, l. 12, c. 1, n. 6. "Toletus thinks," says St. Alphonsus, n. 402, "that after ten years a neophyte is no longer irregular; indeed before then, if the bishop judges that he has advanced well in morals." Busembaum agrees there.

Those baptized in infancy are not neophytes, and therefore not irregular; nor are the children of Jews and infidels irregular. Benedict XIV, *De synodo*, l. 12, c. 1, nn. 4, 5.

Heretics indeed are irregular; nevertheless, if the heresy is occult, there is a question among the doctors. Lugo, *De fide*, disp. 23, sect. 4, n. 124. But the children of heretics are irregular up to the

second degree through the paternal line, up to the first through the maternal line. Yet if the father has abjured heresy, the children are freed from irregularity. Benedict XIV, *De synodo*, l. 13, c. 24, n. 21; C. 2, 15, *De haereticis*, in the Sixth; Holy Office, Dec. 4, 1890; A.S.S., vol. 25, p. 579; Collection of the Sacred Congregation de Propaganda Fide, n. 1696; E.M.

1342. From defect of sacrament, namely from bigamy, irregularity arises, as is clear from the whole title *De bigamis*. And this has been inferred from that saying of the Apostle, 1 Tim. 3: "A bishop ought to be the husband of one wife." From defect of sacrament, because one who has married two wives cannot aptly signify the union of Christ with the Church, his one spouse. L. 435, 436.

1343. Bigamy is threefold: true, interpretative, similitudinary.

True bigamy is when someone successively contracted true marriage with two women. C. *Praecipimus*; C. *Dubium*, *De bigamis*. But each marriage must be valid and consummated. L. 435, 436.

Interpretative bigamy is had when someone, by interpretation of law or by a certain fiction, is judged to have had two wives, although in reality he did not. This bigamy happens in three ways.

First, when someone marries and knows a widow already known by her prior husband, even if he marries invalidly, C. *A nobis* final, *De bigamis*; C. *Debitum*, same title; L. 437; likewise when someone marries and knows a woman corrupted by another, C. final, dist. 51; C. *Curandum*, dist. 34; and according to the more common opinion, even if he contracts invalidly because of some diriment impediment. But otherwise if someone were to marry a woman previously corrupted by himself. L. 438, 439, 440.

Second, when someone knows his wife after she has committed adultery. C. *Si cuius* 11; C. *Si laici* 12, dist. 34; L. 441, 442, 443.

Third, when someone contracts and consummates two marriages, one valid, the other invalid, from C. *Nuper* 4, *De bigamis*; likewise when someone contracts two marriages, both invalid, and consummates them with marital affection. L. 444, 445, 446, 447.

Similitudinary bigamy is contracted from an attempted marriage, although invalid, with a corrupted woman or a virgin after a solemn vow emitted in an approved religion, or after reception of sacred order. For persons marrying in this way are similar to those contracting a double marriage, insofar as after spiritual marriage with Christ has been entered, they, withdrawing from him, attempt to contract marriage, provided such marriage is consummated. But a layman who marries a professed nun is not irregular, because the laws speak only of one contracting after his own vow. L. 448, 449. - Suarez, disp. 49; Sanchez, *De matrimonio*, l. 7, disp. 85; Schmalzgrueber, l. 1, t. 21, n. 1 ff.; St. Thomas, supplement, q. 66.

1344. True bigamy is not removed through baptism, nor through religious profession. C. *Deinde* 3, dist. 26; C. *Si quis viduam* 13, dist. 24. The Supreme Pontiff can dispense in irregularity from true and interpretative bigamy. L. 450. A bishop cannot dispense in true and interpretative bigamy for receiving sacred orders, nor for ministering in them, nor for receiving benefices annexed to them. L. 451. And more truly, he cannot dispense even for receiving minor orders and simple benefices. L. 452.

But in similitudinary bigamy from occult delict, and from double marriage, one spiritual and the other carnal, bishops can well dispense even for receiving and ministering in sacred orders. C. 4, *De clerico coniugato*; C. *Qui clerici vel voventes*; L. 452, *De privilegiis* 50. As regards regular prelates, cf. *Compendium privilegiorum Societatis Iesu*, v. *Dispensatio*. - L. 453; St. Thomas, Quodl. 4, a. 13; supplement, q. 66, a. 4.

1345. From defect of mildness, the following are irregular:

1346. One who kills or mutilates in a just offensive war; but not if others kill, nor one who kills in a just defensive war, nor one who exhorts to killing even if the war is offensive, provided it is just. C. *Petitio tua*; C. *Dilectus*; C. *Significasti*, *De homicidio*; Benedict XIV, note 101; L. 457-460; La-Croix, 528.

1347. In a just judgment, those become irregular who cooperate actively, efficaciously, and proximately toward death or mutilation by an action ordered to this by its nature. Clementina *Si furiosus*, *De homicidio*; C. *Clericis*; C. *Sententiam*, *Ne clerici vel monachi*; C. *Ex litteris*, *De excessibus praelatorum*. Therefore judges, advocates or procurators acting against the defendant, lictors, executioners, voluntary witnesses, but not compelled ones, accusers or denouncers become irregular. Yet otherwise if they accuse the defendant only so that they may guard against their own damage, or it may be repaired to them, after a protestation has been made that they do not will a penalty of blood, C. *Praelatis*, *De homicidio*, in the Sixth, in their own cause or even in the cause of relatives up to the fourth degree; or unless the cause is that of one's own Church; or if damages are to be inflicted on others in the future in such a way that they cannot be impeded by another way. L. 461-468.

1348. Clerics constituted in sacred orders, or monks, are also irregular from defect of mildness when they heal with incision and cautery, since this is expressly forbidden to them under penalty of irregularity, C. *Sententiam*, *Ne clerici vel monachi*, if death follows from such incision or cautery. Nevertheless, if another expert is absent, then a cleric or monk can well use incision or cautery without sin and consequently without danger of irregularity. L. 384, 385, 389. - St. Thomas, supplement, q. 39, a. 4.

1349. Bishops cannot dispense from irregularity from defect of mildness, but dispensation must be sought from the Supreme Pontiff, although the irregularity is occult. L. 469. "But regular prelates can well dispense with their subjects in this irregularity." L. 469.

1350. From defect of good reputation, all infamous persons are irregular, C. *Infames* 17, caus. 6, q. 1, whether the infamy is of fact or of law.

Infamy of fact is had in two ways. It is had first through the confession of the accused in judgment, or through a sentence of the judge at least declaring a crime bringing infamy among honest and upright men, even though in the law no infamy is expressly noted. Secondly, infamy of fact is merely of fact, or popular, and it is likewise from any crime and condition of the person whatever, darkening and rendering him base in the common estimation of men, even without any judicial act.

Infamy of law is also had in two ways. It is had first through a sentence of the judge inflicting the note of infamy. It is had secondly without a sentence of the judge, through the law itself by which the note of infamy is inflicted; namely, from a crime or from the condition of the person noted in the law

as staining and infaming. Infamy of fact properly renders one unworthy; infamy of law properly renders one irregular.

This infamy is had first through a qualified, evident, and public delict, or at least one so notorious that it cannot be hidden by any evasion. *Qualified*, that is, one to which infamy is annexed by the law. But the crimes to which by law infamy is annexed are homicide, perjury committed in judgment, heresy, simony, sodomy, the crime of lese-majesty, adultery, betrayal, robbery, procuring prostitution, the practice of usuries, invasion of cardinals or bishops, abduction of women or cooperation in it, duel, preparation of arms against parents, the exercise of actors with shameful representations in such a way that it does not occur without mortal sin; likewise not the craft of butcher, executioner, lictor, etc., since these offices can be exercised well without sin; and other things which by law induce infamy. Cf. La-Croix, 562 ff.; Salmanticenses, c. 8, n. 78 ff.; Pichler, l. 1, tit. 11, n. 21; Trent, sess. 24, c. 6, *De reformatione matrimonii*; sess. 25, c. 19, *De reformatione*; canon 6, q. 1, c. 17.

Secondly, this irregularity can be incurred because of another's infamy, as the children incur it of those who have been condemned on account of the delict of lese-majesty, children born from a prostitute, children of heretics, and also grandsons descending from them through the male line, provided, however, it is notorious that the parents were heretics and died in heresy. But in order that all these incur irregularity, it is necessary that they were born after the delict. Sanchez, l. 2, c. 27, n. 14. Benedict XIV, *De synodo*, l. 13, c. 24, n. 21, reports the Constitution, c. *In quibusdam*, *De poenis*, in which children of a patron killing the rector of a Church become irregular up to the fourth generation, beyond the loss of the right of patronage for all. But this has force only for children born after the crime was committed by the father. - Lugo, *De fide*, disp. 23, sect. 4; Bizzarri, p. 470 ff.

1348. Infamy merely of fact is removed either through baptism, or through notorious amendment, or even through change of place. Infamy of fact from sentence of a judge is removed either through dispensation, or through another sentence by which reputation is restored to the guilty party. Infamy of law, which properly is irregularity, is removed only through dispensation.

The bishop cannot dispense so that one infamous by infamy of fact may ascend to sacred orders; nevertheless he can dispense so that he may minister in those already received, if the crimes are less than adultery and the guilty party has done penance.

Irregularity on account of the crime of parents, or on account of an infamous office, is removed through entrance into religion. Regulars also can, from privileges of Pius IV and St. Pius V, dispense in this irregularity with their subjects. - L. 352, 362-364, 454; Suarez, disp. 48; Sacred Congregation of the Council, Aug. 9, 1890; Holy Office, July 11, 1884; A.S.S., vol. 23, p. 619 ff., 700.

ON INDULGENCES

1349. **What is an indulgence?** - "Indulgence usually signifies remission and facility, or, so to speak, condescension, in the sacred Scriptures and other authors..." Bellarmine, *De indulgentiis*, l. 1, c. 1. Hence indulgence, taken theologically, is defined: the remission of temporal punishment due to God for sins remitted as to fault, conceded by a legitimate minister outside the sacrament of penance, through application of the satisfactions of Christ and the Saints.

Remission of temporal punishment; for remission of eternal punishment together with remission of mortal fault is not obtained except through the sacrament of penance, or through charity and perfect contrition with the vow of the sacrament. But once the fault and eternal punishment have been remitted, temporal punishment also due to sin is not always remitted. St. Thomas, III, q. 80, a. 4. Moreover, this temporal punishment is that which is afterward remitted in this life through satisfactory works and through indulgence; otherwise it will have to be paid after this life in Purgatory.

The same must be said with proportionate reason concerning venial sin, to which only temporal punishment is due. St. Thomas, loc. cit. Its fault is remitted by charity and other pious acts, by which temporal punishment is also remitted; but again this is not always wholly remitted, whence it must be remitted in this life either through other satisfactory works or through indulgence; otherwise after this life it also will have to be paid in Purgatory. Trent, sess. 6, c. 30; sess. 14, c. 5, 8, 9; canons 12, 15; St. Thomas, IV Sent., dist. 16, q. 2, a. 2, q. 4; dist. 17, q. 2, a. 5, q. 2; supplement, q. 15, a. 3.

Therefore indulgence is neither the remission of the debt of fault, Benedict XIV, *De synodo*, l. 13, c. 18, n. 7; Suarez, *De poenitentia*, disp. 50, sect. 1, n. 14, nor is it the remission of the debt of eternal punishment; but it is only the remission of the debt of temporal punishment still due to sin. *Of temporal punishment*, namely that to be inflicted by God in Purgatory, and therefore it is remission before God. By no means, however, is it a mere remission either of the penance imposed by the confessor or to be imposed on the penitent, or of canonical penance which the Church formerly inflicted. Then indulgence would not be most salutary to us. Trent, sess. 25, decree *De indulgentiis*.

"This opinion," says St. Thomas, IV Sent., dist. 20, q. 1, a. 3, q. 1, "does not seem true, first because it is expressly against the privilege given to Peter, that what he remitted on earth would be remitted in heaven; whence the remission which is made as regards the forum of the Church also has force as regards the forum of God. And besides, the Church, granting or giving indulgences of this kind, would damage more than help, because it would remit to graver punishments, namely those of Purgatory, by absolving from enjoined penances."

But although indulgence is the remission of temporal punishment, and under this head frees us from other satisfactory works, nevertheless for this reason we cannot absolutely neglect these; since they serve at the same time both for satisfying for committed sins and for guarding against sins in the future. St. Thomas, Quodl. 2, a. 16, ad 3.

This remission of temporal punishment is made through the application of the satisfactions of Christ and the Saints, by force of the communion of saints which is present in the Church, and of the power by which one can satisfy for another. "The work of one," says St. Thomas, Quodl. 2, a. 16, "can be satisfactory for another, to whom it is referred by the intention of the one doing it. But Christ poured out his blood for his Church, and did and sustained many other things, the valuation of which is of infinite worth because of the dignity of the person... likewise also all the other Saints had the intention, in those things which they suffered and did for God, that this would be for the utility not only of themselves, but also of the whole Church." Cf. *Contra Gentiles*, l. 3, c. 158, n. 4.

Moreover, the satisfactions of the infinite price of Jesus Christ, to which are added the satisfactions of the Blessed Virgin and also the superabundant satisfactions of the Saints, constitute the treasury of

the Church, from which we participate through indulgences. Extravagant *Unigenitus* 2, *De poenitentia et remissionibus*.

Superabundant: "And therefore," says St. Thomas, IV Sent., dist. 20, q. 1, a. 3, q. 1, "it must be said that they [indulgences] have force both as regards the forum of the Church and as regards the judgment of God, for remission of punishment remaining after contrition and absolution and confession, whether it has been enjoined or not. But the reason why they can have force is the unity of the mystical body, in which many have supererogated by works of penance beyond the measure of their debts; and many have also patiently sustained unjust tribulations, by which a multitude of punishments could be expiated, if they were owed to them. The supply of their merits is so great that it exceeds every punishment owed by those now living, and especially because of the merit of Christ, which although it works in the sacraments, nevertheless its efficacy is not included in the sacraments, but by its infinity exceeds the efficacy of the sacraments.

"But it was said above, a. 2, q. 3, that one can satisfy for another. The Saints, however, in whom a superabundance of works of satisfaction is found, did not do works of this kind determinately for that person who needs remission; otherwise he would obtain remission without any indulgence. But they did them commonly for the whole Church, as the Apostle says to the Colossians 1 that he fills up what is lacking to the Passion of Christ in his body for the Church to which he writes. And thus the aforesaid merits are common to the whole Church. But those things which are common to some multitude are distributed to individuals of the multitude according to the judgment of him who presides over the multitude. Hence just as someone would obtain remission of punishment if another had satisfied for him, so also if the satisfaction of another is distributed to him by one who can do so." Cf. Quodl. 2, a. 16; supplement, q. 25; L., l. 6, n. 531; E.M.

1350. **Whether the Church has power of conceding indulgences?** - R. Affirmatively, and it is of faith. Trent, sess. 25, decree *De indulgentiis*; Pius IV, Bull *Iniunctum nobis*, Nov. 18, 1564.

But indulgences cannot be conceded without cause, neither licitly nor validly. The reason is that prelates of the Church are only delegates of Christ for dispensing the treasury of the Church. L., l. 6, n. 532. Now "whatever cause is present which turns to the utility of the Church and the honor of God is a sufficient reason for bestowing indulgences." St. Thomas, IV Sent., dist. 20, q. 1, a. 3, q. 2.

The Pope can concede indulgences "principally; others insofar as they receive power from him, either ordinary or committed or delegated." St. Thomas, Quodl. 2, a. 16; Suarez, *De poenitentia*, disp. 53. The Supreme Pontiff can delegate this faculty both to bishops and to simple priests. Indeed, as St. Thomas says, Quodl. 2, a. 16, ad 2: "An indulgence does not extend to remission of fault, because it is not sacramental; hence it does not follow order, but jurisdiction. For even one who is not a priest can make an indulgence, if it has been committed to him."

Hence: 1. The application of indulgences is made outside the sacrament. 2. A bishop-elect and canonically instituted, although not yet consecrated, can concede indulgences; by no means, however, a titular bishop, or coadjutor, or dimissionary. Sacred Congregation of Indulgences, Jan. 12, 1878, to the fourth. 3. Personal indulgences conceded by a bishop can be acquired only by diocesans, since no one can be bound or absolved by a judge not his own. C. *Quod autem* 4, *De poenitentia et remissionibus*. But a bishop can concede indulgences to his subjects staying outside his diocese, because he has personal jurisdiction over them. - St. Thomas, supplement, q. 26; L., l. 6, nn. 532, 533.

1351. **Who in particular can concede indulgences?** - 1. The Supreme Pontiff can concede any indulgences whatever for the whole Catholic world, for the living and for the dead. A General Council also has this faculty together with the Supreme Pontiff. But a Provincial Council does not have this power. St. Thomas, Quodl. 2, a. 16.

1352. Bishops can concede a year of indulgence on the day of dedication or consecration of a Church, and forty days at other times; and these indulgences are not applicable to the dead. C. *Cum ex eo* 14, *De poenitentia et remissionibus*. A bishop cannot concede indulgences to the faithful of another diocese. Nevertheless travelers can gain local indulgences by visiting, for example, the Church or oratory to which the indulgence has been conceded. But a successor bishop cannot add another forty days of indulgences to the same object or act of piety. Nor indeed can bishops concede forty days of indulgences to individual parts of some pious work, or to individual words of some prayer. Sacred Congregation of Indulgences, Jan. 12, 1878. Archbishops can concede the same indulgences as bishops, both in their own dioceses and in those of their own province. C. *Nostro* 15, *De poenitentia et remissionibus*. Besides, bishops have the faculty of giving a blessing with plenary indulgence in the article of death, and of delegating this faculty to others. Benedict XIV, Constitution *Pia mater*. For this blessing the rite prescribed in the Roman Ritual is to be observed.

1353. "A bishop in the regions of infidels, although auxiliary of the Ordinary of some diocese, cannot concede an indulgence of forty days, as a diocesan can." Sacred Congregation of Indulgences, Jan. 12, 1878.

1354. Nuncios and Apostolic Legates can, by force of the concessions which are made to them by the Supreme Pontiff, concede indulgences in the places of their own Nunciature or Legation for some pious work, of one hundred or three hundred days, provided they do not reach a year. They can concede to a Church or Chapel indulgences of seven years and seven quarantines for all the faithful who have received the sacraments of penance and Eucharist, and who have visited the aforesaid sanctuaries and prayed there according to the intention of the Supreme Pontiff.

1355. Cardinals can concede indulgences of one hundred days in their own titular Churches, when they assist at sacred functions on feast days. From at least the tacit consent of the Supreme Pontiff, the Cardinal Major Penitentiary can concede at Rome one hundred days of indulgences.

1356. Apostolic Vicars, Vicars General, capitular Vicars, Abbots, Generals, Provincials of religious orders, parish priests, and confessors can concede no indulgence without a special faculty of the Holy See. C. *Accedentibus* 12, *De excessibus praelatorum*; Sacred Congregation de Propaganda Fide, Aug. 24, 1852. Cf. Suarez, disp. 55, sect. 5, n. 2; St. Thomas, supplement, q. 26; La-Croix, 1317 ff.; E.M.

1357. Note: Those who obtain general concessions of indulgences, general and not personal, for the recitation, for example, of prayers, etc., must, under penalty of nullity, deliver a copy of the same concessions to the Secretary of the Sacred Congregation of Indulgences. The same Sacred Congregation, Jan. 28, 1756; Apr. 14, 1856; Trent, sess. 21, c. 9, *De reformatione*.

1358. **What do the words *in the form accustomed by the Church* signify in concessions of indulgences?** - The words *in the form accustomed by the Church*, which are used in concessions or

indults, signify nothing else except that indulgences are conceded to the faithful who are truly penitent, or truly contrite. Lavorius, tract *De iubilaeo et indulgentiis*, part 2, c. 14; Theodorus a Spiritu Sancto, p. 284.

Nor indeed do they signify that some special formula is to be used in the blessing of pious objects so that indulgences may be applied to them. For this the simple sign of the cross suffices, except for the Rosaries of the Fathers Preachers and Servites, for which the prescribed formula is required. Sacred Congregation of Indulgences, Apr. 11, 1840; Jan. 7, 1843; Feb. 29, 1864.

Several objects can be blessed at the same time, and indulgences can be applied to them. Sacred Congregation of Indulgences, Mar. 12, 1855. Several indulgences can be applied to the same object. And thus apostolic indulgences, those of the Fathers Preachers, Crucigers, and St. Bridget can be applied to the same chaplet. Nevertheless, to gain them the enjoined repeatable works must be renewed. Sacred Congregation of Indulgences, Feb. 29, 1820.

Generally, indulgences can be applied to any solid and durable things, but by no means to fragile things. Sacred Congregation of Indulgences, Jan. 24, 1846. In particular, chaplets or rosaries of polished steel (*acciaio polimentato*), of iron, tin, lead, and of solid and compact glass can be blessed. Sacred Congregation of Indulgences, Feb. 29, 1820; Mar. 22, 1839.

But whether someone can gain the same indulgences several times in a day by repeating the enjoined works several times must be defined from another clause of the concession or indult, *as often as*. If the concession or indult determines nothing, one must stand by the interpretation and common practice of the Church. And thus indulgences of Stations, or of visiting a Church, cannot be obtained several times on the same day. On the contrary, indulgences of the Rosary, of acts of faith, hope, charity, etc., can be obtained several times. - E.M.

1354. **To whom can indulgences be applied?** - Since the living are subject to the authority of the Church, the Church directly remits temporal punishments to them through indulgences; and consequently indulgences are said to be conceded by way of payment and absolution, namely by paying those punishments through application of the satisfactions of Christ and the Saints. St. Thomas, IV Sent., dist. 20, q. 1, a. 3, q. 1, ad 2.

Indulgences can also be applied to the dead dwelling in Purgatory, and are applied to them by way of suffrage, since the Church no longer has jurisdiction over souls who are detained in Purgatory. *By way of suffrage*, namely by offering to God a part of the satisfactions of Christ and the Saints which corresponds to the indulgence conceded, asking God that he will console the souls of purgatory by remitting to them as much punishment as corresponds to the indulgence obtained. But the real effect of such an indulgence cannot be infallibly affirmed, namely whether it is applied totally and to such a soul. For God has made no formal promise of this matter. But, with attention to the communion of Saints, it can be very piously believed and hoped. Sacred Congregation of Indulgences, July 28, 1840. Hence it is very useful to apply to the dead the greatest number of indulgences we can.

Therefore "although the effect of indulgences for the living is infallible, nevertheless it is not infallible for the dead, since no promise is present for them; hence God accepts them only according to his good pleasure." L., l. 6, n. 534. And this is confirmed from the use and practice of the Church of celebrating sacred rites for several years and for the same souls, for example anniversaries, even at

privileged altars, or those to which the privilege of a plenary indulgence adheres. But that practice would be empty if it were established with infallible certainty that at once, by the first sacred rite applied to them, they would be liberated.

All and singular indulgences which are listed in the Collection of prayers, etc., commonly called *Raccolta di orazioni*, etc., are applicable also to the faithful departed. Sacred Congregation of Indulgences, Sept. 30, 1852. - St. Thomas, supplement, q. 27, a. 4; q. 71; Lugo, disp. 27, n. 58; La-Croix, 1336; Billuart, appendix, art. 6; E.M.

1355. **How many kinds of indulgence are there?** - One indulgence is plenary, another partial. Plenary is that by which the whole temporal punishment due to sins is remitted. Partial is that by which some certain quantity of the aforesaid punishment is remitted. St. Thomas, Quodl. 2, a. 16. Moreover a partial indulgence, for example of forty days or of one year, does not import remission of the punishment of Purgatory of forty days or one year, but only remission of that punishment of Purgatory which someone would once have obtained before God through canonical penance of forty days or of one year. But how great the remission of punishment of Purgatory is which corresponds to the aforesaid canonical penance is a matter unknown to us, and is reserved to divine mercy. - Benedict XIV, *De synodo*, l. 13, c. 17; St. Thomas, supplement, q. 28; L., l. 6, nn. 530, 535.

Besides, one indulgence is local, another personal, another real. Local is that which is affixed to a determinate place, for example, to a determinate church, a determinate chapel and altar, a statue or image placed in some sanctuary. Personal, more strictly, is that which is conceded to some person or persons, without being conceded to all the faithful. Less strictly, however, it is that which, independently of a determinate place or of a determinate object, is conceded to the faithful because of some act of piety. Finally, real is that which is attached to portable objects or things of devotion, for example, to a crucifix, medal, rosary, small statue, etc.

This real indulgence is regularly also personal, since regularly only the owners of these things, to whom the aforesaid things were first handed over, can gain the indulgences. And if the same things are lent to others so that they may gain indulgences, or given to them, the indulgences are lost. Sacred Congregation of Indulgences, Feb. 6, 1657; Feb. 3, 1745. Blessed objects can neither be sold nor exchanged; otherwise the indulgences are lost. Sacred Congregation of Indulgences, June 4, 1721; Dec. 4, 1722. Indeed, if someone buys them so that afterward he may distribute them blessed, he can neither ask back their price, nor anything even under the title of alms, without the indulgences being lost. Sacred Congregation of Indulgences, Feb. 22, 1847; Jan. 31, 1837; July 16, 1887. But real indulgences of this kind endure as long as the object is at least not morally destroyed; and thus if a rosary is repaired because some beads have been lost, the indulgences are not for that reason lost. Sacred Congregation of Indulgences, Jan. 10, 1839.

Moreover one indulgence is perpetual, another temporary. The former endures until it is revoked; the latter endures only for a determinate time, for example, three, five, seven years. But indulgences conceded at the good pleasure of the Roman Pontiff or of the Apostolic See are judged perpetual, because they are referred not to the person but to the dignity. Rule 16 of law, in the Sixth.

Finally, one indulgence is only for the living, another only for the dead, another for the living with the faculty of applying it to the dead. This indulgence conceded for the living and also applicable to the

dead does not signify that someone can gain the indulgence twice, for himself and for the dead, but only that he can gain it according to his own choice either for himself or for the dead. Sacred Congregation of Indulgences, Jan. 15, 1839. Therefore in order that an indulgence can really be applied to the dead it is required: 1. that it be conceded in the Pontifical indult as applicable to the dead; 2. that there be the intention of making such application. Suarez, disp. 53, sect. 14. But it can be applied either generally to all souls dwelling in Purgatory, or in particular to some or to only one.

1356. **Whether intention is prerequired for gaining indulgences?** - R. Affirmatively, for an indulgence is a grace, which is made to those willing to enjoy it; and therefore certain works to be fulfilled are always prescribed. But it is not necessary that this intention be actual; rather virtual intention suffices, namely one which, once had and not revoked, moves us to fulfill the prescribed works.

But whether a merely habitual intention also suffices, that is, one once had and not retracted, without its moving us to fulfill the prescribed works, is disputed. Grave doctors affirm, because indulgence is conceded by the Church by way of payment for the work imposed. Therefore once this is furnished, the power of the keys of the Church pays the punishment. Cf. Schmalzgrueber, l. 5, t. 38, n. 133.

In the book of indulgences, *La Raccolta,* p. XII, it is said: "it is necessary to have at least in general the intention of gaining indulgences." Therefore it suffices if in the morning someone forms the intention of gaining, during the day, all indulgences which may be annexed to pious works that he is going to do. Nor indeed is it necessary to know determinately what these indulgences are, and whether they really exist. - Laymann, l. 5, tr. 7, c. 6, n. 5; Diana, tom. 4, res. 18; Billuart, appendix *De indulgentiis*, art. 5; Lugo, *De poenitentia*, disp. 27, n. 80.

1357. **Whether, in order to gain indulgences, it is required that one be in the state of grace?** - R. Affirmatively. "Punishment can be remitted to no one unless fault has already been remitted to him." St. Thomas, IV Sent., dist. 20, q. 1, a. 5, q. 1; L., l. 6, nn. 533, 534. Besides, indulgence depends on the intention of the one conceding. Moreover, indulgence is conceded only to the contrite and confessed. St. Thomas, supplement, q. 27, a. 1.

Nevertheless, if a plenary indulgence requires several works of piety, it is enough that the last be completed in the state of grace. *Raccolta,* p. XII; L., loc. cit. If, when confession is prescribed, someone falls into grave sin after confession, an act of contrition suffices, and a new confession is required only in a Jubilee. Sacred Congregation of Indulgences, Mar. 15, 1852.

1358. **Whether one who is in the state of mortal sin can at least gain indulgences for the souls of Purgatory?** - The Sacred Congregation of Indulgences responded, Feb. 22, 1847: "Let him consult approved authors." But approved authors, some affirm, others deny. L., l. 6, n. 534.

1359. **Whether venial sin is an obstacle to gaining an indulgence?** - "It is certain that venial sin not remitted as to fault cannot be remitted as to punishment. Thus St. Thomas, supplement, q. 27, a. 1, whom Viva, Sporer, and others generally follow. Nevertheless that venial sin does not impede remission of the punishment due to other sins already remitted... Nor does it stand in the way that a plenary indulgence has been conceded under the aspect of total remission, so that if it does not take away the punishment of that venial sin not remitted, it takes away none.

For it is answered that just as it is not repugnant for the fault of some venial sin to be remitted without the fault of others being remitted, so also the punishment. But the Pontiff, by conceding a plenary indulgence, is not presumed to will to restrict it only to those for whom all venial sins are remitted, but rather to concede it according to the capacity of the subject, so that at least the punishment of those venial sins whose fault has been remitted is remitted." L., l. 6, n. 534.

And hence it is clear that someone can acquire several plenary indulgences on the same day. Sacred Congregation of Indulgences, May 27, 1841. Nevertheless no one can gain a second plenary indulgence if after the first no punishment to be paid remains any longer.

1360. **What is generally required as regards fulfillment of the works enjoined for acquiring indulgences?** - One must fulfill them piously and devoutly, personally and integrally, at the time and place and with the other circumstances constituted in the indult. Sacred Congregation of Indulgences, Mar. 21, 1820.

Personally; nevertheless alms prescribed in a Jubilee can be fulfilled through another.

Integrally; a small omission does not impede gaining the indulgence; a little is regarded as nothing. But they do not have to be fulfilled among themselves in any determinate order.

That formula, *who truly penitent, confessed, and refreshed by Holy Communion, have visited the church*, indeed imports that confession is to be made even by those who are not conscious to themselves of lethal sin; yet this confession can also avail if it is fulfilled on the vigil of the feast. But the visit of the church can be fulfilled either before or after the fulfillment of the other pious works. Sacred Congregation of Indulgences, May 19, 1759.

When in partial indulgences the clause is added, *at least with contrite heart*, contrition is required only as a disposition, not as an enjoined work, and therefore it is not necessary that an act of contrition be elicited by those who are in the state of grace. Sacred Congregation of Indulgences, Dec. 17, 1870.

A work which must be performed from an obligation from elsewhere cannot suffice for gaining an indulgence without express concession of the Supreme Pontiff. Benedict XIV, Constitution *Inter praeteritos*, section 53; Sacred Congregation of Indulgences, May 29, 1841; Mar. 7, 1888. Cf. Benedict XIV, instruction 53, section 11.

By the same pious work to which indulgences are annexed under various titles, all can be gained, provided the enjoined works cannot truly be repeated, or are not customarily repeated, such as confession, unless it is necessary from elsewhere. Sacred Congregation of Indulgences, Jan. 12, 1878, to the third.

The Most Holy Father granted "that the sick or those worn out by age, living in community and under rule, who cannot visit churches or oratories or execute other things prescribed for indulgences, nevertheless may be able to gain the indulgences by fulfilling other pious works to be prescribed at the judgment of the confessor." Leo XIII, Jan. 16, 1886. Pius IX had already previously granted the same privilege, Sept. 18, 1862, to those habitually sick outside a community and unable to go out of the house. - St. Thomas, supplement, q. 27, a. 3; L., l. 6, nn. 533, 534.

1361. **When are confession and Communion to be made?** - For the indulgence of a Jubilee, or in the form of a Jubilee, all prescribed works, and therefore also confession and Communion, are to be performed within the time designated for the duration of the Jubilee.

For other indulgences, confession and Communion are not always required. And thus it is not necessary for the indulgences of the Way of the Cross. Nevertheless it is ordinarily required as regards most plenary indulgences. Moreover, confession and Communion can be made on the vigil of the feast, or of the day to which the indulgences are affixed. Sacred Congregation of Indulgences, May 19, 1750; June 22, 1822; Oct. 6, 1870; *Raccolta*, p. XXI; L., loc. cit., n. 534.

When confession is prescribed for gaining an indulgence, it is necessary for all, even those who are already in the state of grace; but for these only confession without absolution suffices. Sacred Congregation of Indulgences, May 19, 1759; Aug. 20, 1822; Dec. 15, 1841; May 6, 1852.

All those who have the custom of making confession at least once each week can gain all and any indulgences which occur from one confession to another, except the indulgence of a Jubilee and others conceded after the likeness of a Jubilee. Confession would then be necessary only if they had sinned gravely. Sacred Congregation of Indulgences, Dec. 3, 1763; Mar. 5, 1855; Dec. 4, 1843; Nov. 23, 1878; Feb. 25, 1886; *Raccolta*, pp. XVII-XVIII.

Easter Communion suffices for gaining indulgences affixed to the same day or the following day. Nevertheless the same does not suffice for gaining the indulgence of a Jubilee. And the same must be said concerning confession. Sacred Congregation of Indulgences, May 10, 1844; Mar. 19, 1841; Dec. 15, 1841; May 10, 1884.

Outside a Jubilee, the same confession and Communion suffice for gaining several plenary indulgences on the same day or the following day, provided, however, that the other prescribed works are fulfilled. Sacred Congregation of Indulgences, May 29, 1841; Feb. 29, 1864.

When, for gaining a local or personal indulgence, a determinate church is to be visited, it is not necessary to receive Communion in the same church, unless this also has been prescribed. But if Communion is received in it on the same day to which the indulgence is annexed, and prayers are poured forth according to the intention of the Supreme Pontiff, it is not necessary to make another visit. *Raccolta*, p. XXV.

When in the article of death it is not possible to receive Communion, then for gaining a plenary indulgence it suffices to invoke with contrition, and at least with the heart if one cannot with the mouth, the Name of Jesus. - E.M.

1362. **What prayers are to be recited?** - The prayers regularly to be recited according to the intentions of the Supreme Pontiff or according to the ordinary intentions are often not determined. Therefore one is free to recite the prayers one wishes. Sacred Congregation of Indulgences, May 29, 1841; Sept. 13, 1888. Nevertheless vocal prayers are to be recited. Sacred Congregation of Indulgences, Sept. 13, 1888; Benedict XIV, *Convocatis*, Nov. 25, 1749, section 51; encyclical to the Roman penitentiaries *Inter praeteritos*, Dec. 3, 1749, section 83.

Prayers are to be recited in the church if it is prescribed to visit the church and to pour forth prayers there; otherwise they can be recited in any place. *Raccolta*, p. XXIV. Prayers do not have to be recited

on bent knees, unless this also is prescribed. Sacred Congregation of Indulgences, Sept. 18, 1862; *Raccolta*, p. XV. But someone can recite them alone, or alternately with a companion according to custom. Sacred Congregation of Indulgences, Feb. 29, 1820. Prayers are to be recited as many times as there are distinct indulgences which someone wishes to gain on the same day. *Raccolta*, p. XXV.

The intentions of the Supreme Pontiff, which he almost always requires, are the exaltation of the Catholic Church, propagation of the faith, extirpation of heresy and schism, conversion of sinners, peace and concord among Christian princes, and other necessities of the Christian people. It is not necessary to have these intentions explicitly; it suffices to pray generally according to the intention of the Supreme Pontiff. Sacred Congregation of Indulgences, Feb. 22, 1847.

Prayers to which indulgences are annexed can be recited in any language, provided the translation is faithful. In order that the fidelity of the translation be established, the declaration of the Cardinal Prefect of the Sacred Congregation of Indulgences, or of the bishop of the place whose vernacular language is that of the translation, suffices. Sacred Congregation of Indulgences, Dec. 29, 1864. The Little Office of the Blessed Virgin Mary is excepted, which is to be recited in Latin. Sacred Congregation of Indulgences, Sept. 13, 1888. The same must be said of the Office of the Dead.

For deaf-mutes, when a visit to a church is prescribed, it suffices to visit the church devoutly; when public prayers are prescribed, it suffices to pray in the heart, provided they are found together with the other faithful in the same place; when private prayers are prescribed, the confessor can commute them into other pious acts that are in some way sensible. Sacred Congregation of Indulgences, Mar. 15, 1852; *Raccolta*, p. XVI. - E.M.

1363. **How must the visit of a church be made?** - The visit of a church is to be made in order to gain indulgences when it is prescribed, and it is to be made in a determinate church if that church is determined by the indult. *Raccolta*, p. XXI. It is not necessary to enter the church. If the church is closed, or if it is impossible to enter it for another reason, then it suffices to pray at the door. "One existing near the doors of the church is judged to be in it." Lavorius, *De iubilaeo*, part 1, c. 18; L., l. 6, n. 534.

Chapels of monasteries, seminaries, and other pious societies to which there is not free access from a public way for all the faithful are not judged public oratories in order to gaining indulgences. Sacred Congregation of Indulgences, Aug. 22, 1842.

The visit of a church can be made on foot or by carriage. In order that someone may gain several indulgences prescribing a visit of a church, he must make several visits, by going out and again entering into the church. Sacred Congregation of Indulgences, Feb. 29, 1864; *Raccolta*, p. XXIII.

1364. **At what time are the prescribed works to be fulfilled?** - They are to be fulfilled within the time determined in the indult itself. Sacred Congregation of Indulgences, Sept. 25, 1841. Nevertheless confession and Communion, as has been said, can always be made on the vigil. The time of an indulgence conceded for one determinate day begins from midnight to midnight, unless something else is expressed. Sacred Congregation, Jan. 12, 1878.

Pius IX, on Aug. 9, 1852, by decree *Urbis et Orbis*, "graciously commanded that all indulgences which thus far have been conceded to certain feasts and will be conceded hereafter, or which have likewise

been conceded and will be conceded hereafter to some churches and public oratories for the same feasts, or even, if it is pleasing, with the consent of the Ordinary, those conceded in sacred processions, or in novenas, or septenary or triduan prayers before or after the feast, or while its octave endures, be understood as transferred to that day on which feasts of this kind, even as regards solemnity alone and external celebration, but not as regards office and Mass, are legitimately transferred in some places, or churches, and public oratories, whether perpetually, or on some occasion, or for a time, and while that time endures. But when only the office with the Mass is transferred, and not the solemnity and exterior celebration of the feast, he decreed that no transfer of indulgences is made." - E.M.

1365. **When the faculty is conceded of commuting works enjoined for gaining indulgences, must the commutation be made in confession?** - One must stand, says Gury, n. 1056, by the rule which Benedict XIV hands down in the Constitution *Inter praeteritos*, section 63, where he establishes that commutations of this kind are to be made in confession alone. For after the controversy has been reviewed concerning commutation of vows, absolution from censures, and the power of dispensing in other matters, or of commuting prescribed works, whether all these things must be done by the confessor in the act of sacramental confession or not, he thus concludes: "But We, to remove every difficulty, in the instruction, Constitution *Convocatis*, enjoined that no absolutions, commutations, and dispensations can be given by the penitentiaries outside the act of sacramental confession; and this seemed to Us both congruous and fitting to the gravity of the matter and the quality of the ministry, and it removes every opening of controversy, and is conformable to the practice of Our Apostolic Penitentiary."

But Ballerini observes there that Benedict XIV in the cited place speaks of faculties conceded, and the mode of using them, on the occasion of the Jubilee of the year 1750, but does not establish a general law. Hence he concludes that commutations, etc., necessarily must be made in confession only when in the concession of the faculty such a condition is expressly provided. Indeed, from various responses of the Sacred Penitentiary, Mar. 16, 1865; Jan. 30, 1886, the matter is one which depends on the will of the one conceding the indulgence. If it is not positively conceded, since in Jubilees the cited Constitution of Benedict XIV is for the norm, this faculty is in reality not had. Sacred Congregation of Indulgences, Mar. 15, 1852.

ON THE JUBILEE

1366. **What is a Jubilee?** - The word *Jubilee* is derived, according to many, from the Hebrew *iobel*, which signifies fiftieth, because among the Hebrews the year of Jubilee recurred in the fiftieth year; or, according to others, from the same word signifying the sound of a trumpet, by which the fiftieth year was proclaimed. According to still others, Jubilee is derived from *iubal* or *iobal*, which signifies to germinate, because in the fiftieth year the land was not cultivated, and the inhabitants fed on fruits germinating spontaneously.

In imitation of the Jubilee of the Old Testament, the ecclesiastical Jubilee was instituted, which was first celebrated at Rome, but afterward began to be celebrated in the whole world with fullest indulgence of sins, great joy, and solemnity. It was instituted by Boniface VIII, Constitution

Antiquorum habet, Feb. 23, 1300, and was to be celebrated every hundredth year. But Clement VI, by a Constitution of the year 1343, decreed that thereafter it was to be celebrated every fiftieth year. Then, from a decree of Urban VI, it began to be celebrated every thirty-third year; and from the statute of Paul II, every twenty-fifth year.

Jubilee is defined: a solemn plenary indulgence which the Supreme Pontiff sometimes concedes to all the faithful with the obligation of performing certain pious works, at the same time granting confessors special power of absolving from reserved sins and censures, and of commuting most vows. Hence Jubilee differs only accidentally from an ordinary plenary indulgence, namely by reason of solemnity and privileges annexed to it, and also by reason of the most abundant and extraordinary graces which accompany it. For the wonderful and astonishing effects which the Jubilee is accustomed to produce point to these altogether special graces, even if solemn assemblies of the faithful are not held and the divine word is not preached.

1367. **How many kinds of Jubilee are there?** - A manifold Jubilee is distinguished:

Major Jubilee, which regularly occurs every twenty-fifth year, which year is called holy. It is also called ordinary Jubilee, because it is fixed and determined by law.

Minor Jubilee, which is customarily conceded by individual Supreme Pontiffs after the exaltation of each one, and in other peculiar circumstances, and is called extraordinary Jubilee.

General, which is conceded to the whole world, of which kind the major Jubilee always is, and sometimes also the minor Jubilee; but it is customarily conceded first to the City, or to Rome alone, before it is conceded to the world.

Particular, which is conceded to some province, city, or particular place, as is the very celebrated Jubilee conceded to the Church of Anicius, whenever the feast of the Annunciation of the Blessed Virgin falls on the sacred day of Parasceve.

An entire year is ordinarily conceded at Rome for gaining the major Jubilee; and in the following year six months are customarily conceded by extension to all other regions of the Christian world. But to individual parishes only fifteen days or three weeks are conceded for gaining the Jubilee. The minor Jubilee is also first made at Rome, but for a few weeks, and then is extended to the whole world, so that, while the year runs, it can be made during a time to be determined by the bishop. But both for the ordinary Jubilee and for the extraordinary Jubilee one must chiefly attend to the tenor of the indult conceded. Pius IX conceded it for a very long time on the occasion of the Vatican Council. Leo XIII constituted the entire year 1886 for all the faithful to gain the Jubilee.

In the Jubilee of the holy year, or major Jubilee, while it is celebrated at Rome, not in the following year in which the Jubilee is extended to the whole world, all other indulgences, both plenary and particular, conceded for the living, but not those which are conceded for the dead, are suspended outside Rome for the whole year. Indeed, all indulgences, even those which otherwise were not applicable to the dead, can be applied to them in this year. Sacred Congregation of Indulgences, Dec. 16, 1749; Benedict XIV, Constitution *Inter praeteritos*, section 24.

From the suspension of indulgences for the living are excepted: 1. indulgences for the dying; 2. indulgences for the prayer *Angelus*; 3. indulgences for visiting the Most Holy Sacrament solemnly

exposed; 4. indulgences for those who accompany the Most Holy Sacrament carried to the sick; 5. all indulgences which are conceded by someone other than the Pope, by Legates *a latere*, Nuncios, Archbishops, Bishops. Benedict XIV, Brief *Cum nos nuper*, May 17, 1749. But the indulgence of the papal blessing which Archbishops, Bishops, etc., give twice a year remains suspended. Clement XIII, Constitution *Inexhaustum*, Sept. 3, 1762.

Likewise faculties conceded of absolving from reserved cases and censures, of commuting vows, and of dispensing in irregularities are suspended. Benedict XIV, Brief *Cum nos nuper*, May 17, 1749, section 4; Constitution *Inter praeteritos*, section 32; Constitution *Convocatis*, sections 55, 56. But the faculty conceded to bishops by Trent, sess. 24, c. *Liceat* 6, *De reformatione*, is excepted, and other faculties which they enjoy by common law or from special indult in particular cases for determinate persons. The same exception must be made for faculties conceded to regular prelates in favor of their subjects. There are likewise other exceptions. Benedict XIV, Brief *Cum nos nuper*, section 3; Sacred Penitentiary, 1875; A.S.S., vol. 8, p. 486. But since the same conditions of this suspension are not always observed, one must likewise always attend to the tenor of the Bull of Jubilee. L., l. 6, nn. 535, 536.

This suspension of indulgences and faculties outside Rome while the Jubilee is celebrated at Rome has this purpose: that the faithful may be invited to go to Rome. Benedict XIV, Constitution *Inter praeteritos*, section 17.

1368. **What is required for gaining the Jubilee?** - It is necessary to have at least virtual or habitual intention of gaining the Jubilee. Besides, the prescribed works are to be fulfilled exactly, and without express faculty of the Supreme Pontiff they cannot be commuted. The Pontiff ordinarily concedes this faculty to confessors for the impeded. Laymann, l. 5, tr. 8, c. 8, n. 12.

In a general Jubilee, whether major or minor, the following works are enjoined: fasting, almsgiving, visit of churches, piously praying according to the intention of the Supreme Pontiff, confession, Communion. Benedict XIV, Brief *Inter praeteritos*, Dec. 3, 1749, for the Jubilee of the holy year; L., l. 6, n. 536. For a particular Jubilee one must attend to the tenor of the indult conceded; ordinarily only three things are required, namely confession, Communion, and visit of some Church.

Works already owed from an obligation from elsewhere cannot serve for gaining the Jubilee unless this is conceded by the Supreme Pontiff. Benedict XIV, encyclical *Inter praeteritos*, section 53; L., l. 6, nn. 536, 538. They can be fulfilled in whatever order one wishes. Nevertheless it is necessary that someone be in the state of grace when he fulfills the last one. Benedict XIV, encyclical *Inter praeteritos*, sections 73, 77. Nor is there any obligation of performing them in one and the same week. Sacred Penitentiary, Mar. 16, 1865; A.S.S., vol. 1, p. 176.

But they can be fulfilled in one's own diocese or in another diocese, by conforming oneself to the prescriptions of the local Ordinary. Sacred Congregation of Indulgences, Nov. 28, 1759; A.S.S., vol. 8, p. 486; vol. 18, p. 334. Someone can likewise make confession and Communion in another diocese, but the rest of the works in his own, again conforming himself to the prescriptions of the local Ordinary. Sacred Penitentiary, 1875; Jan. 15, 1886; A.S.S., vol. 8, p. 486; vol. 18, p. 334.

If the Jubilee is prolonged for those traveling at sea, they can gain the Jubilee after returning to their homeland by fulfilling the prescribed works, or gain it when they have come to some stopping place. Sacred Penitentiary, 1875; A.S.S., vol. 8, p. 485; L. 538. - E.M.

1369. **What is to be said concerning Confession and Communion?** - For gaining the Jubilee, confession is necessary even for those who do not have consciousness of grave sin. Nevertheless absolution is not necessary unless it is prescribed in the Bull of Jubilee. In this Jubilee confession also the confessor ought to impose sacramental penance. Benedict XIV, Constitution *Convocatis*, sections 46, 64, 65; Sacred Congregation of Indulgences, May 6, 1852.

If after confession has been made, and before the other works have been fulfilled, someone falls into grave sin, he ought again to confess in order to gain the Jubilee, and it does not suffice that he be contrite. Benedict XIV, Constitution *Convocatis*, section 47; *Inter praeteritos*, section 79. Nevertheless the other works already fulfilled are not to be repeated. Sacred Congregation of Indulgences, Nov. 28, 1759.

Annual confession from obligation, although someone approaches confession twice and then is absolved once, does not suffice for gaining the Jubilee without express faculty of the Supreme Pontiff. The same must be said of Easter Communion. Both confession and Communion of the Jubilee can be made in any church. Sacred Congregation of Indulgences, Dec. 9, 1763; May 10, 1844; Sacred Penitentiary, Jan. 25, 1875; Feb. 26, 1875; Feb. 26, 1879; Mar. 25, 1881; Jan. 15, 1886; A.S.S., vol. 8, p. 555.

Confession can be made on the day preceding the first day of the Jubilee, namely if it is made when the ecclesiastical day has already begun, that is, at first Vespers of the first day of the Jubilee. Benedict XIV, Constitution *Inter praeteritos*, section 8. - E.M.

1370. **What is to be said concerning the visit of a Church?** - The number of visits and the number of churches which must be visited is indicated by the Bull of Jubilee. When in some place a sufficient number of churches is not had, the bishop can prescribe the visit of one or two churches as many times as there are churches to be visited for the acquisition of the Jubilee. Sacred Congregation of Indulgences, decree *Urbis et Orbis*, Mar. 15, 1852. The bishop can also designate for the visit a public oratory in which Mass is habitually celebrated. Sacred Penitentiary, 1879; Mar. 25, 1881; Jan. 15, 1886; A.S.S., vol. 11, p. 528; vol. 13, p. 423; vol. 18, p. 334.

The bishop of the diocese can also diminish the number of visits for those who make them processionally with the chapter, congregations, confraternities, and also with the parish priest or another priest designated by him. Sacred Penitentiary, Feb. 26, 1879; Mar. 25, 1881; Jan. 15, 1886; A.S.S., vol. 11, p. 527; vol. 13, p. 423; vol. 18, p. 333.

Regulars cannot make the visits in their own domestic chapels, nor can regular prelates designate these for their subjects; rather, they must make the visit in the churches prescribed by the bishop. Impeded regulars can in particular obtain commutation from their own confessor. Sacred Penitentiary, 1875; A.S.S., vol. 8, p. 554; Apr. 24, 1886; Dec. 15, 1886.

One who has made some visits in his own diocese, if he goes to another diocese, can complete the remaining visits there according to the prescriptions of the local Ordinary. Sacred Penitentiary, 1875; Jan. 15, 1886; A.S.S., vol. 8, p. 486; vol. 18, p. 334.

When four visits of churches in a day are prescribed in the Bull of Jubilee, the day is taken either as natural, from midnight to midnight, or ecclesiastical, from first Vespers until the end of twilight of the following day. *From first Vespers*, namely from the hour at which Vespers are recited publicly or in choir, or at which according to custom they can be recited, namely about the second hour after noon. Benedict XIV, *Inter praeteritos*, sections 8, 13; Sacred Penitentiary, Jan. 25, 1875; A.S.S., vol. 8, p. 266; *Raccolta*, p. XXII; Theodorus a Spiritu Sancto, *De indulgentiis*, II, p. 74; Martinucci, *Manuale ecclesiasticorum*.

But when several visits of churches are to be made and nothing is prescribed as regards time, then all visits can be made either on the same day or on different days. Sacred Penitentiary, 1879; Mar. 25, 1881; Jan. 15, 1886; A.S.S., vol. 11, p. 528; vol. 13, p. 423; vol. 18, p. 334.

Several visits to be made cannot be fulfilled by staying longer in the church; rather, it is necessary to go out and enter again, although one enters again immediately afterward. And when there is a great gathering of people, the visit would be fulfilled even outside the church by uniting oneself with the whole people. Sacred Penitentiary, Jan. 25, 1875; A.S.S., vol. 8, pp. 268, 485; Theodorus a Spiritu Sancto, *De iubilaeo*, c. 6, section 1, n. 3.

But the prayers to be recited in visits of this kind according to the intention of the Supreme Pontiff ought to be vocal, and they can be any prayers whatever, since they are not determined. By the common opinion it suffices to recite five *Pater*, *Ave*, *Gloria*. Benedict XIV, Constitution *Convocatis*, section 51; Constitution *Inter praeteritos*, section 83.

One who has undertaken a journey to Rome to gain the Jubilee and is seized by mortal illness can gain the Jubilee by confession and Communion with due dispositions. Benedict XIV, Constitution *Inter praeteritos*, section 14. - L., l. 6, nn. 536, 537; E.M.

1371. **What is to be said concerning the fast of the Jubilee?** - To gain the Jubilee, the fast is to be observed even by those who by the law of the Church are not obliged to fasting, or for a legitimate cause are dispensed from the law of fasting or from abstinence. If someone is legitimately impeded, he ought to obtain commutation from the confessor.

But one who has obtained from the confessor, because of a just cause, the faculty of eating meat in the fast of the Jubilee could not at the same meal also eat fish. This permission conceded by the confessor to eat meat cannot be extended to the evening collation, unless the confessor, having the due faculty, judges that someone ought to be dispensed from the fast altogether. But one who by legitimate permission can eat eggs and milk foods can also eat fish in the same meal. Sacred Congregation of Indulgences, July 10, 1869; Sacred Penitentiary, Feb. 26, 1879; Mar. 25, 1881; A.S.S., vol. 11, p. 527; vol. 13, p. 422; Benedict XIV, letter to the Archbishop of Compostela, June 10, 1745.

The fast prescribed in a Jubilee is an ecclesiastical fast, according to which it is observed by the law of the Church. Therefore the evening collation and the morning morsel are permitted besides the single meal. But the use of meats is prohibited, and in Lent the use also of milk foods. St. Thomas, II-II, q. 147, a. 8, ad 3; Sacred Penitentiary, Jan. 20 and Apr. 28, 1865; A.S.S., vol. 1, pp. 174, 175.

And if outside Lent a stricter fast is expressly prescribed, then a double abstinence from meat and from milk foods is to be observed even outside the time of Lent, notwithstanding an indult, privilege, or general custom permitting milk foods or even meats on days of fasting by precept of the Church.

Sacred Penitentiary, Jan. 16, 1886; Feb. 26, 1879; Mar. 4, 1879; Mar. 31, 1879; Mar. 25, 1881; Aug. 31, 1881; A.S.S., vol. 11, p. 527; vol. 13, pp. 422, 423; vol. 18, p. 333.

If the Bull of Jubilee designates the days on which the fast is to be observed, the designated time is to be observed, and the fast is valid for gaining the Jubilee, although at the designated time the fast falls as one to be observed by precept. But if the Bull of Jubilee does not designate the time of the fast, the fast cannot be made on the same day on which there is a fast to be observed from the precept of the Church from elsewhere, unless this is expressly conceded in the indult of Jubilee or permitted by special concession. Sacred Penitentiary, July 2, 1881; Jan. 15, 1886; Apr. 10, 1886; L., l. 6, n. 537.

If three fasts are prescribed on Wednesday, Friday, and Saturday, almost all easily agree that these three fasts are to be fulfilled in the same week, since they are prescribed in the manner of fasts of the Four Times. Cf. Sacred Congregation of Indulgences, July 10, 1869. - E.M.

1372. **What is to be said concerning almsgiving?** - Alms can be given by oneself and through another, provided that if it is done through another, one's own consent and intention is added. And thus a father of a family can give alms for himself, for his wife, for his children, for his domestics. The superior of a convent or monastery can give alms for the whole convent or monastery, etc.

If nothing is prescribed, any alms suffices for the rich and for the poor. But if alms proportioned to fortune is prescribed, that which suffices for the poor does not suffice for the rich. - Theodorus a Spiritu Sancto, I, p. 323; L., l. 6, n. 538; La-Croix, 1428, 1430; Laymann, c. 8, n. 12; E.M.

1373. **What is to be said concerning the faculty of confessors for commuting the enjoined works?** - Confessors can commute the enjoined works of the Jubilee, from a just cause, into other pious works. Confession and Communion, and likewise prayers according to the intention of the Supreme Pontiff when they are separated from the visit of a church, are excepted from this commutation.

But for children who have not yet been admitted to first Communion, commutation into another pious work at the judgment of the confessor is permitted. Benedict XIV, Constitution *Inter praeteritos*, sections 53, 80; Constitution *Convocatis*, section 48. One who without fault of his own has been impeded for any cause whatever from approaching Communion can also obtain delay from his confessor. Thus commonly. Bouvier, *Opusculum de indulgentiis et iubilaeo*, c. 3, section 4; Gury, 1066, etc.

Commutation of this kind seems to be made in confession, cf. 1365, unless something else is declared, as in the Jubilee of the year 1865. Benedict XIV, Constitution *Convocatis*, section 25; Constitution *Inter praeteritos*, section 63; Leo XIII, Jan. 30, 1886; Sacred Penitentiary, Mar. 16, 1865; A.S.S., vol. 1, p. 176; L., l. 6, n. 534, 15. But if the Jubilee can be gained several times, then the prescribed works can also be commuted several times from a legitimate cause. Sacred Penitentiary, July 2, 1881; Mar. 18, 1886; A.S.S., vol. 18, p. 512; E.M.

1374. **What is to be said concerning other faculties of confessors?** - The confessor can absolve from all sins and censures, even those reserved in a special manner to the Supreme Pontiff or to the bishop, whether occult or public, whether the censures were carried by law or by man,

with only absolution of an accomplice and false accusation of solicitation excepted. Benedict XIV, Constitution *Inter praeteritos*, sections 56-61; Constitution *Sacramentum Poenitentiae*.

But this absolution can be given only once, and only in the forum of conscience, with satisfaction made to the injured party and scandal repaired, and only in favor of those who wish to gain the Jubilee and to fulfill the prescribed works. Benedict XIV, Constitution *Inter praeteritos*, sections 62, 86; Sacred Penitentiary, June 1, 1869; Jan. 15, 1886; A.S.S., vol. 5, p. 33; vol. 18, p. 334; L., l. 6, n. 537.

Formerly heresy also was excepted. Benedict XIV, Constitution *Convocatis*, section 53; Constitution *Inter praeteritos*, sections 38, 85; Holy Office, Mar. 23, 1656. But at present heresy also is comprehended, after it has first been retracted and abjured. Sacred Penitentiary, June 1, 1869; Jan. 25, 1875; A.S.S., vol. 5, p. 32; vol. 8, p. 266.

One who, after he has been absolved from reserved cases or has obtained commutation of vows, afterward, with changed will, does not wish to fulfill the enjoined works of the Jubilee, although he sins, but not gravely according to the common opinion, nevertheless remains absolved from reserved cases and dispensed from vows. Benedict XIV, Constitution *Inter praeteritos*, section 86; Constitution *Convocatis*, section 54; L., l. 6, n. 537; Lugo, disp. 20, n. 100; Salmanticenses, c. 13, n. 57.

Likewise one who was absolved from reserved cases and dispensed from vows, and who received no absolution or a sacrilegious one, remains absolved from reserved cases and dispensed from vows. St. Alphonsus indeed denies this, l. 6, n. 537. But others, and grave doctors, probably affirm it, and therefore since the reservation would now be doubtful, in practice it ceases. Cf. 806; Lugo, disp. 20, nn. 111-113; Benedict XIV, Constitution *Inter praeteritos*, section 62.

One who during the time of Jubilee has duly made confession, although in it he forgot reserved sins, can afterward after the Jubilee be absolved from those same sins, since at least then he was absolved from the reservation, or acquired a right to that absolution. The same must be said concerning dispensation of vows. L., l. 6, nn. 536, 537, q. 4; Ferraris, v. *Iubilaeum*, a. 2, n. 27; La-Croix, 1449.

Likewise the confessor can absolve a penitent from censures and from the reservation of sins, and dispense his vows, although the confessor ought to defer absolution for him, if nevertheless the penitent fulfills the warnings of the confessor and performs the other prescribed works of the Jubilee, being afterward to obtain absolution even after the Jubilee. L., l. 6, nn. 535, 537.

If someone in the already completed confession of the Jubilee which he already gained had no reserved cases and no vows to be dispensed, he can still once be absolved from reserved cases and dispensed in vows, if he can again gain the Jubilee by again performing the prescribed works. Sacred Penitentiary, Jan. 1, 1873.

One who has already been absolved once from sins and reserved censures, and has gained the Jubilee, although afterward he repeats the enjoined works to gain the Jubilee again, cannot any further be absolved from reserved cases. But whether he can be absolved again if he has not yet gained the Jubilee once, since he has not yet performed all the enjoined works so that he can gain it at least once, some deny from the Sacred Congregation of Indulgences, July 10, 1869; Sacred Penitentiary, June 1, 1869; Jan. 25, 1875; Jan. 15, 1886; A.S.S., vol. 5, p. 32; vol. 8, pp. 267, 359; vol. 18, p. 333. Others, however, affirm, unless the contrary is expressed in the Bull of Jubilee. D'Annibale, part 3, n.

190, 2nd ed., and part 1, n. 348, 3rd ed. Cf. Benedict XIV, Constitution *Inter praeteritos*, sections 67, 73, 77, 78, 79, 84, 86.

During the time of Jubilee, regulars can without any permission of their superiors confess to any regular or secular confessor approved by the local Ordinary, or approved only by their own prelate, and they can be absolved by him even from cases reserved in their own order. Benedict XIV, Constitution *Inter praeteritos*, sections 35, 36; Sacred Penitentiary, Jan. 30, 1886. But nuns can also confess to any confessor, but one approved by the local Ordinary for nuns. L., l. 6, n. 336; Ferraris, v. *Approbatio*, a. 2, n. 21.

Besides, confessors can commute vows, or dispense vows by commuting them, and dispense from irregularity from violation of censure; in all of these, as in all the rest, the tenor of the Bull of Jubilee is to be attended to. Benedict XIV, *Inter praeteritos*, section 45; L., l. 6, n. 536. And in those things in which the Bull of Jubilee is not opposed, the rules handed down by Benedict XIV in the same Constitution *Inter praeteritos* are to be observed. Sacred Congregation of Indulgences, Mar. 15, 1852. - E.M.

ON THE PRIVILEGED ALTAR

1375. **What is a privileged altar?** - A privileged altar is an altar to which the Supreme Pontiff has annexed a plenary indulgence which, if the mind of the one conceding and the use of the power of the keys is considered, would immediately free the soul from all punishments of Purgatory; but if the effect of application is considered, the indulgence is to be understood as one whose measure corresponds to the good pleasure and acceptance of divine mercy. Sacred Congregation of Indulgences, July 28, 1840; Benedict XIV, instruction 56, n. 15.

This indulgence does not differ from other plenary indulgences which are applied to the dead, except insofar as it has a more certain effect. For, according to the common opinion of the doctors, it does not depend on the personal dispositions of the priest, but on the oblation of the divine Victim, since it is annexed solely to the celebration of the divine sacrifice on such an altar.

Hence a priest who from an accepted stipend ought to celebrate on a privileged altar does not satisfy the obligation undertaken by celebrating on another altar and gaining a plenary indulgence annexed to some pious work or object. But he does satisfy if he enjoys the privilege of a personal privileged altar. Those who make the heroic act of charity have such a privilege. Sacred Congregation of Indulgences, Feb. 13, 1745; Feb. 22, 1847; May 2, 1852.

For one privileged altar is local, another personal, insofar as the privilege adheres either to a determinate altar or to the person, on whatever altar he celebrates, whether privileged or not, whether fixed or portable. Sacred Congregation of Indulgences, Mar. 15, 1852; Mar. 20, 1846.

1376. **What are the required conditions for a local privileged altar?** - It is necessary that the church or oratory in which it is present be blessed; it is not required that they be consecrated. But it is necessary that the altar be fixed, namely that it cannot be moved from the place. Therefore, for constituting the quality of a fixed altar, it suffices that in the middle of a stable and immovable altar, although not consecrated, a consecrated stone, even removable, be placed.

The indulgence is conceded to the fixed altar itself, not to the removable consecrated stone, of which one can be substituted for another according to necessity or opportunity. Nor indeed can the aforesaid indulgence be transferred from one fixed altar to another fixed altar in the same church or oratory without a special faculty.

And the indulgence is lost even if the fixed altar itself is transferred from one church to another; but by no means if it is transferred from one place to another in the same church, nevertheless remaining under the same invocation; or if because of age it is built anew, or repaired as to the greater part, provided it is built again under the same title or invocation. Sacred Congregation of Indulgences, Apr. 22, 1752; Jan. 30, 1760; Nov. 27, 1764; Dec. 15, 1841; Apr. 24, 1843; Mar. 20, 1846; Mar. 26, 1867; Sept. 27, 1843; Sept. 16, 1723; June 27, 1836; Apr. 24, 1843.

1377. **What are the conditions required for gaining the indulgence of a privileged altar?** - 1. The indulgence of a privileged altar cannot be separated from the application or fruit of the sacrifice of the Mass. Sacred Congregation of Indulgences, Aug. 25, 1897.

1378. It is necessary to apply the Mass for the same soul for whom the Mass is celebrated. Holy Office, July 8, 1846; Sacred Congregation of Indulgences, Jan. 31, 1848; Dec. 18, 1885.

1379. The indulgence cannot be applied except to only one soul, although someone celebrates Mass for several. Sacred Congregation of Indulgences, July 28, 1840; Feb. 29, 1864; June 19, 1880; Dec. 19, 1885; A.S.S., vol. 13, p. 139; vol. 18, p. 340.

1380. On days not impeded, the Mass of Requiem is to be read. Sacred Congregation of Indulgences, Apr. 11, 1840; Feb. 22, 1847. On other impeded days, by reason of the rite, one gains the indulgence by reading another Mass corresponding to the day. And this has force also if someone does not read the Mass of Requiem by reason of exposition of the Most Holy Sacrament, or the station of the church, or another solemnity. Sacred Congregation of Indulgences, Apr. 11, 1840; Apr. 22, 1847; June 30, 1760; Nov. 27, 1764; Feb. 29, 1864, etc.

1381. Note: When someone celebrates Mass at a privileged altar for some deceased person, the Mass is privileged of itself, and it is not necessary that either the one offering the alms or the priest intend to apply the privilege. For explicit intention of application is not required; implicit suffices.

But when someone celebrates for several deceased persons, if he does not explicitly apply the privilege to one determinate soul, the aforesaid privilege does not therefore become useless. For then either it is applied to some soul as it pleases God, or to all, not plenarily to all, but partially to each. Sacred Congregation of Indulgences, Mar. 5, 1855; June 19, 1880; A.S.S., vol. 13, p. 141.

The Mass of the dead is to be celebrated only in black vestments; violet ones cannot be used except in the case in which on Nov. 2 the sacrament of the Most Holy Eucharist is exposed for public adoration of the faithful for the solemn prayer of forty hours. Sacred Congregation of Rites, July 23, 1868; Gardellini, n. 5403.

A priest who has celebrated Mass for a deceased person on a privileged altar, applying to him the indulgence of the privileged altar, can on the same day, by force of sacred Communion made in the sacrifice, gain another plenary indulgence for himself or for the souls of Purgatory; indeed, he can

gain several plenary indulgences for the souls of Purgatory if sacred Communion is prescribed for gaining them. Sacred Congregation of Indulgences, May 10, 1844.

1379. **What is to be said concerning a Gregorian altar?** - A privileged altar is not to be confused with a Gregorian altar. At a privileged altar one Mass suffices for liberating a soul from Purgatory. At a Gregorian altar, the continuous celebration of thirty Masses is required.

But a Gregorian altar indeed has a special title to divine acceptance, namely the mediation of St. Gregory and the peculiar destination of the Church. But concerning the concession of a plenary indulgence for Gregorian altars, it is not established. Sacred Congregation of Indulgences, Aug. 24, 1888; A.S.S., vol. 1, p. 254 ff.

Nevertheless the confidence by which the faithful hold the celebration of thirty Masses, which are commonly called Gregorian, as specially efficacious by the good pleasure and acceptance of divine mercy for the liberation of a soul from the punishments of Purgatory, is pious and rational; and the practice of celebrating the same Masses is approved in the Church.

Likewise the confidence by which the faithful hold the celebration of Mass at the altar of St. Gregory in his church on the Caelian Hill as specially efficacious by the good pleasure and acceptance of divine mercy for the liberation of a soul from the punishments of Purgatory is pious and approved in the Church. The same must be said concerning Gregorian altars after the likeness. Sacred Congregation of Indulgences, Mar. 15, 1884; A.S.S., vol. 16, p. 508 ff.

1380. **What is to be said concerning the heroic act of charity as regards the privileged altar?** - The personal indult of a privileged altar on individual days of the year, as also the faculty of applying to the dead all indulgences conceded and to be conceded for the living, have been conceded for the heroic act of charity toward the souls of Purgatory. Sacred Congregation of Indulgences, decree *Urbis et Orbis*, Nov. 20, 1854.

This act consists in this: that a Christian faithful, either using some formula or only mentally, offers to God for the souls of Purgatory all satisfactory works which he himself will perform as long as he lives, and all indulgences which he can gain, and also all suffrages which in any way can come to him after death. Sacred Congregation of Indulgences, Dec. 18, 1885.

But a heroic act of this kind does not prevent someone from satisfying the obligations which he has, and from offering suffrages for this or that soul.

A.M.D.G.

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