

SUMMA OF MORAL THEOLOGY.

Adapted for the use of schools

by

H. Noldin, S.J.

Professor of Sacred Theology in the University of Innsbruck.

First Complement:

On Ecclesiastical Penalties.

With the approval of the Bishop of Brixen and of the Superiors of the Order.

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Introduction.¹

I have thought that the treatise on ecclesiastical penalties, which pertain to the proper object of canon law, should be added to moral theology, because in some schools the professor of moral theology also treats ecclesiastical penalties.

1. a. The power which Christ conferred upon His Church, that through it the faithful might be directed to the supernatural end of eternal life, is twofold: the power of order, which is an aptitude acquired by sacramental ordination for performing certain sacred actions, but especially the offering of the eucharistic sacrifice and the administration of the sacraments and sacramentals; and the power of jurisdiction, which is the power of ruling the faithful in order to eternal salvation.

The power of jurisdiction is again twofold: the power of teaching, or the power of ruling the faithful with respect to the intellect through precepts of faith; and the power of government, which is the power of ruling the faithful with respect to the will through precepts of morals.

b. That Christ instituted His Church as a true, visible, and perfect society, to which He conferred every power which is necessary for directing the faithful to the end of eternal salvation, is shown both by dogmatic theologians in fundamental theology and by canonists in public law. But in particular the same authors show that the power of jurisdiction with which Christ willed the Church to be furnished is not only the power of making laws, but also of exercising coercive force and of restraining transgressors of both divine and ecclesiastical laws by penalties. Now, therefore, after laws have been treated, the sanction of laws, or ecclesiastical penalties, must also be treated.

c. Namely, law needs a sanction, by which a reward is decreed for those observing it, but a penalty for those violating it. The sanction of the Christian law is twofold: one of the future life, another of the present life. The sanction of this life consists chiefly in ecclesiastical penalties, by which the Church strives to deter the faithful at least from violation of the graver laws and to compel them to fulfill their duties.

First Book.

On Ecclesiastical Penalties in General.

Only Question.

On Ecclesiastical Penalties Themselves.

2. **Definition.** A penalty is an evil inflicted by legitimate authority because of transgression of law.

- a. The evil inflicted by the Church as penalty consists in the privation of a good, either the possession or the use of which depends upon the Church, and of which therefore she herself can deprive the delinquent. Goods of this kind are only external goods; but they are not only spiritual goods, but also temporal goods, such as goods of fortune, reputation, liberty, etc.
- b. Although the Church can also inflict temporal penalties, nevertheless ordinarily, especially with respect to lay persons, she does not employ for obtaining her ends except spiritual penalties, which consist in the privation of a spiritual good either already received or afterward to be received; wherefore ecclesiastical penalties are accustomed to be called spiritual penalties.

Notes

1. Thesaurus-Giraldi, *De poenis ecclesiasticis*. J. Hollweck, *Die kirchlichen Strafgesetze* (Mainz: Kirchheim, 1899). Ballerini-Palmieri, *Opus theol. morale*³ (Prati: Giachetti, 1901) VII, *De poenis ecclesiasticis*. Lehmkuhl, *Theologia moralis*¹⁰ (Freiburg: Herder, 1902) II, 860-1030.

- c. A penalty by its nature supposes fault, because it is inflicted because of a committed fault; wherefore there is no penalty where there is no fault.

3. End of ecclesiastical penalties. The threat of a penalty must be distinguished from the infliction and execution of the penalty.

- a. The end of the threat is that subjects be deterred from violation of the law and be compelled by fear of the penalty to its observance.
- b. The end of infliction and execution is fourfold: a. that the order which has been injured may be restored and confirmed; b. that the guilty person may be amended; c. that both the delinquent himself and others may be deterred from crime and restrained; d. that by the example of the penalty the scandal given by the crime may be repaired.

In all penalties, indeed, this fourfold end is more or less intended; nevertheless in diverse genera of penalties one end is chiefly regarded before the others. The primary and essential end is restoration of the injured order. For the injury of order, which was made by this, that the delinquent, having despised the good of order, indulged his own concupiscences, demands a certain kind of expiation and satisfaction, because the same delinquent is compelled to yield something from his own goods and to undergo an evil.²

4. The cause of ecclesiastical penalty is a crime or delict. Although the names of crime and delict are for the most part used indiscriminately, nevertheless in law those actions are called crimes which are punished by graver penalties, and those actions delicts which are punished by lighter penalties.

A crime or delict is understood to be an external action or omission which disturbs the social order of the Church. And since ecclesiastical penalties are established against actions which disturb the public order, a crime or delict can also be defined: an action against which an ecclesiastical penalty has been established. But the social order of the Church is preserved by both divine and ecclesiastical laws; therefore a crime or delict is the transgression of a penal law, or of a law in whose transgression a penalty has been sanctioned.

5. Division of penalties. Ecclesiastical penalties are divided in manifold ways.

- a. By reason of the subject, into personal penalty, which affects the person only, such as suspension from hearing confessions, fasting; real penalty, which punishes a person in his goods, such as privation of a benefice; and mixed penalty, which embraces both, such as excommunication, suspension from celebration.
- b. By reason of quantity, into ordinary penalty, which does not exceed the measure customarily observed in this matter; and extraordinary penalty, which is imposed beyond the measure on account of special circumstances, and therefore cannot be foreseen even confusedly.
- c. By reason of the mode by which the guilty person is deprived of the good, into negative penalty, by which he is barred from acquiring a good, such as the impediment of crime, irregularity from delict; privative penalty, by which he is deprived of an acquired good (a right, the exercise of a right), such as privation of active and passive voice, suspension from order; positive penalty, by which an evil is inflicted, such as a monetary fine, beating. The execution of this requires some positive action either of the delinquent himself or of another.

Notes

- 2. Cf. St. Thomas I-II, q. 87, a. 1.

- d. By reason of the object, into spiritual penalty, which deprives the delinquent of a spiritual good; and temporal penalty, which deprives the delinquent of a temporal good or affects him in a temporal mode, as by prison or blows.

It cannot be doubted that the Church can also inflict temporal penalties; for since she has the power of applying all means which are necessary for the end, and temporal penalties are sometimes altogether necessary so that external order can be preserved, it is certain that the Church can apply temporal penalties. Nevertheless, concerning the penalty of death and mutilation, almost all teach that the Church herself cannot inflict it; indeed, according to the opinion of many, the Church cannot even demand that it be inflicted by the secular arm: for the axiom is solemn, the Church does not thirst for blood. But according to the discipline now in force, temporal penalties are accustomed to be applied by the Church only to clerics, not to lay persons.

- e. By reason of form, into a penalty of a sentence already passed, which is incurred by the very fact, i.e. by perpetration of the crime or transgression of the law; and of a sentence to be passed, which is not incurred unless it is inflicted by the sentence of a judge.
- f. Only the Church inflicts penalties of a sentence already passed; the civil penal code contains no penalties of sentence already passed, but only of sentence to be passed.
- g. The sentence of a judge is either condemnatory or only declaratory of the crime committed; the former falls upon the penalty which is inflicted by the judge, the latter falls upon the fault against which the penalty has been laid by law.
- h. Some penalties of sentence already passed are incurred before, others only after, a declaratory sentence of the crime committed.

Before sentence there are incurred: a. censures of a sentence already passed; b. penalties which only prevent a right from being acquired, and have more the character of an inability than of penalty properly so called, as if non-resident clerics are prohibited from making the fruits their own; c. conditional penalties, which properly are a condition under which something is given; therefore if someone does not fulfill the condition, before sentence he must give up what he received under it; thus one elected bishop, if he is not consecrated within six months, must give up the episcopate.

After sentence there are incurred penalties by which the guilty person is deprived of a right already acquired, as if someone is deprived of a benefice, active and passive voice, etc.³

- f. By reason of the internal end which is chiefly intended, into vindicative or punitive penalty, which chiefly tends to the punishment of the crime; and medicinal penalty, which chiefly tends to the amendment of the delinquent.

The distinctions between each must be noted: a. by a vindicative penalty the guilty person can be punished for a past delict, even after he has returned to his senses; but by a medicinal penalty the guilty person cannot be punished if he has already returned to his senses; b. a medicinal penalty is removed by absolution, which remits the penalty to one rightly disposed; but a vindicative penalty does not need absolution, but either ceases of itself when the time has elapsed or is removed by dispensation, which exempts from the penal law.

6. What ecclesiastical penalties are. All penalties which the Church inflicts can be reduced to three genera:

Notes

3. Genicot, *Theologiae mor. institut.*² (Louvain: Polleunis et Ceuterick, 1905), I, n. 140.

- a. to censures;
 - b. to vindictive penalties;
 - c. to penances.
1. Censures, which chiefly tend to the restoration of external order and to the amendment of the delinquent, are divided into three species:
 - a. Excommunication;
 - b. Suspension;
 - c. Interdict.
 2. Vindictive penalties, which chiefly tend to the restoration of external order and to the punishment of the crime, are some inflicted upon all, others upon clerics alone.
 - a. Vindictive penalties which are inflicted, or can be inflicted, upon all, both clerics and lay persons:
 - b. Irregularity from delict;
 - c. Ecclesiastical infamy;
 - d. Privation of ecclesiastical burial;
 - e. Privation of particular rights or privileges;
 - f. Temporal penalties, such as monetary penalty, public correction, canonical admonition.
 - g. Vindictive penalties which are inflicted upon clerics alone:
 - h. Penalties of prison;
 - i. Privation of the fruits of a benefice;
 - j. Translation to a worse benefice or complete privation of a benefice;
 - k. Deposition;
 - l. Degradation.
 3. Penances are public works of penance enjoined by the Church chiefly for this end, that public scandal may be repaired.⁴

Exercises of several days are now customarily enjoined upon clerics; but upon lay persons, either revocation before witnesses or use of the sacraments or a pious pilgrimage with reception of the sacraments.

Note. We shall treat here only censures and irregularities, since these are what it is chiefly necessary for the confessor to know, and we shall interpret more accurately only those censures which occur more frequently in the internal forum of penance.

7. On the forum of the Church. 1. By the name forum there is signified: a. both the place in which saleable things are exposed, and the place in which controversies and lawsuits are conducted; b. the territory in which a judge can exercise his jurisdiction.

Notes

4. Cf. Council of Trent, sess. 24, c. 8, *De reform.*

2. Forum is chiefly divided into external, in which public causes pertaining to the government of the Church are treated, and internal, or of conscience, in which matters pertaining to the spiritual salvation of individuals are conducted.

A faculty (of absolving, dispensing) conceded for each forum signifies: a. that a faculty which someone can or must use for the external forum also avails for the internal forum; b. that the faculty can be applied both for the external forum and for the internal forum, according as the subject matter demands it, i.e. according as the matter is public or occult.

Second Book.

On Ecclesiastical Penalties in Particular.

Question One.

On Censures in General.⁵

Article One.

On the Nature of Censure.

8. Notion of censure. A censure is a medicinal penalty by which the use of certain spiritual goods is taken away by the Church from a delinquent and contumacious Christian. Therefore two things are needed for incurring a censure: a delict and the contumacy of the delinquent.

- a. Among the ancient Romans the name censure signified both the dignity and office of the censor, and also the sentence of the same, by which he either branded with a mark or inflicted a penalty upon citizens. In ecclesiastical usage censure signifies both a judgment by which it is noted whether something is worthy of praise or of blame, and a penalty inflicted for crime.
- b. Medicinal: for in inflicting censure the Church chiefly intends the restraint of crime and the amendment of the delinquent; wherefore, once amendment has been posited, censure by its own nature demands that it be taken away; and if sometimes it is carried against those whose amendment is despaired of, this is done for striking terror into others. For the same reason censure is to be inflicted simply, not perpetually nor to a certain day, so that when the guilty person has amended himself, he can be absolved.
- c. Censure can also have the character of a vindictive penalty, but only secondarily; but if it is inflicted chiefly for punishing a delict, it cannot be a censure properly so called.
- d. Contumacious: censure is inflicted for breaking contumacy (virtual contempt of authority and of censure, disobedience), whose nature is described below. Therefore contumacy as a condition for incurring censure is always required; and as soon as contumacy ceases through the amendment or satisfaction of the delinquent, the censure is to be taken away, just as once health is recovered the use of medicine ceases.
- e. Of spiritual goods, namely those which are subject to the power of the Church. Indeed, besides the goods which inhere habitually in each person, goods of a threefold kind exist in the Church: goods

Notes

5. Suarez, *De censuris*. Covarruvias, *Operum* t. I, p. 315. Dicastillo, *De censuris*. Tamburini, *De censuris et irregularitate*. St. Alphonsus l. VII, *De censuris eccles.* Buceroni, *De censuris etc.*⁴ (Rome: Typographia S. C. de Prop. Fide, 1896). Hilarius a Sexten, *Tractatus de censuris ecclesiasticis* (Mainz: Kirchheim, 1898). Hollweck l. c., *Die Zensuren*, p. 86 ff. Heiner, *Die kirchlichen Zensuren* (Paderborn: Bonifatius-Druckerei, 1884). I. Kock, *Die kirchlichen Zensuren latae sententiae* (Graz: Styria, 1902). Paschalis de Siena, *Commentarius in Const. Ap. sedis*³ (Pustet: Rome, 1902).

which proceed from the Head, or from Christ; goods which proceed from the members taken privately; goods which proceed from the body, or from the Church. Now, one censured cannot be deprived of goods habitually inhering in himself, such as the sacramental character, the power of order, faith, hope, and charity, etc.; nor of goods which proceed from Christ, the Head of the Church, such as manifold graces, because these goods do not depend upon the Church; nor can he be deprived of goods which proceed from the members of the Church taken individually, such as the prayers and good works of the faithful, because the Church cannot impede the communion of saints; but only of goods which are administered and conferred by the Church, such as the use of the sacraments, the sacrifice, indulgences, common suffrages, jurisdiction, ecclesiastical benefices. And if sometimes the Church deprives someone of temporal goods, as of civil commerce with the faithful, this is done secondarily and indirectly, insofar as it conduces to the spiritual good both of him who is bound by censure and of others.

9. Division of censures. a. By reason of essence they are divided into three species, into excommunication, suspension, and interdict: for each of these penalties has the common character of censure and deprives the guilty person of other and diverse spiritual goods; but other ecclesiastical penalties, by whatever name they are called, are not censures.⁶

b. By reason of the efficient cause, into a censure which is from law, if it is inflicted by stable law against future sins; and which is from man, if it is inflicted by a superior through judicial sentence against future or past sins.

A censure carried by man is carried either by way of precept or particular sentence, as if a bishop suspends a contumacious cleric from office, or if he prohibits a cleric from the game of dice under penalty of suspension, or by way of law or general statute, as if a bishop decrees that all who are about to commit some crime be bound by excommunication.

c. By reason of the power of absolving, into reserved censures, which cannot be taken away except by the one imposing them, his successor, or his superior; and non-reserved censures, which by the disposition of the legislator can also be taken away by inferior ministers.

d. By reason of publicity, into notorious censures, when either by sentence of a judge or by perpetration of the delict in a public place it is so known that someone has incurred censure that it can no longer be hidden; and occult censures, when this is not known.

e. By reason of the mode by which they are incurred, into censures of a sentence already passed, which are incurred by delinquents by this very fact, that they have committed the delict; and of a sentence to be passed, which, once the delict has been posited, are to be imposed by sentence of a judge.

f. By reason of the mode by which they are reserved:

g. into censures reserved to the Roman pontiff in a special mode;

h. into censures reserved to the Roman pontiff in the ordinary mode, or simply reserved;

i. into censures reserved to bishops;

j. into censures reserved to no one, which are indeed true censures insofar as they produce the effects of others, but from which the censured person, provided he is truly sorry for the sin, can be absolved by any confessor.

Notes

6. C. *Quaerenti* 20. *De verborum sign.* (V. 40).

- k. Several censures are called reserved in a special mode: a. because for them a general faculty of absolving from censures reserved to the Roman pontiff does not suffice, but an altogether special faculty is required; b. because they are not contained in the faculty conceded to bishops by c. *Liceat*, namely of absolving from all occult censures even those reserved to the pope; c. because those presuming to absolve from these without due faculty incur a special excommunication reserved to the Roman pontiff; d. because those absolved from these in the article of death by one not having power, if they recover, are held by a special obligation of presenting themselves to the superior and standing by his mandates.
- l. From the declaration of the Holy Office of April 4, 1871, in the special faculty of absolving from censures reserved to the Roman pontiff in a special mode, there is not contained the faculty of absolving from cases reserved in the bull *Sacramentum poenitentiae*, which need a most special faculty and therefore are called reserved to the supreme pontiff in a most special mode. The cases reserved in the aforesaid bull are: a. absolution of an accomplice; b. malicious denunciation of a priest concerning the crime of solicitation.

10. Since censures in the specific sense, namely insofar as they pertain to the external forum, are called public or notorious, it is useful to indicate what is required for a censure to be notorious. But a censure is notorious if the delict prohibited under censure is notorious. A delict can be notorious either by law or by fact.

- a. A delict is notorious by law when it is established: a. by the declaratory sentence of a judge, whether because the guilty person himself confessed the delict, or because he has been convicted of it; b. from public acts or from authentic protocols.

Thus if a cleric constituted in sacred orders contracts civil marriage; if a Catholic enters marriage before a heretical minister; if someone is punished by a civil judge because of a duel, these delicts are notorious by law, because they are established from public acts.

- b. A delict is notorious by fact when it was perpetrated in a public place before several persons who can testify concerning it.
- c. Since both elements must concur at the same time, a delict is not notorious which was perpetrated in a private or hidden place, although before many, nor a delict which was perpetrated in a public place before few persons, or indeed before many who nevertheless cannot testify about it, because they did not attend to it, e.g. to the heresy uttered. How many persons must know the delict so that it can be called notorious is indicated elsewhere.⁷
- d. A delict public by law is public everywhere, nor can it ever become occult; but a delict public by fact in one place can be occult in another, and if it consists in a transitory fact (the striking of a cleric), through oblivion it can become occult; not likewise if it consists in a permanent fact (illicit possession of ecclesiastical goods).

Article Two.

On the Author of Censure.

11. Who can impose censures. He can impose censures who has either ordinary or delegated power for this.

- 1. Ordinary power is had by all and only ecclesiastical superiors having jurisdiction in the external forum.

Notes

7. Cf. *De praeceptis* n. 649.

- a. The supreme pontiff has it over all the faithful, both taken collectively (diocese, province) and taken individually; he indeed receives this power immediately from Christ; all others participate in it from the supreme pontiff.
- b. Apostolic legates have it in the territory assigned to them.
- c. Bishops, archbishops, patriarchs have it over their subjects; however, archbishops and patriarchs cannot bind the subjects of their suffragans by censures; an episcopal vicar, who constitutes one tribunal with the bishop; when the see is vacant, the vicar of the chapter, who succeeds the bishop in jurisdiction, and a fortiori the chapter itself before the vicar has yet been elected.
- d. Cardinals have it in the churches of their title.
- e. A general council has it over the whole Church, and a provincial council over its province.
- f. Abbots having quasi-episcopal jurisdiction have it.
- g. Superiors of regulars (generals, provincials, locals) have it over their subjects from a privilege of the pontiff attached to their office,⁸ yet according to the statutes of their order.

Parish priests do not have the power of imposing censures, because jurisdiction in the external forum does not belong to them.

- 2. Delegated power is had by all and only clerics to whom this has been committed by those having ordinary power.

Clerics: because all and only clerics are capable of ecclesiastical jurisdiction, which is required for imposing censures, unless by positive law they have been declared incapable of ecclesiastical jurisdiction, as married clerics have been declared.⁹ Wherefore all lay persons and women, even abbesses, are excluded from the power, both ordinary and delegated, of imposing censures.

12. Conditions required on the part of the author. In order that an ecclesiastical superior can validly impose censures, there is required:

- a. That he be in possession of reason and have the will of binding him against whom he imposes the censure: for to impose censure is an act of jurisdiction, which has its whole force from an act of the will. Wherefore a censure imposed by a drunken man would be null.
- b. That he act freely, not by compulsion.

A censure carried from grave fear must of itself be called valid, because an act done from grave fear is of itself valid, unless it is annulled by special positive law; but a censure carried from fear is not annulled by positive law. Nevertheless the case must be excepted in which the one imposing the censure would have pronounced it only externally, without internal intention.

- c. That he exercise power within the limits of his jurisdiction: for contentious jurisdiction cannot be exercised outside one's own territory.

Therefore a bishop existing outside his own diocese cannot impose censure, not even upon his own subject, unless he has obtained the consent of the bishop of the place in which he is found.

Notes

8. C. *Quum in ecclesiis* 10. *De maiestate et oboedientia* (I. 33).

9. C. *Clerici un.* *De clericis coniugatis* (III. 2) in 6°.

Nevertheless several cases must be excepted, in which a bishop, even existing outside the diocese, can impose censure:

- a. If the censure is imposed not by way of a particular sentence, but by way of statute for guarding against future crimes.
- b. If the censure is indeed imposed by way of sentence, which nevertheless does not need cognition of the cause, either because the contumacy is manifest, or because the cause has already been known in one's own territory.
- c. If the bishop has been unjustly expelled from his own territory.¹⁰
- d. That he admonish the delinquent concerning the censure to be inflicted: for censure is imposed upon a contumacious person; but that contumacy may be established, a prior correction is required.

According to the diversity of censures, a diverse admonition is required.

- a. In censures of a sentence already passed for future delicts, likewise in censures which are attached to some delict as of a sentence to be passed, legal admonition suffices, which consists in the law promulgated with the censure added: for a known law which threatens censure is judged continually to admonish subjects concerning their obligation and concerning the penalty to be incurred by transgressors.
- b. In a censure which no law threatens, and which therefore is inflicted by man for a past or present delict, a canonical or express admonition is required, and indeed a threefold one with some interval of time (at least two days) between the individual admonitions. Nevertheless a single admonition suffices, provided it is expressed that it is peremptory, or that it avails for three. But in this case six days must intervene between the admonition and the infliction of the censure, unless the necessity of the fact advises otherwise.¹¹

Note. A censure unjustly inflicted does not oblige in conscience, whether it is unjust because of defect of fault or because of defect of proof. Wherefore one unjustly censured is not bound to observe the censure in secret; but publicly, because otherwise it cannot be done without scandal, he is bound so to conduct himself as if he were bound by censure.

Article Three.

On the Subject of Censure.

The subject capable of censure is only a baptized man, a wayfarer, capable of reason and subject to him who imposes the censure.

13. A baptized man, both because the Church has no jurisdiction over those who are not baptized, and because only the baptized enjoy the spiritual goods of which they are deprived by censures.

Therefore the Church can impose censures neither upon infidels and Jews nor upon catechumens, but indeed upon heretics and schismatics, who by reason of baptism are subject to her jurisdiction.

14. A wayfarer: for the Church does not have jurisdiction over the dead.

But if sometimes the dead are excommunicated, they are not properly condemned by judicial sentence; rather, for striking terror into the faithful, the Church only declares that in life they incurred censure

Notes

10. Regular superiors can bind their subjects by censure by way of particular sentence wherever they are staying, because their jurisdiction is chiefly personal.

11. C. *Constitutionem* 9. *De sententia excommunicat.* (V. 11) in 6°.

because of their delicts and must be treated as censured, i.e. that they must be deprived of the suffrages of the Church and of ecclesiastical burial, and, if already buried in a blessed place, must be exhumed. In like manner, if the dead are absolved from censure, the Church only removes the prohibition by which they could not participate in the common suffrages of the faithful nor be given ecclesiastical burial.¹²

15. Capable of reason: for since censure supposes sin, indeed also contumacy, it cannot be imposed upon those who cannot yet sin.

The question is whether those who indeed have the use of reason, but are still impubescent, can be bound by censure. Although the impubescent are of themselves capable of censure, nevertheless from the common opinion of doctors these things must be held:

- a. The impubescent, by the will of the Church, do not incur censures of a sentence already passed unless this is expressed in law.¹³ Wherefore the impubescent incur only one censure also, because this is expressly established in law, namely because of entrance into a monastery of nuns.¹⁴
- b. With respect to censures of a sentence to be passed, by positive law indeed it is not prohibited that the impubescent be bound by them; nevertheless the age of the impubescent does not seem sufficient for them suitably to be censured: for the impubescent, as the Salmanticenses well observe (n. 168), are more suitably corrected with rods than with censures.

16. A subject: for there is no jurisdiction over one who is not a subject. Therefore:

- a. The supreme pontiff alone cannot be bound by censure, because he has no superior on earth, and he cannot bind himself. But all the faithful can be bound by censures by the supreme pontiff, and all diocesans by the bishop.
- b. Although all the faithful can incur pontifical censures, nevertheless bishops and cardinals from a privilege of law do not incur suspension and interdict to be incurred by the very fact, unless special mention is made of them;¹⁵ but bishops and cardinals are also subject to papal excommunication, unless they are specially excepted.
- c. Although all subject to the bishop incur episcopal censures, nevertheless kings and queens by a privilege introduced through custom cannot be struck by censures by bishops, even if in other respects they are subject to the bishop's power, both legislative and judicial.
- d. Strangers, or subjects of another, do not incur episcopal censures to be incurred by the very fact, unless the matter concerns censures attached to those laws which even strangers are bound to observe;¹⁶ nevertheless strangers, or subjects of another, can be punished by a bishop with censures carried by a particular precept if they have committed a delict in his territory: for by reason of the delict they become his subjects.
- e. Therefore a stranger who commits a delict to which an episcopal censure is attached does not incur the censure, because a bishop cannot bind another's subject, even one delinquent in his diocese, by censures

Notes

12. The rite of absolving an excommunicated dead person is had in the *Roman Ritual*, tit. III, c. 4.

13. *C. Pueris* 1 and *C. Referente* 2. *De delictis puerorum* (V. 23).

14. Council of Trent, sess. 25, c. 5, *De reg.* In the old law there is another excommunication which even the impubescent incurred, namely that carried against those violently laying hands upon clerics (*C. Super* 1. *C. Mulieres* 6. *C. Pueris* 60. *De sententia excommunicationis* [V. 39]). But several doubt whether in the recent law this same thing avails (cf. n. 70).

15. *C. Quia periculosum* 4. *De sentent. excommun.* (V. 11) in 6°.

16. Cf. *De principiis* n. 149.

carried by way of general sentence and therefore before the delict, and to be incurred by the very fact. The same must be said of one who commits in a place exempt from the diocese, e.g. in a monastery, a delict to which an episcopal censure is attached. Nevertheless, one who has once been bound by censure remains bound by it, even if he goes into other regions: for censure follows him as the shadow the body and leprosy the leper.

- f. Since a stranger by the statute of law obtains the forum of the delict, both because there where the delict was perpetrated the author and quantity of the crime are more easily known, and because restoration of the injured order is better obtained there where the violation was made, by reason of the delict a stranger becomes the subject of the bishop of the place in which he committed the delict.
- g. Exempt regulars do not incur episcopal censures, nor can they be bound by censure by bishops except in those matters in which jurisdiction over regulars has been conceded to bishops by law. In this case bishops act as delegates of the apostolic see.
- h. One delinquent outside the diocese does not incur a censure carried by general statute, because this statute affects only the territory; but he incurs a censure carried by special precept for guarding against some crime, as if a bishop, under penalty of suspension of a sentence already passed, prohibits a cleric from entrance into a tavern, but the cleric enters a tavern outside the diocese.

Several authors indeed deny that a cleric in this case incurs censure, whose opinion St. Alphonsus (n. 23) calls probable; but, as Ballerini after Laymann notes, a particular precept, as clinging to the bones, obliges even outside the diocese; wherefore the opinion denying it seems to lack true probability.¹⁷

- e. One delinquent within, but existing outside, the diocese can be bound by censure by the bishop; thus a bishop can suspend a parish priest who flees after a delict has been committed.

Citation indeed, since it imports judicial notice, cannot be made in another diocese; nevertheless one absent can be cited by letters and, having been cited, must appear; but if he does not appear, he can be excommunicated.

17. Whether the subject of censure can be an entire community, e.g. a university, monastery, chapter, city.

- a. Interdict can be imposed upon a whole community, although there are several innocent persons in it; for by interdict the innocent are not properly punished, but the Church for just causes withdraws her benefits from both the guilty and the innocent.
- b. Suspension can be imposed upon a whole community, although there are several innocent persons in it, because suspension does not affect the innocent except with respect to acts which belong to the whole community as such, such as the election of superiors.
- c. Excommunication cannot be imposed upon a whole community, but only upon those who are found culpable: for since in a community several persons are accustomed to be either altogether innocent or less guilty than others, it would be too harsh if all were affected by the same penalty.¹⁸

18. Nothing prevents someone from being bound at the same time by several censures of the same species, and likewise from being loosed from one while he remains bound by another.

Notes

17. Ballerini-Palmieri VII, n. 71.

18. C. *Romana ecclesia* 5. *De sententia excommun.* (V. 11) in 6°.

- a. No one doubts that someone can be bound by several censures of diverse species, e.g. excommunication and suspension; but they have doubted whether someone can be bound by several censures of the same species. For since censure consists in the privation of spiritual goods, if someone by force of one censure has already been deprived of goods, he cannot by another censure again or more greatly be deprived of the same goods. But formally censure is not so much privation as the cause inducing privation; but nothing prevents the same privation from existing from several titles and causes, just as several mortal sins deprive of the same sanctifying grace.¹⁹
- b. There is an axiom in law: as many transgressions, so many penalties.²⁰ Therefore one who commits two crimes distinct in species, to each of which a distinct excommunication is attached, as, for example, one who commits heresy and reads a book prohibited under censure, incurs a twofold excommunication. One who commits two crimes distinct in number, e.g. commits a duel twice, incurs the same censure twice. One who commits a crime by which two penal laws diverse in species are violated at the same time incurs a twofold censure; for example, one who kills a priest in a church incurs the censure laid upon personal sacrilege and upon local sacrilege. One who commits several and diverse crimes prohibited by the same penal law incurs the censure several times; thus one who reads, retains, prints, and defends a book prohibited under excommunication is excommunicated from a fourfold head, because all four actions are prohibited by the same penal law.

Article Four.

On the Conditions Required for Incurring Censure.

The cause of censure is crime: for censure is brought upon the delinquent; but the crime because of which censure is inflicted must be grave, external, consummated, and committed with contumacy, in order that censure be incurred.

19. Grave with respect to the internal and external act. a. For penalty supposes fault, and grave penalty supposes grave fault; but censures (at least excommunication, suspension from order, and general interdict) are grave penalties. Nevertheless light censures, such as suspension and interdict which are inflicted for a short time and prohibit only one or another act, can be inflicted even because of light fault.

- a. Therefore a censure would be invalid by which restitution of a slight thing was commanded under excommunication. Nevertheless if a thing light in itself becomes grave by reason of scandal, danger, or end, it can be commanded or prohibited under grave obligation and under censure. Thus one incurs excommunication who violates enclosure only for a very little while.
- b. Therefore whatever excuses a delinquent from grave sin, such as smallness of matter, imperfection of the act, material cooperation offered from a grave cause, also excuses him from incurring censure, at least before God and in conscience.
- c. For censures are immediately inflicted because of an external sin; wherefore excommunication is not incurred because of a light striking of a cleric, even if he is struck with the intention of gravely injuring him.

One who commits an action prohibited under excommunication in such a way that it is a grave sin only because of a gravely evil intention or from an erroneous conscience does not incur censure, as one who reads a book which he falsely thinks is prohibited under excommunication.

Notes

19. Cf. Ballerini-Palmieri VII, n. 78.

20. C. *Ea, quae* 1. *De poenis* (V. 37).

20. External. For a merely internal sin cannot be punished by a censure of a sentence to be passed, because it cannot be proved in judgment; it could indeed be punished by a censure to be incurred by the very fact, but the usage is not in force in the Church of punishing internal sins with censures of a sentence already passed: no one suffers penalty for thought.²¹

An internal sin is one thing, an occult sin, of which only the delinquent has knowledge, is another. The Church can punish occult sins and in fact does punish them, as when, for example, she strikes occult heresy with excommunication; but one who commits merely internal heresy does not fall into excommunication.

21. Consummated, i.e. an attempted act (*der Versuch*) does not suffice, but the act prohibited under penalty must be truly posited and completed in its own genus by the effect following: for penal laws are of strict interpretation; wherefore they are restricted to consummated acts, unless the law itself decrees otherwise.

- a. Hence where the violent laying on of hands upon a cleric is prohibited under excommunication, he does not incur the censure who shoots at a cleric without hitting him, because the action prohibited under censure is not posited. Where incest is prohibited under censure, the penalty is not incurred except because of perfect intercourse with a blood-relative or relative by affinity, because by the name incest is signified carnal intercourse with a blood-relative or relative by affinity. Where homicide is prohibited under penalty, he does not incur the censure who inflicts a lethal wound unless death follows, whatever be the cause which prevents death, whether a natural remedy or a miracle, because properly only he commits homicide who brings about death itself.
- b. Thus the law itself prohibits under censure not only a duel, but also acts preparatory for a duel, namely provocation and acceptance. These acts, however, must be completed in their own genus in order to induce censure; therefore censure is not incurred if, for example, the provocation from any cause whatever does not reach the offender.
- c. One who, after a culpable action has been posited, repents of it before the effect follows, incurs censure and irregularity, because repentance does not prevent the effect which afterward follows from being voluntary. Nor should it be said with St. Alphonsus (n. 40) that he is not punished unless contumacious, and that one is not contumacious who has retracted his evil will through repentance: for the delict which is punished by the Church was truly committed with contumacy, even if it was afterward retracted. Indeed, he is called contumacious who, knowing the penal law of the Church, voluntarily transgresses it; nevertheless he does not incur the censure in fact before the effect has followed. Therefore it can happen that someone through contrition or confession is already immune from the sin because of which he is punished by the Church, when he in fact incurs the penalty itself or censure.²²
- d. Whether the effect which is intended to be prohibited under censure must be completed, if the censure is carried against those mandating or counseling, e.g. homicide or abortion, must be gathered from the very words of the law: for if the words of the law chiefly prohibit the effect (homicide, abortion) and only accessorially the mandate or counsel, those mandating or counseling do not incur censure when the effect has not followed; but if the words of the law chiefly prohibit also the mandate itself and counsel, they incur censure even when the effect has not followed, because by the very mandate or counsel the action prohibited under penalty is already posited.

Note. One who doubts whether he has contracted censure can regard himself as immune from it, and the confessor can absolve him. If, for example, someone has given an efficacious remedy for procuring abortion

Notes

21. C. *Cogitationis* 14, d. 1, *De poenit.*

22. Cf. Lugo, who with Suarez defends this opinion (*De poenit.*, disp. 16, n. 445); likewise Ballerini-Palmieri III, n. 350; VII, n. 95.

and afterward does not know whether the effect followed or not, he is burdened by censure or immune from it according as the effect in fact followed or did not. Nevertheless the confessor can absolve a penitent of this kind from the sin and from the censure, if it were present in fact, without enjoining the obligation of declaring this sin again if he learns that the effect followed, because in doubt, even of fact, concerning the existence of censure, the Church supplies power.

22. Committed with contumacy: for censures have been instituted for breaking contumacy against the power of the Church threatening the penalty. But he is judged to be contumacious who knows that something is prohibited by the Church under penalty and nevertheless dares to act against the prohibition.

A twofold contumacy against the Church, or contempt of the Church, is distinguished: special, which is committed by a proper and formal act of contempt against the power of the Church and constitutes a special sin; and general, which is implicitly contained in the transgression of ecclesiastical law committed by one who knew that the matter was commanded or prohibited by the Church under penalty. General contumacy suffices for incurring censure, nor is it required that the delinquent in the act of sin, e.g. while he commits a duel, think about the censure, provided he knows it habitually.

Note. These conditions are required in order that censure be present in the internal forum; in order that it also be incurred in the external forum, it is further required that the delict be notorious, and that not only with respect to the fact in itself, but also with respect to the conditions which are necessary for incurring censure. But since the conditions which by their nature are internal, such as knowledge and consent required for grave sin, are rarely notorious by fact, in the external forum someone would rarely have to be considered as bound by censure without a declaratory sentence of the judge, unless the conditions were presumed. But where the delict itself prohibited under censure is notorious, the required conditions, especially knowledge and contumacy, are presumed in the external forum until it is juridically established that the delinquent did not incur the censure, unless only those acting knowingly and rashly are bound by censure by the law: for in this case knowledge of the law and contumacy must be proved even for the external forum.

Hence it can happen that a censure is incurred in the external forum, but is not present in the internal forum. Thus Catholics who, ignorant of the censure, entered marriage before a heretical minister need absolution for the external forum,²³ because knowledge of the censure is presumed in this forum until ignorance is proved before the judge; but in the internal forum they are immune from the censure because of ignorance of it.

Article Five.

On Causes Excusing from Censures.

For incurring censure contumacy is required; therefore whatever either notably diminishes or completely removes contumacy excuses from incurring censure. Now there are chiefly two causes numbered which for this reason excuse from incurring censure: grave fear and ignorance.

23. Fear. a. Grave fear excuses from censure whenever it excuses from observing an ecclesiastical law: for an act which proceeds from grave fear is not committed from contumacy, but rather from the weakness of nature. Moreover, fear of grave harm of itself excuses from the very precept of the Church; but where no sin is committed against the precept of the Church, censure is not incurred, which of itself and primarily is established against injury of an ecclesiastical precept.

Notes

23. Holy Office, May 18, 1892.

- a. Namely, an act prohibited under censure is prohibited either by ecclesiastical law alone or at the same time by divine law (natural or positive). If the first, an act posited from fear is not a sin; if the other, an act posited from fear can be a sin against divine law, but is not a sin against the law of the Church, which does not oblige with grave inconvenience.
- b. There are a few certain cases in which fear, however grave, does not excuse from observation of ecclesiastical law, especially where violation of the law causes common harm. In these cases, therefore, grave fear, just as it does not excuse from observing ecclesiastical law, so also does not excuse from incurring censure.²⁴
- c. Just as grave fear excuses from incurring censure, so it also excuses from observing it: for ecclesiastical laws do not oblige with grave inconvenience. Therefore when observation of censure, e.g. of occult excommunication, is joined with fear of grave harm or with grave inconvenience, the excommunicated person can conduct himself as immune from censure.
- d. Even light fear excuses from incurring censure, provided the fear is the cause of the prohibited action, if the censure is imposed on those doing it rashly, with rash daring, spontaneously: for in these cases it is required that the prohibited action be posited altogether by one's own movement, not for escaping any evil whatever.

24. Ignorance. a. Ignorance which is not crass always excuses from incurring censure, whether the ignorance is of fact or of law, not only when it is not known that the act is prohibited, but also when only this is not known, that it is prohibited under censure.²⁵ The reason for the first is that censure supposes fault; but this ignorance (whether antecedent or concomitant) excuses from fault, therefore also from incurring censure. The reason for the second is that one ignorant that a censure is attached to a sinful act is not contumacious against the coercive power of the Church; but censure is inflicted for breaking the contumacy of the delinquent.²⁶

- a. Several authors (Sanchez, Pirhing, Reuter, Mazzotta, Ballerini) do not call every gravely culpable ignorance crass, but admit gravely culpable ignorance which is not crass: for crass ignorance, so they say, arises not simply from gravely culpable negligence, but from negligence with grave excess. This opinion is probable and therefore licit in practice. But since it is very difficult to distinguish between culpable ignorance from grave negligence and culpable ignorance from grave negligence with excess, practically it can be established that only ignorance which is not gravely culpable always excuses from incurring censure.
- b. Therefore ignorance both of law and of fact excuses from incurring censure, and it also excuses when the delinquent indeed knows that the action is prohibited by divine law, whether natural or positive, but does not know that the same is prohibited under ecclesiastical censure.
- c. Ignorance is gravely culpable in him who does not know what he ought to know by reason of office; therefore lay persons are always excused from incurring censures which they do not know; not likewise clerics, who ought to know them by reason of office, unless it can be affirmed that their negligence in learning censures was not grave, or at least was not grave with excess.

Notes

24. Cf. *De principiis* n. 176, where it is explained when grave fear, or grave inconvenience, excuses from the obligation of an affirmative law.

25. C. *Ut animarum* 2. *De constit.* (I. 2) in 6°. Although in this chapter there is speech only about censures of ordinaries, nevertheless by right and deservedly the principle established in it is extended also to papal censures.

26. In the external forum knowledge of the censure is presumed; therefore, in order that ignorance excuse from incurring censure in the external forum, it must be proved.

- d. Sometimes even crass ignorance excuses from incurring censure, namely if the law imposing censure does not speak absolutely and simply (whoever shall have committed this, let him be excommunicated), but if the censure is carried against those who have sinned rashly, with rash daring, by presumption, knowingly, deliberately.
- e. Indeed if the law for incurring censure requires that the sin have been committed knowingly or deliberately, even affected ignorance excuses from incurring censure: for one who acts with any ignorance whatever certainly does not act knowingly. Therefore, although one who acts with such ignorance sins gravely against the precept, nevertheless he does not incur censure, since the law itself requires certain and formal knowledge for incurring censure.

But if someone knows the law and the penalty imposed, but does not know that the penalty is reserved, there are a few certain doctors who think that the reservation of the censure ceases because of this ignorance: for reservation is added to censure in the manner of a penalty; but ignorance excuses from incurring a penalty and therefore from incurring a reservation. But authors commonly teach that this ignorance does not bring it about that the censure is not reserved. For ignorance would excuse because the Church does not wish to subject the ignorant to an extraordinary penalty; but reservation, once the censure has been contracted, is not something extraordinary which is added to the censure, but rather that which naturally follows it, unless the legislator from kindness has made absolution easier.²⁷

Note. a. Forgetfulness and inadvertence of the censure are equivalent to ignorance, because one who in no way adverts to the law cannot be called contumacious against it.

- b. Censures, especially by the more unlearned, are rarely incurred because of ignorance until they have been admonished about the matter.

25. Whether ignorance excuses from incurring a vindictive penalty. A vindictive penalty, since it is not inflicted for correcting the contumacy of the guilty person, but for punishing his crime, is incurred even by those ignorant, not indeed of the law, but of the annexed penalty, unless this penalty is extraordinary.

For incurring a vindictive penalty knowledge of the penalty is not required if this is ordinary: for natural reason understands that a delict by its nature is to be punished. But if the penalty is extraordinary and exorbitant, knowledge of the penalty is required in order that it be incurred. Namely, for incurring a penalty there is not indeed required consent to the penalty, but nevertheless consent to the cause of the penalty is required; now, one committing a delict by this very fact implicitly consents to the cause of the ordinary penalty, but does not consent even implicitly to the cause of an extraordinary penalty, since he in no way knows it. Now all vindictive penalties of a sentence already passed are judged extraordinary and exorbitant.

Article Six.

On Absolution from Censures.

26. On absolution itself. 1. A censure once contracted cannot be taken away except through absolution conceded by a legitimate superior.²⁸

- a. Censure is not taken away through the amendment of the guilty person, nor through the death or removal of the one imposing the censure, nor through the death of the censured person, who, even if he

Notes

27. Lehmkuhl II, n. 866.

28. C. *Quum desideres* 15. C. *A nobis* 28. *De sentent. excom.* (V. 39).

has died contrite, is deprived of the suffrages of the Church and ecclesiastical burial unless he has been absolved; for censure once inflicted remains until it is taken away through absolution.

- b. Hence an excommunicated person who elicits an act of contrition is in the state of grace, but nevertheless remains excommunicated and deprived of the communion of the Church. Therefore, although fault is required for incurring censure, the penalty can nevertheless remain after the fault has been remitted.
2. Absolution of censure is remission of the penalty made by a legitimate superior.

It differs from dispensation, because absolution is an act of justice, which is owed to him who has laid aside contumacy and has offered satisfaction, if any was needed; but dispensation, by which someone is exempted from a common law, is an act of grace, which can be denied even to one disposed. Moreover, for granting absolution validly and licitly, besides the disposition of the guilty person, no other cause is required; for granting dispensation validly or at least licitly, a just cause is required. Medicinal penalties are taken away by absolution, vindictive penalties by dispensation.

27. Absolution from censures can be conceded in manifold ways:

- a. In the internal forum, which of itself takes away the effects of censure for the internal forum alone.
- b. In the external forum, which takes away the effects of censure also for the internal forum.
- c. Absolution to re-incidence, or under penalty of re-incidence, is absolution conceded under a determined condition, so that if this is not fulfilled the same censure is again incurred by the very fact.

The censure into which the absolved person falls back is of the same species, but new and distinct in number; wherefore one cannot add the penalty of re-incidence to absolution unless he has the power of imposing censures. For re-incidence there is required new fault and contumacy, and for its removal a new absolution.

- d. Absolution for caution is given when it is unknown or doubted whether someone is in fact bound by censure. Of this kind is the absolution which is given in the sacrament of penance before absolution from sins.
- e. Absolution for an effect is sometimes conceded in pontifical rescripts, and tends to this, that censure not impede the effect of obtaining the grace conceded, while with respect to other effects the censure remains. Thus spouses in rescripts of dispensation are absolved from censures, that they may certainly become participants in the dispensation.²⁹
- f. Absolution can be given absolutely or conditionally, and indeed under a condition concerning the past, concerning the present, and concerning the future. Generally it is not licit to use a condition concerning the past or concerning the present; but a condition concerning the future (e.g. I absolve you if within a month you shall have restored) is licit from a grave cause.

28. Who can absolve. 1. From reserved censures only he can absolve who imposed them, his superior, his successor in office, and the delegate of these; for to absolve belongs to the same one to whom it belongs to bind.

It must be noted that censures carried by man by way of precept, or through particular sentence, are reckoned among reserved censures; on the contrary, censures carried by man by way of statute, or through general sentence, are reckoned among non-reserved censures.

Notes

29. The form of this absolution, which is accustomed to be appended to pontifical rescripts, is this: "We therefore, absolving the same N. N. from any excommunications ... if he in any way exists bound by them, for the sole effect of obtaining the present things, and judging him to be absolved."

2. From non-reserved censures any confessor can absolve, both for the internal forum and for the external forum.³⁰ The confessor can grant this absolution both within and outside confession. Nevertheless, in order that one notoriously censured may publicly use the absolution, for preventing scandal it is required that the granted absolution be publicly established.

Concerning absolution from censures, whether reserved or non-reserved, which is granted to strangers, the same must be said as is established concerning absolution from sins in the treatise on the sacrament of penance.³¹

3. In the article of death any priest, even one not approved, indeed even when an approved or privileged one is present, can absolve from all censures, even reserved ones.³²

One who in the article of death is absolved from censures reserved to the Roman pontiff is not bound to present himself to the superior if he recovers, if he was absolved from censures simply reserved.³³ But if he was absolved from censures reserved in a special mode, under grave sin and under penalty of re-incidence he must present himself to the superior, i.e. either by himself or through the confessor he must have recourse to the holy see and stand by its mandates, or seek a new absolution from one having the power of absolving.³⁴

4. In more urgent cases any confessor can give absolution from censures reserved to the pope, yet under this condition, that the absolved person, under penalty of re-incidence into the same censures, within a month by letter or through the confessor have recourse to the holy see.³⁵

29. On absolution in occult cases. Bishops have the faculty of absolving in the internal forum, even outside the sacrament, any delinquents subject to themselves from censures contracted from an occult delict and reserved to the Roman pontiff simply, but not in a special mode.

- a. The terms occult and public have a different sense in diverse matters. Where matrimonial impediments are concerned, they are understood more strictly;³⁶ where crimes are concerned, a little more broadly.³⁷
 - b. A crime can be occult in two ways: materially, namely when the fact itself is unknown, e.g. entrance into enclosure; or formally, if the fact is known, but either is thought to have been done rightly, e.g. entrance from permission (error of fact), or the attached censure is unknown (error of law). Now a bishop can absolve not only if the crime is materially occult, but also if it is only formally occult; and indeed if there is error of fact, all concede this; if there is error of law, it is commonly admitted.
1. This faculty is conceded to bishops by the Council of Trent in the celebrated chapter *Liceat*,³⁸ and the same is confirmed and restricted to simply reserved cases by the Pian constitution *Apostolicae sedis*.³⁹

Notes

30. C. *Nuper* 29. *De sentent. excom.* (V. 39).

31. Cf. *De sacramentis*³ n. 349, 378.

32. Council of Trent, sess. 14, c. 7.

33. Holy Office, June 17, 1891.

34. Holy Office, August 19, 1891.

35. Holy Office, June 23, 1886. Cf. *De sacramentis*³ n. 381.

36. Cf. *De sacramentis*³ n. 619.

37. Cf. above n. 10 and *De praeceptis*³ n. 649.

38. Sess. 24, c. 6, *De reform.*

39. "Nevertheless we will that the faculty of absolving conceded to bishops by the Tridentine synod remain firm in any censures reserved to the apostolic see by this our constitution, excepting only those which we have declared reserved to the same apostolic see in a special mode."

But besides this faculty conceded in law, bishops are accustomed to receive from the holy see, for a time, the faculty of absolving either by themselves or through others even from cases reserved in a special mode, whether they are occult or public. In practice, therefore, the faculty of absolving from papal cases will almost always be able to be obtained from the bishop.

2. Regular prelates, by the constitution *Apostolicae sedis*, lack a perpetual faculty of absolving from papal cases not only seculars but also their own subjects;⁴⁰ nevertheless this power is accustomed to be conceded to them for a time.

Regular prelates can absolve their own subjects from censures which by pontifical law are reserved to bishops.

3. Although Trent does not concede to bishops the power of absolving except with respect to their own subjects, nevertheless from universal custom they can absolve even subjects of others, or strangers, by power conceded by the tacit consent of the bishop of the strangers.⁴¹
4. From c. *Liceat*, bishops can absolve their own subjects from occult cases in the forum of conscience. Now these words do not signify that this must be done in sacramental confession, but that the absolution of itself avails only for the internal forum.

30. On the conditions required for absolving. 1. Someone can be absolved from censure even absent and unwilling; nevertheless it is fitting that absolution be given only to one present and asking.

Just as one absent can be struck by censures through letters, so also he can be absolved from censures; nevertheless the presence of the censured person conduces more both to reverence for censures and to the humiliation of the censured person himself; therefore it is conceded to one absent only from a reasonable cause.

2. The conditions to be fulfilled by the censured person are generally accustomed to be expressed by these words: those things having been enjoined which must be enjoined by law; but in particular there must be enjoined:
 - a. That he satisfy the injured party, if he injured any (by revocation, restitution, petition for pardon), or if he cannot satisfy, that he at least promise that he will satisfy as soon as he can, unless the injured party has remitted the injury or the guilty person is unable to satisfy.
 - b. That he repair scandal, if any was given, which is necessary by divine law. But scandal must be repaired in the better way in which it can be done, according to the prudent judgment of the ordinary or confessor.
 - c. That a salutary penance be imposed besides the sacramental penance.
3. For validly absolving from censure a determined formula of words is not required, but the will of the superior manifested by a sensible sign suffices, whether this is done by words or in writing or by another sign.

For licitly absolving in the internal forum, whether sacramental or extra-sacramental, from the prescription of the Roman Ritual the formula which is had in the very form of sacramental absolution is to be used;⁴² but in the external forum, from the prescription of law, the form which is had in the Roman Ritual or Pontifical

Notes

40. Sacred Penitentiary, December 5, 1873.

41. Cf. *De sacramentis* 3 n. 378.

42. *Roman Ritual*, tit. III, c. 3, n. 8.

is to be used.⁴³

31. On whether absolution from censure is to be given in the internal or external forum. In practice a difficulty not rarely arises whether absolution must be conceded for the external forum or whether it suffices for the internal forum. A censure carried by man through condemnatory sentence certainly needs absolution for the external forum; concerning a censure of a sentence already passed, these things must be held:

1. If a censure of a sentence already passed was contracted in the internal forum alone, absolution for the internal forum suffices.

If the delict is occult, the censure pertains to the internal forum and it is treated in the internal forum alone. Both a delict which became public neither by law nor by fact, and a delict which in the place where the guilty person is now staying neither is nor will be known, even if in another place it is known by fact, are judged occult.

2. If a censure of a sentence already passed was contracted in the external forum, absolution for the external forum is required.

Only if the censure is not reserved does absolution for the internal forum suffice, even if the censure is notorious, provided the absolution conceded is publicly established.

3. Absolution conceded for the external forum avails also for the internal forum; but absolution for the internal forum of itself does not avail for the external forum. Nevertheless an ecclesiastical judge can recognize it also for the external forum if the absolution conceded is publicly established.

That the absolution conceded is publicly established is judged if it is publicly known that the censured person has confessed and has offered due satisfaction, if any was necessary.

Article Seven.

On Censures Now in Force.

32. Censures now in force. 1. At every time the Church has used the power of inflicting censures because of certain graver crimes, but especially because of the crime of heresy.⁴⁴ The mode by which she imposed censures was diverse in diverse times; nevertheless she more frequently used excommunications, of which the first, by common law and reserved to the Roman pontiff, was established by the Second Lateran Council (1139), to which in the course of time several others were added. All these, collected in the form of a bull by the will of the Roman pontiffs, were promulgated every year at Rome in the churches on certain days, especially on Maundy Thursday. Their collection is therefore called the Bull *In Coena Domini*, which in the passage of time, by the care of the Roman pontiffs, was increased up to twenty censures. Besides the censures which were contained in the Bull *In Coena*, several others were in force, both those carried by pontifical constitutions and those carried by the Council of Trent. Since the number of censures was growing too much, and some of them, with morals and times changed, seemed less useful, by Pius IX, through the constitution *Apostolicae sedis* of October 12, 1869, very many censures of a sentence already passed having been abrogated, the most recent law was established with respect to ecclesiastical censures. Wherefore today by common law only those censures of a sentence already passed are in force which are directly or indirectly contained in this constitution, and those which were added to them after its promulgation.

Notes

43. C. A nobis 28. *De sentent. excom.* (V. 39).

44. Cf. 1 Cor. 5, 1-5. Kober, *Der Kirchenbann*, p. 15 ff. Hausmann, *Geschichte der papstlichen Reservatfalle* (Regensburg: Pustet, 1868), p. 21 ff.

But all censures which are contained clearly and certainly in this constitution receive full force of obliging through it, even if before its promulgation they perhaps had fallen into desuetude.

The Pian constitution, which treats only censures, and those of a sentence already passed, changed nothing with respect to censures of a sentence to be passed, nor with respect to censures carried by private law, such as censures carried by bishops or by prelates of regulars against their own subjects, nor with respect to irregularities or other ecclesiastical penalties, nor with respect to ecclesiastical laws. Therefore if by this constitution the censure has been removed from some law, the law itself retains the force of obliging.

2. The censures now in force are:

- a. Censures inflicted in express words in the bull itself.
- b. Censures inflicted by the Council of Trent and confirmed by this constitution.

It is the common opinion of interpreters that from this constitution only those Tridentine censures have force which the Council of Trent then first inflicted, but not those which Trent only renewed and confirmed from the old law. For the words which the supreme pontiff uses in this constitution designate those censures alone.

- c. Censures previously in force and not changed by this constitution from the constitutions: a. for the election of the Roman pontiff; b. for the internal governance of any orders and regular institutes.
- d. Censures which were carried after the constitution *Apostolicae sedis*.

Question Two.

On Excommunication.

Article One.

On Excommunication in General.

33. Notion. Excommunication is a censure by which a Christian man is deprived of communion with the faithful.

- a. There is a threefold communication of the faithful: a. merely internal, consisting in faith and charity, by which the faithful are mystically united among themselves and with Christ; b. merely external (in civil matters), which consists in external profane actions, namely in the common life, conversation, commerce, etc., of the faithful; c. mixed (in divine matters), consisting in external religious actions which by their institution produce internal spiritual fruit, such as the administration and reception of the sacraments, the suffrages of the Church, which in the sacrifice of the Mass and in other public offices are founded for all the faithful, indulgences. Now the Church deprives no one of the communion of merely internal goods, nor can she deprive anyone of it; but she can deprive a disobedient and contumacious man of external and mixed communion, and in fact deprives him of it through excommunication.
- b. Excommunication is the gravest of all ecclesiastical penalties, than which there is none greater in the Church: for since it deprives one of all the goods of the Church, it virtually contains in itself the other censures, which deprive one of the same goods only partially. Therefore the Council of Trent admonishes ecclesiastical judges not to use this penalty unless when no other remedy remains.⁴⁵

Notes

45. Sess. 25, c. 3, *De reform.*

- c. By the name anathema there is designated either excommunication itself, or excommunication inflicted because of heresy or suspicion of it, or excommunication which is denounced against the excommunicated person with a certain extraordinary solemnity.⁴⁶

34. Division of excommunication. Excommunication was previously divided, from its effect, into greater and lesser; the former deprived one of all common goods, the latter only of part, namely reception of the sacraments and passive election to dignities and benefices. But now, lesser excommunication having been removed by the constitution *Apostolicae sedis*, only greater excommunication is in force.⁴⁷

Lesser excommunication was formerly incurred by those who, against the prohibition of the Church, communicated with an excommunicated person to be avoided. Those communicating with an excommunicated person to be avoided today fall into greater excommunication, but only in those cases which are expressly indicated in the constitution *Apostolicae sedis*.

35. Distinction among excommunicated persons. Some excommunicated persons are to be avoided, whom the faithful are bound to avoid; others are tolerated, whom the faithful are not bound to avoid. This distinction, taken from the chief effect of greater excommunication, must still be attended to today.

- a. In antiquity all persons excommunicated by greater excommunication were to be avoided. In the Council of Constance the constitution *Ad evitanda* was issued, confirmed by Martin V and afterward by Leo X, which a. removes the prohibition of communicating with excommunicated persons, with three cases excepted, yet b. does not intend to relieve the excommunicated persons themselves in anything or in any way to favor them, but to avoid scandals and many dangers and to aid the consciences of the faithful.
- b. Therefore not only is it prohibited to excommunicated persons to be avoided to communicate with the rest of the faithful, but there also lies upon the faithful an obligation in conscience of omitting commerce with excommunicated persons to be avoided. But with respect to tolerated persons, they indeed are bound to abstain from commerce with the rest of the faithful in divine matters; however, the faithful can licitly communicate with them both in divine and in human matters. But if the excommunicated persons have been anticipated by the faithful, they too can licitly communicate even in divine matters.
- c. Therefore by reason of excommunication, sacraments can licitly be asked from an excommunicated person (tolerated) even without necessity; but from another reason it can happen that sacraments cannot be asked from him without necessity, namely if he is in sin.

36. Who are to be avoided. Therefore, from the new law introduced through the Council of Constance, excommunicated persons to be avoided are:

1. Those excommunicated by name and publicly, whether by the Roman pontiff or by a bishop.
2. Those who by name and publicly have been denounced as excommunicated by the pope or by a bishop, namely where it concerns a censure of a sentence already passed.
- a. By name, i.e. by an expressed name or by another title which certainly designates the person and therefore is equivalent to a name, e.g. we excommunicate the dean of this place.
- b. Publicly, i.e. in the mode by which promulgation of law is made, either by affixing the name in a public place or by reading it in church at the time of Mass or sermon, etc.

Notes

46. Cf. C. *Debent* 106, c. 11, q. 3, where the mode and form of solemn excommunication is described.

47. Holy Office, December 5, 1883. Cf. *Acta sanctae sedis* XVII, p. 555.

- c. Therefore we licitly communicate with heretics and schismatics who, because of their heresy, have been excommunicated and denounced publicly as such, because they have not been excommunicated and denounced by name.

3. Notorious strikers of clerics, even if they have not been denounced as excommunicated.

But in order that a striking inducing censure be notorious, notoriety of fact does not suffice; rather, notoriety of law is also required, i.e. that the crime be known by sentence of a judge or by confession of the guilty person in judgment (n. 10).⁴⁸

Article Two.

On the Effects of Excommunication.

37. Some effects of excommunication are immediate, others mediate; nevertheless all these effects affect only those to be avoided. The immediate effects, by which the excommunicated are deprived of almost all rights which belong to members of the Church, are numbered as nine: excommunication deprives one of the passive use of the sacraments, the active use of the sacraments, the use of divine offices, the common suffrages of the Church, ecclesiastical jurisdiction, capacity for acquiring a benefice, ecclesiastical burial, forensic communication, and civil communication.

38. 1. It deprives one of the reception (passive use) of the sacraments.

- a. An excommunicated person, whether tolerated or to be avoided, validly receives the sacraments, even penance: for the Church cannot render the excommunicated person unable validly to receive the sacraments.
- b. If an excommunicated person approaches the sacrament of penance in bad faith, the absolution is invalid not because of the censure but because of defect of disposition; but if he approaches in good faith, the sacrament of penance is valid; for the confessor is not deprived of jurisdiction even if knowingly he absolves an excommunicated person, and the penitent is not incapable of absolution, even if the excommunication is reserved; nevertheless, with sins remitted, the excommunication remains, if it is reserved.⁴⁹
- c. The use of sacramentals is not prohibited to the excommunicated, but the prayers of the Church do not assist excommunicated persons using them: therefore they lack the fruit which comes from the prayers of the Church.
- d. But neither an excommunicated tolerated person nor one to be avoided licitly receives the sacraments; wherefore one receiving them sins gravely, unless ignorance or fear of grave harm, whether spiritual or temporal, excuses.
- e. Therefore an excommunicated person without an excusing cause can licitly receive no sacrament (not even penance), but when an excusing cause exists he can licitly receive all the sacraments (even the Eucharist).
- f. From these things it is clear that not only can sacraments not be administered to excommunicated persons to be avoided before they have been absolved from excommunication, but neither to heretics or schismatics who, after the use of reason, publicly lived in a heretical or schismatic sect, before they have abjured heresy and professed the true faith.

Notes

48. Holy Office, January 9, 1884. Cf. St. Alphonsus n. 144.

49. Ballerini-Palmieri VII, n. 245 f.

39. 2. It deprives one of the administration (active use) of the sacraments, i.e. an excommunicated person, whether tolerated or to be avoided, cannot licitly administer the sacraments, and one to be avoided cannot even validly administer penance, because he lacks jurisdiction.

- a. An excommunicated person to be avoided always administers the sacraments illicitly, unless someone is in the article of death and no other priest is present who may administer the sacraments to him (for in this case the Church supplies jurisdiction for the utility of the faithful), or unless he himself would suffer grave inconvenience, because the Church does not oblige with so great an inconvenience (danger of death, infamy, grave loss of goods).

In a case of necessity he licitly administers not only baptism and penance, but also the Eucharist and extreme unction, lest the dying person be deprived of so great a help. A parish priest to be avoided assists at marriage illicitly, but can licitly delegate another to assist.

- b. An excommunicated tolerated person administers the sacraments illicitly if he, not asked, thrusts himself of his own accord into the administration; but if he is asked by the faithful, by reason of excommunication he licitly administers the sacraments, though he does this illicitly if he is in a state of sin.

Therefore when asked, indeed even rightly presuming that the faithful would ask (as if on a feast day there were not another priest present who would celebrate Mass), he can celebrate Mass. Nor do the faithful need a special reason in order to ask the sacraments from him, because communication with tolerated persons has been permitted to them.⁵⁰

40. 3. It deprives one of the use of divine offices, i.e. an excommunicated person, whether tolerated or to be avoided, is prohibited under grave sin from attending divine offices in a notable part, unless the necessity of avoiding scandal or another grave inconvenience excuses.

- a. Divine offices are to be understood as those which are performed by clerics as ministers of the Church, such as the sacrifice of the Mass, public prayer, procession, the chanting of hours, blessings which are publicly and solemnly done in church, such as the blessing of oil, candles, palms, the obsequies of the dead, etc.; but not those things which are done by private devotion, such as to pray, to venerate images or relics, etc.
- b. Therefore an excommunicated person to be avoided can enter a church at a time when divine offices are not being celebrated and pray there privately, whether separately in a distinct place or even in the same place with others: for by praying privately he does not communicate with others. A priest to be avoided can recite the divine office privately and therefore is also bound to recite it; he can attend a sermon, etc.
- c. Not only does an excommunicated person who attends divine offices sin, but also the other faithful who communicate with an excommunicated person to be avoided by assisting at the same divine office, e.g. the same Mass, commit sin, and indeed grave sin in grave matter.
- d. This prohibition of itself affects a tolerated person and one to be avoided in an equal mode; but with respect to tolerated persons it seems today to have gone into desuetude. And indeed tolerated excommunicated persons assisting at divine offices do not think that they sin, nor do ecclesiastical superiors urge this prohibition; thus neither Freemasons nor heretics are prohibited from assisting at sacred rites.⁵¹
- e. If an excommunicated person to be avoided attends a divine office, he must be admonished to leave; and if, after being admonished, he does not withdraw from the church, clerics are bound with the aid of lay

Notes

50. St. Alphonsus n. 169.

51. D'Annibale I, n. 362, note 19; Ballerini-Palmieri VII, n. 259.

persons to expel him if they can; if they cannot, then the faithful departing, they are bound to cease from the office.

If an excommunicated person to be avoided assists at Mass and cannot be expelled, the priest, the canon not yet having been begun, must break off the Mass; if he has already begun the canon, he can either break off the Mass or, the rest departing, continue it. If he has already consecrated, with the minister alone remaining, he must continue the sacrifice up to communion and complete the rest either in the sacristy or in another fitting place.

41. 4. It deprives one of the common suffrages of the Church.⁵²

1. Common and private suffrages are distinguished. Common or public suffrages are those which are done in the name of the Church by her ministers; private suffrages are those which are done in the proper name of the faithful. Therefore excommunicated persons, even if they are in the state of grace, are deprived of the fruits which come to the faithful from the sacrifice of the Mass, from recitation of the office, from the public prayers of the Church, and from indulgences. But private prayers can be made even for the excommunicated, and good works can be given to them.
2. Whether only those to be avoided or also tolerated persons are deprived of these suffrages is greatly disputed. The question, which chiefly refers to the sacrifice of the Mass and its application, seems to be solved in this way: occult tolerated excommunicated persons, who do not publicly adhere to a non-Catholic sect, are no longer deprived of the suffrages of the Church, from the time when it was conceded to the faithful to communicate with them even in divine matters; but public tolerated excommunicated persons, who publicly adhere to a non-Catholic sect (heretics and schismatics), are deprived of them.⁵³

42. 5. It deprives one of ecclesiastical jurisdiction, whose exercise indeed is a principal communication with the faithful.

An excommunicated person to be avoided exercises acts of jurisdiction illicitly and invalidly, except in the cases enumerated above (n. 39); but an excommunicated tolerated person, even a notorious one, exercises them validly, though he acts illicitly unless from a grave cause or when asked he exercises acts of jurisdiction.

- a. Even an excommunicated person to be avoided validly assists at marriage, because this assistance is not an act of jurisdiction; likewise he validly gives another priest the power of assisting at marriage, because the concession of this power likewise is not an act of jurisdiction.
- b. An excommunicated prelate validly receives a religious profession, because admission of profession is not properly an act of jurisdiction, but is the use of superiority which belongs to a prelate by reason of his office; otherwise neither a layman nor a woman could admit profession.⁵⁴

43. 6. It deprives one of capacity for acquiring a benefice.

- a. Hence the conferral of a benefice made to an excommunicated person, whether to be avoided or tolerated, is null, as are presentation, election, institution, confirmation: for an excommunicated person, even a tolerated one, cannot exercise an office, because he cannot communicate in office; but a benefice is given because of an office.

Notes

52. Cf. C. *Si quem* 59. C. *Sacris* 38. *De sententia excom.* (V. 39).

53. Cf. *De sacramentis* 3 n. 176.

54. Cf. Schmalzgrueber n. 167 ff.

- b. An excommunicated person likewise is by the law itself unable to obtain any rescripts of the holy see, whether of grace or of justice, which therefore will be null.⁵⁵ Nevertheless if they have been conceded knowingly to an excommunicated person, or with absolution from censures premised, as is accustomed to happen, they are valid; this must also be understood of the conferral of a benefice, if absolution from censures is contained in it.
- c. Therefore if a dispensation from an impediment of marriage is sought for an excommunicated person, the rescript of dispensation of the holy see (not likewise the rescript of dispensation of the bishop), whether it is conceded in gracious form or in commissory form, is null by the law itself. Now, for guarding against this nullity in apostolic rescripts, absolution from excommunication for the effect is accustomed to be appended (n. 27.e).
- d. If this absolution in commissory form is committed to the delegate himself, the petitioner must first be absolved and afterward dispensed, in order that the dispensation be valid. This absolution does not take away the censure, but only one effect of the censure, while the censure itself remains with the other effects.

44. 7. It deprives one of ecclesiastical burial, so that not even an excommunicated tolerated person, unless he is occult, can be buried in a sacred place; and if he has been buried in a sacred place, he must be taken out from there. Nevertheless there is a twofold distinction in this matter between one to be avoided and one tolerated:

- a. If each gave signs of penance before death, the tolerated person can be buried in a sacred place, even if he is not absolved from excommunication; but it is fitting that he first be absolved. But one to be avoided cannot be buried in a sacred place unless he is first absolved.
- b. If a tolerated person has been buried in a sacred place, he must be exhumed, but the sacred place is not thereby polluted; but if one to be avoided has been buried in a sacred place, he must be exhumed, and the sacred place is thereby polluted and needs expiation.

To the question how a parish priest ought to conduct himself if someone bound by censure has died, so that for this reason he ought to lack ecclesiastical burial, but if, by grave threats, obsequies and ecclesiastical burial itself are obstinately demanded, the Sacred Penitentiary responded on December 15, 1860: 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, either by himself or through other priests, in the obsequies and burial.⁵⁶

45. 8. It deprives one of forensic communication, or of every act pertaining to judgment, both in the ecclesiastical forum and in the civil forum. But in the civil forum this privation is no longer in force; in the ecclesiastical forum, however, an excommunicated person cannot be a judge, advocate, witness, tutor, executor of a will, etc.

Nevertheless the distinction between a tolerated person and one to be avoided must be attended to. A tolerated person acts not only validly, but also licitly if he is required; but one to be avoided always acts illicitly, indeed even the sentence of a judge to be avoided is invalid, because he lacks jurisdiction.

Notes

55. C. *Dilectus* 26. *De rescriptis* (l. 3). C. *Ipsa iure* 1. *De rescriptis* (l. 3) in 6°.

56. Cf. *Acta sanctae sedis* I, p. 563, n. 21.

46. 9. It deprives one of civil communication, so that an excommunicated person of himself can neither contract with the rest of the faithful, nor have commerce, nor cohabit, nor converse familiarly, nor can the faithful do so with him.

An excommunicated tolerated person indeed cannot communicate with the faithful in divine and forensic matters unless he is required; but in civil matters from today's custom he can communicate even when not required⁵⁷ (n. 35). Indeed, to recent authors (Lehmkuhl, Ballerini), this penalty even with respect to those to be avoided seems to have gone into desuetude. And indeed the causes excusing from this penalty, which are admitted by ancient authors, today have become so common that they exist for almost every excommunicated person; but a law ceases which now cannot commonly be observed, even if it can still be observed by some particular person.

47. Excusing causes, on account of which it is licit to communicate with one to be avoided in civil matters, are contained in this little verse:

Useful, law, humble, thing unknown, necessary;

These five loose anathema, lest it be able to harm.

- a. Useful signifies the spiritual or temporal utility of the one communicating, of the excommunicated person, or of a third person, which cannot otherwise conveniently be procured.

Therefore it is licit to exact a debt from one to be avoided, to ask alms, to employ him as physician or advocate if another equally suitable cannot be had, to give him salutary counsels, etc.

- b. Law signifies marriage, by force of which spouses, one or the other of whom is to be avoided, can communicate mutually, not only with respect to the conjugal debt, but also with respect to cohabitation, table, and domestic conversation.
- c. Humble signifies subjection; therefore children can communicate with parents, servants with masters, subjects with superiors to be avoided.
- d. Thing unknown signifies ignorance whether of law or of fact, provided it is not affected. In order that someone be prohibited from communicating with one to be avoided, he must know not only that the person is excommunicated, but also that he is to be avoided.
- e. Necessary signifies any notable necessity, whether spiritual or corporal, of the one communicating, of the one to be avoided, or of a third person.

Note. This excusing cause is already contained in the first, except that according to the mind of some authors the temporal utility alone of one to be avoided does not excuse, but necessity is required; and therefore this fifth cause of temporal necessity has been added.

48. Mediate effects of excommunication are called those which arise not from excommunication itself, but from fault committed by the excommunicated person because of the excommunication. Three effects of this kind are chiefly numbered:

- a. Irregularity, which arises from violation of the censure: for an excommunicated person who culpably exercises an act of sacred order becomes irregular.

Notes

57. Sacred Penitentiary, July 5, 1867.

- b. Suspicion of heresy; one who through a whole year becomes filthy in excommunication, or persists contumaciously, incurs suspicion of heresy, because he is presumed to think badly concerning the power of the Church and concerning the sacraments, whose reception he omits.⁵⁸
- c. Privation of benefices, namely he who for a year perseveres contumaciously in excommunication must be deprived of ecclesiastical benefices, if the crime because of which he has been excommunicated deserves a privation of this kind.

49. What kind of sin it is to communicate with an excommunicated person. a. To communicate with an excommunicated person in divine matters is mortal, unless smallness of matter excuses.

- b. To communicate with an excommunicated person in civil matters, even without a just cause, of itself does not exceed venial sin. Today, however, as is noted above (n. 46), it lacks all sin.
- c. To communicate with an excommunicated person in criminal crime is a mortal sin. He is said to communicate with an excommunicated person in criminal crime who communicates with him in that very crime because of which he is excommunicated, by furnishing help or favor to him.

Thus if someone furnished help or favor to a person excommunicated because of retention of an ecclesiastical good, lest he restore the good of the Church, he would communicate with him in criminal crime.

Note. The constitution *Apostolicae sedis* itself divides the excommunications now in force into four series, the first of which contains excommunications reserved in a special mode to the Roman pontiff, the second excommunications reserved in an ordinary mode to the Roman pontiff, the third excommunications reserved to bishops, the fourth excommunications reserved to no one. The individual ones will be explained in this order, yet in such a way that those which more rarely occur will be explained briefly, and those which are more easily contracted by the faithful with a fuller pen.

Article Three.

On Excommunications Reserved in a Special Mode.

To the first series belong thirteen excommunications, of which twelve are contained in the bull *Apostolicae sedis*, but one was afterward added from the constitution *Romanus pontifex*. The first twelve, with the tenth excepted, are taken from the Bull *In Coena*.

§ 1. From the Constitution *Apostolicae sedis*

Therefore the Pian constitution declares subject to excommunication of a sentence already passed, reserved in a special mode to the Roman pontiff:

First excommunication. 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, favorers, and generally any defenders of them.

50. A twofold genus of persons is struck by this censure: a. those who defect from the faith previously received: apostates, heretics, those believing heretics; b. those who in some way become participants in this crime, yet do not properly commit it: receivers, favorers, defenders.

Those defecting from the faith. 1. Apostates are called those who defect totally from the Christian faith received through baptism, so that they no longer wish to be numbered among Catholics.⁵⁹ For incurring

Notes

58. Council of Trent, sess. 25, c. 3, *De reform.*

59. Cf. *De praeceptis* 3 n. 28.

excommunication it is required that the internal defection from the faith manifest itself externally; but it makes no difference whether the apostate passes over to another religious sect, to Judaism, paganism, Mohammedanism, or indeed professes no religious worship, as atheists, deists, indifferentists, materialists, naturalists, pantheists, freethinkers.

Those who deny either the existence or the possibility of Christian revelation are apostates from the Christian faith and incur this excommunication. Those are not apostates who, following practical indifferentism, utterly neglect the duties of the Christian religion, because externally they do not defect from the Christian religion, but still wish to be counted among Catholics.

2. Heretics are called Christian men who voluntarily and pertinaciously deny (or call into doubt) a truth of faith proposed by the Church. For incurring excommunication it is required that the heresy conceived internally be manifested externally by some sign, whether by word or by deed or by writing, even with no one present or hearing. But it is not required that the heretic join himself to some sect of heretics, such as Protestants, schismatics erring in faith, Jansenists, anti-infallibilists or Old Catholics.
 - a. He also incurs this excommunication who exercises heretical superstition, as one who attempts to divine, through turning tables, spiritism, and magical arts of this kind, secrets of hearts or future free actions of men known to God alone, provided he adverts to the heresy implicit in this deed.⁶⁰
 - b. Not all concede that he incurs excommunication who positively doubts concerning the truth of faith, “because,” as Struggl says, “such a one does not have heresy plainly consummated and perfect.”⁶¹
 - c. Because only those incur this censure who have committed formal heresy, it is clear that it can happen that several who have been educated in heresy are, because of their good faith, immune from excommunication. But if they return to the Catholic faith, in the external forum they are absolved from excommunication because they are subject to a censure notorious by law; but in the internal forum those do not need absolution who are established to have been in good faith.
3. Those believing apostates or heretics are understood to be those who implicitly assent to their errors by some external sign, even if they neither join themselves to their sect nor have their doctrine viewed in particular; as if someone says of another, whom he knows to be a heretic, that he believes whatever that person believes, although he does not know his errors; or if someone, with the intention of assenting to his errors, hears the reading or sermon of some heretic.⁶²

Not all interpret this clause so that even those are subject to censure who profess heresy only implicitly; but some understand by this term Catholics who commit the crime of heresy, yet do not adhere to a non-Catholic sect. Practically it makes no difference which sense is admitted, because each group incurs excommunication either under the name of heretics or under the name of believers.

51. Those cooperating with them. In order that those who cooperate with heretics or apostates incur excommunication, there is required participation or formal cooperation which tends to this, that it assist heretics in their crime; material cooperation, which only gives help to the heretical person, does not suffice.

1. Receivers of heretics are called those who receive them into their house so that they may escape the penalty of heresy. Therefore they do not incur excommunication who receive them not for the sake of heresy, but as friends, blood-relatives, or suchlike.

Notes

60. D’Annibale, *Commentar. in const. Ap. sedis* n. 31.

61. *Theol. mor.*, tr. 4, q. 2, n. 12.

62. Cf. *Acta sanctae sedis* XI, p. 168 ff.

2. Favorers of heretics are called those who furnish them help, whether negatively or positively, so that they may more easily spread their errors.
 - a. They favor heretics negatively who omit those things which must be done not from mere charity but from office for impeding their progress; they favor them positively who help them in spreading errors by words (praising, commending them as heretics) or by deeds (furnishing money). Here also belong Catholics who permit offspring to be educated in a non-Catholic religion.
 - b. The Holy Office has several times declared that those incur excommunication who enter marriage before a non-Catholic minister.⁶³ They dispute what the cause of this censure is; some say that they are excommunicated as favorers of heretics, but others more rightly say that in the external forum they are excommunicated as those believing heretics: for those who receive sacraments among heretics according to their rite are judged implicitly to believe heretics.

Note 1. From the declaration of the same holy see it is further established that those who contract marriage before a non-Catholic minister incur excommunication, even if they were ignorant of the censure. Therefore those who know the censure incur it for each forum, but those who are ignorant of it incur the censure for the external forum alone. For celebration of marriage is by its nature a public act, which pertains to the external forum, and therefore its forbidden celebration is punished directly by censure for the external forum. Therefore in order that one who contracted before a non-Catholic minister can be admitted to the sacraments, he must be absolved from the censure at least for the external forum.

Note 2. Reconciliation, supposing the validity of the marriage, is done in this way:

- a. The one to be reconciled is admonished: a. concerning the gravity of the sins which he committed by contracting before a heretical minister, and concerning the obligation of being sorry for them and accusing himself of them in confession; b. concerning the obligation of educating children Catholicly, or, if it is a woman, of seeing to it that the husband permit the Catholic education of the children; but if he should not permit it, of seeing to it that the children, as much as depends upon her, be educated Catholicly.
- b. A suppliant petition is sent to the bishop, in which, with the name of the one to be reconciled expressed, the fact about which it concerns is set forth with all its circumstances (especially that the one to be reconciled wishes to satisfy his obligations), and the faculty of absolving from excommunication for the external forum is sought. Once this has been obtained, the one to be reconciled is absolved from excommunication according to the Roman Ritual (tit. 3, c. 3). Once absolution has been granted, the acts are drawn up according to the disposition of the ordinary; once reconciliation has been made, the penitent can be absolved by any confessor from the sin of heresy.
- c. If the delict is not known in the place where the one to be reconciled is staying, it is not required that the cause be conducted in the external forum. Therefore it suffices that the confessor seek the faculty of absolving the one to be reconciled from heresy in the act of sacramental confession, which absolution avails also for the external forum.

3. Defenders of heretics are those who defend their persons or doctrines insofar as they are heretical.

Therefore they do not incur excommunication who praise the learning and eloquence of a heretic, or the style and elegance of a heretical book, unless the praise redounds to approval of the heretical doctrine.

Notes

63. Holy Office, August 28, 1888; May 11, 1892.

Second excommunication. All and singular persons knowingly reading, without the authority of the apostolic see, books of the same apostates and heretics defending heresy, and also books of any author by apostolic letters prohibited by name; and those retaining, printing, and in any way defending books of the same.

52. This censure passed verbally into the constitution *Officiorum ac munerum* (n. 47), and from it draws its force. From this we learn: a. books today prohibited under excommunication; b. actions prohibited under excommunication.

Books prohibited under censure are of a twofold kind:

1. Books of heretics and apostates defending heresy. Therefore a threefold condition by reason of the object is required for incurring the censure: a. that it be a book, not only a manuscript or a booklet of smaller volume; b. that it be written by a heretical or apostate author; c. that it defend heresy.
 - a. Therefore they do not incur excommunication: a. who read newspapers or booklets defending heresy; b. who read a book defending heresy written by a Catholic, heathen, Jew, or by another who properly is neither a heretic nor an apostate; c. who read a book containing heresy or defending it only incidentally and in a few words.
 - b. From the declaration of the Holy Office, those incur excommunication “who knowingly read periodical publications bound into fascicles, having a heretical author and defending heresy.”⁶⁴
 - c. For incurring this censure it is required that it be certain to the reader (not only probable: for it says knowingly reading) that the author of the book is a heretic and that he defends heresy. That the author is a heretic can be established either from the name of the author, if he is a known heretic, or from the character of the book: for if manifest heresy is pertinaciously defended in the book, it is sufficiently established that the author is a heretic or apostate; therefore either from the sect to which he adheres, or from the manifest doctrine which he defends.
 - d. It is not required that the book treat expressly of religion; therefore one who reads a profane book, e.g. historical, physical, philosophical, in which a heretical author defends heresy, incurs excommunication.
2. Books of any author prohibited by name through apostolic letters. Three conditions also are required in this kind on the part of the book: a. that it be prohibited through apostolic letters, of whatever form they are: bull, brief, encyclical; b. that it be prohibited by name, i.e. by its proper title expressly given; c. that it be prohibited under excommunication reserved to the Roman pontiff, which is gathered from the mind of the constitution itself, namely of moderating censures. But it makes no difference whose author it is and what it contains.

Therefore here do not belong: a. books prohibited through decrees of the Index or of another congregation, because decrees of this kind are not issued by apostolic authority; b. books of some author condemned in a body, because they are not prohibited by name; c. books indeed condemned through apostolic letters, but not under reserved excommunication.

Note. Since it is impossible for the confessor to know all works defending heresy, when a case occurs let him ask the penitent about the argument of the depraved book which he read, and from this judge whether the book defends heresy and therefore is prohibited under excommunication or not.

Notes

64. Holy Office, April 21, 1880.

53. The prohibited actions are these four: to read, to retain, to print, to defend; all these indeed must be exercised knowingly in order that censure be incurred through them: for since this term is placed in the head of the article, it must be understood of all. Wherefore even affected ignorance excuses from incurring censure.

What is prohibited by the terms to read and to retain is said elsewhere;⁶⁵ it remains that the terms those printing and those defending be explained.

- a. Those printing, taken more broadly, are understood to be all who concur proximately in printing the book: a. the printer, publisher, and author; b. those who furnish work for the printing itself, such as those setting the types and turning the press. In this place more strictly only the printer and publisher seem to be understood.⁶⁶
- b. Those defending are called those who physically or morally impede that the book be destroyed or denounced; those who try to persuade others that the book is good; those who so praise the doctrine contained in it, or its learning and knowledge, that approval of the depraved doctrine appears.
- c. For incurring the censure there is required a threefold knowledge: a. that the book is of a heretic or apostate, or that it is prohibited through apostolic letters; b. that its reading, retention, printing, or defense is prohibited under excommunication; c. if it has not been prohibited through apostolic letters, that it defends heresy. But it suffices that these things be known either by public report or from a man worthy of faith.
- d. Since grave sin is required for incurring censure, they do not incur it except those who cooperate formally, or indeed materially but without a just cause, and notably.
- e. If literary societies (*Leihbibliotheken*) keep books prohibited under censure, besides the president and librarian all who have joint ownership of the books incur excommunication. But this censure does not seem to affect public libraries.

Third excommunication. Schismatics and those who pertinaciously withdraw or recede from obedience to the Roman pontiff existing for the time.

54. They incur this censure: a. schismatics, who, whether from malice or from error, deny subjection to the Roman pontiff and, separating themselves from the unity of the Church, establish a new church or adhere to one already established.

- b. Those who deny obedience to the Roman pontiff in spiritual matters, rejecting his spiritual authority, although they adhere to no other head or church.

Note. From the declaration of the holy see, this excommunication is also incurred by “whoever according to decrees of civil laws, or with the people voting and the civil power confirming, having been elected to the office of parish priest or vicar, dare to undertake the duties of ecclesiastical ministry,” because by this very fact they deny obedience to the Roman pontiff.⁶⁷

Fourth excommunication. All and singular persons, of whatever state, grade, or condition they may be, appealing from ordinances or mandates of the Roman pontiffs existing for the time to a future universal council, and also those by whose help, counsel, and favor the appeal has been made.

Notes

65. Cf. *De praeceptis* 3 n. 702.

66. Cf. Vermeersch n. 125. Hollweck p. 48.

67. S. C. C., May 23, 1874.

55. a. This censure is a particular case of the preceding one: for those appealing by the fact withdraw themselves from subjection to the Roman pontiff. But lest they think that under the pretext of appeal they can escape excommunication, this special censure has been added.

b. Any physical persons: for concerning communities appealing there is an interdict; appealing from ordinances of the reigning pontiff to a future universal council. Therefore appeal to a future pontiff or to a present council does not suffice, nor to a provincial council.

Fifth excommunication. 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 furnishing help, counsel, or favor in them.

56. By this censure are punished real injuries inflicted upon the princes of the Church (*Kirchenfursten*), of whom the first is the supreme pontiff himself, bishop of the Roman Church, although he is not explicitly named. Therefore they incur it:

a. Those who unjustly injure their life: those killing, mutilating, striking; their liberty: those capturing, imprisoning, detaining; their dignity: those hostilely (with the intention of harming body or dignity) pursuing, expelling them from places subject to their jurisdiction.

b. Those who cooperate in these injuries by mandate, ratification, help, etc., provided the cooperation was efficacious and gravely influenced.

Sixth excommunication. Those directly or indirectly impeding the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, and for this recurring to the secular forum and procuring or issuing its mandates, or furnishing help, counsel, or favor.

57. a. This censure has been established for protecting the liberty of ecclesiastical jurisdiction; they contract it who impede the exercise of ecclesiastical jurisdiction, but not those impeding the exercise of jurisdiction of regular superiors. Therefore they do not incur excommunication who impede the exercise of the power of order, such as to offer sacrifice, administer sacraments, bless, etc., nor those impeding the exercise of an ecclesiastical office, such as to preach, to teach; but they incur it who impede him who commits those things which are of order to be performed, or him who deposes someone to ecclesiastical offices.

b. Therefore they contract this censure: a. those who by some fact impede the exercise of jurisdiction directly or indirectly (e.g. the publication, execution of a pontifical constitution); b. those who for this end recur to the secular forum, to civil judges and magistrates; c. those who for this end procure or issue mandates of the secular forum; d. those who cooperate with these by help, counsel, favor.

Seventh excommunication. Those compelling lay judges either directly or indirectly to draw ecclesiastical persons to their tribunal beyond canonical dispositions; likewise those issuing laws or decrees against the liberty or rights of the Church.

58. Persons of a twofold kind are struck by this excommunication: a. those compelling lay judges to draw ecclesiastical persons to their tribunal against the privilege of the forum; b. those issuing laws or decrees against the liberty and rights of the Church.

Those compelling lay judges either directly or indirectly to draw ecclesiastical persons to their

tribunal beyond canonical dispositions.⁶⁸

1. Those compelling are understood to be those who compel judges, although they themselves are compelled neither by any man nor by law; therefore legislators carrying a law by which judges are compelled to draw ecclesiastical persons to their tribunal, magistrates who, compelled by no law, of their own accord compel judges to draw ecclesiastics to their tribunal, whether it concerns a criminal cause or a civil cause.
2. They compel directly who compel the judges themselves by threats, force, or fear unjustly struck into them; indirectly, those who employ force or threats against other persons joined with the judges, so that they compel the judges to draw clerics as guilty persons to their tribunal.
3. Ecclesiastical persons are understood to be all who enjoy the privilege of the forum; therefore all clerics, even those marked by first tonsure alone, all religious, even nuns living under a rule, whether in some order or in a simple congregation.
4. Beyond canonical dispositions, i.e. unless somewhere it is permitted by the holy see (through concordats) that ecclesiastics be drawn to a lay tribunal.
 - a. “Nevertheless in those places in which there has not been derogation from the privilege of the forum by the supreme pontiffs, if in them it is not granted to pursue one’s rights except before lay judges, individuals are bound first to seek permission from their own ordinary, that they may be able to sue clerics in the form of lay persons. But it is not licit to sue bishops in that forum without permission of the apostolic see.”⁶⁹
 - b. Therefore they do not incur excommunication: a. the judges themselves who draw ecclesiastics to their tribunal, but those who compel the judges to this; b. plaintiffs who accuse a cleric before a lay judge; c. those compelling a cleric to be drawn not as a guilty person, but as a tutor, witness, or under another title.

59. Those issuing laws or decrees against the liberty or rights of the Church.

1. Those issuing are the authors of laws and decrees who possess authority of establishing laws and decrees, and who must concur in establishing them.

Therefore the prince who approves and promulgates laws, ministers, rulers of provinces and cities, deputies both to the assemblies of the empire and to the assemblies of the province, and local councilors who concur by their vote; the people, wherever laws are established by vote of the people.

2. Laws are universal and perpetual ordinances which emanate from supreme power; decrees likewise are general ordinances which emanate from competent power, e.g. from municipalities. But here do not belong mandates which are carried for particular persons or cases, nor sentences passed by judges.
3. Against the liberty or rights of the Church: these words are to be taken in the widest sense, so that they are subject to excommunication who establish laws or decrees by which any right whatever of the Church is taken away, restricted, or disturbed, such as the right of teaching, promoting to benefices, instituting public supplications outside the church building, erecting churches, benefices, pious sodal-

Notes

68. Concerning this decree an instruction of the Holy Office was issued on June 15, 1870, and February 1, 1871, and a declaration of the same Holy Office on January 23, 1886, all of which must be attended to in the interpretation of this decree. Cf. *Acta sanctae sedis* VI, n. 433; XVIII, p. 416; XXV, p. 456.

69. Holy Office, l. c.

ities; rights which belong to the Church as a society, such as the right of acquiring, alienating, leasing, and the immunity of the clergy from military service.

Eighth excommunication. Those recurring to the lay power for impeding letters or any acts whatever proceeding from the apostolic see or from any of its legates or delegates, and directly or indirectly prohibiting their promulgation or execution, or on account of them injuring or terrifying either the parties themselves or others.

60. a. Acts of the apostolic see are understood to be both those which immediately proceed from it itself and those which mediately come from the Roman congregations.⁷⁰

b. They incur excommunication: a. those recurring to the lay power, i.e. to those who exercise jurisdiction over citizens, such as judges and magistrates; b. those prohibiting promulgation or execution, meaning persons furnished with authority; c. those injuring, i.e. affecting with grave harm, according to some in body, according to others also in honor and goods of fortune; d. those terrifying, i.e. affecting with very grave fear the parties themselves to whom the acts of the holy see are directed, or others to whom namely the promulgation or execution of the acts has been committed.

Ninth excommunication. All falsifiers of apostolic letters, even in the form of a brief, and of supplications concerning grace or justice signed by the Roman pontiff, 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 one acting in place of the aforesaid.

61. a. The crime of forgery committed through writings, which in past centuries with reference to pontifical letters (bulls, encyclicals, briefs) was very frequently in use, is punished by this censure.

b. They contract it: a. falsifiers, who in apostolic letters, after they have been signed, add, remove, or change something, so that the sense is changed; b. those falsely publishing either true but corrupted letters, or letters fabricated entirely; c. those falsely signing supplications, who therefore subscribe rescripts of grace or justice both with the concession (*Fiat, Concessum, Placet*) and with the name, as if these were from the supreme pontiff himself or from one acting in his place.

Tenth excommunication. Those absolving an accomplice in a shameful sin, even in the article of death, if another priest, although not approved for confessions, without grave infamy or scandal about to arise, can hear the confession of the dying person.⁷¹

a. The removal of jurisdiction over one's own accomplice and the penalty of excommunication carried against one absolving his own accomplice must carefully be distinguished; for it can happen that the absolution is invalid without excommunication being incurred, and that excommunication is incurred where the absolution is valid.⁷²

b. This censure is called reserved in a most special manner, because in the faculty of absolving from all cases and censures reserved in a special mode to the Roman pontiff, the faculty of absolving from this censure is not contained.⁷³

Notes

70. Holy Office, January 13, 1892.

71. Benedict XIV, const. *Sacramentum poenitentiae*.

72. Cf. *De sacramentis* 3 n. 384 ff.

73. Holy Office, June 27, 1866; therefore even to bishops the faculty of absolving "an accomplice priest" is usually conceded for only a few cases.

- c. To explain this censure, three things must be set forth: a. the notion of an accomplice; b. the notion of a shameful sin from which an accomplice priest cannot absolve with impunity; c. the action of absolving because of which excommunication is incurred.

62. Accomplice in a shameful sin. 1. An accomplice is called one who commits the same (shameful) sin with another, whoever that person may be.

- a. Hence complicity is not properly had if a priest sins with one sleeping, drunk, insane, unwilling: for the law speaks of formal complicity, for which the consent of each party into the same sin is required.
 - b. For incurring the case of complicity there is required complicity immediately in the shameful action itself; cooperation, however proximate, to the shameful sin of another does not suffice.
 - c. Therefore under the name accomplice is understood not only a woman, but also a man or boy, even if not yet pubescent, indeed also a person with whom the priest sinned before receiving priesthood;⁷⁴ for the bull says: whatever person may be the accomplice.
2. Shameful sin is understood to be any sin against the sixth precept, although it is not consummated by intercourse, provided that on the part of each it is certain, grave, and external.
- a. Therefore even a shameful touch alone, or look, or dishonorable conversation constitutes a sin of complicity, provided that on the part of each it is mortal sin.⁷⁵
 - b. It is not required that each act, as in mutual touches and conversations, but it suffices that one alone act, e.g. that one shamefully touch another and the latter consent and manifest consent externally. But he who does not resist externally is already judged to manifest consent externally.
 - c. Therefore a sin of complicity is not had in the following cases:
 - d. If only venial sins were committed, whether from smallness of matter or from imperfection of the act. But let the confessor never absolve his own accomplice even from venial sins committed in shameful matter, although he does not lack jurisdiction for this.
 - e. If the sins committed with respect to the external act are only venial, e.g. handling of the hand, even if in internal affection they are grave.
 - f. If the sins are merely internal, not manifested externally.
 - g. If the sins are doubtful, whether by doubt of fact or doubt of law, as if he doubts whether he sinned gravely, or whether shameful speech is comprehended by the pontifical constitution.
 - h. If it is not established whether the penitent himself also sinned gravely.

63. Those absolving an accomplice incur excommunication:

- 1. If they absolve or at least simulate or feign absolving.
 - a. After so many declarations of the holy see it is certain that even those incur excommunication who only feign that they absolve.⁷⁶ Wherefore the contrary opinion of St. Alphonsus (n. 556) can no longer be safely taught. Since for simulation, or rather dissimulation, it is required that the penitent who judges

Notes

74. Sacred Penitentiary, January 22, 1879.

75. Holy Office, May 28, 1873.

76. Sacred Penitentiary, March 1, 1878. Holy Office, December 10, 1883.

himself to be absolved be led into error, a priest does not incur excommunication who dismisses with only a blessing a penitent who has been admonished about this matter.

- b. Therefore one who only hears an accomplice in confession, but does not absolve nor feign absolving, indeed commits grave sin, because even the very hearing of confession is prohibited to an accomplice priest, but he does not incur the censure.
2. If they directly absolve, and further if the confessors themselves, either directly or indirectly, induced the penitent not to declare the sin of complicity and thus indirectly absolved.⁷⁷
 - a. Therefore one who absolves an accomplice who does not declare the sin of complicity, even if the penitent culpably conceals it and the confessor knows this, does not incur the censure,⁷⁸ provided he did not induce the accomplice to do this.
 - b. A confessor directly induces the penitent when he positively and explicitly warns him not to disclose the sin of complicity; he indirectly induces him when he tries to persuade the penitent that the action committed with him is not a sin or is not a grave sin, so that the penitent persuades himself that the sin is not to be declared and in fact does not declare it.⁷⁹
 - c. Therefore he probably does not incur excommunication who, when the precept of confession is pressing, absolves only indirectly from the sin of complicity an accomplice unwilling to confess to another without danger of grave infamy or scandal, and at the same time admonishes him concerning the obligation of afterward confessing it to another confessor.⁸⁰
3. If by absolving they sin gravely.
 - a. Since grave sin must be certain, a priest who in some perplexity of mind, likewise a priest who without advertence to the complicity absolves an accomplice, cannot be declared entangled by censure.
 - b. Although ignorance of censure simply vincible excuses from incurring censure, nevertheless crass ignorance does not excuse from censure. The older authors indeed excuse from censure even him who absolves an accomplice with crass ignorance, because the Benedictine constitution carries the censure against him who shall have dared to absolve; nevertheless, since the Pian constitution *Apostolicae sedis* strikes simply with excommunication him who absolves, the more recent authors rightly do not excuse one absolving with crass ignorance.⁸¹
 - c. One who absolves a penitent concerning whom he doubts whether he is his own accomplice does not incur censure, because he is not bound to inquire into the matter with danger to his own reputation and that of the whole priestly state.
 - d. Likewise one does not incur censure who absolves an accomplice by whom neither in the act of sin nor afterward he had been known as a priest, because he is not bound to manifest his own delict with defamation of himself and of the priestly state. Nevertheless, if after the sin has been perpetrated he is known as an accomplice and a priest, he contracts censure by absolving the accomplice.

Notes

77. Sacred Penitentiary, February 19, 1896.

78. Sacred Penitentiary, May 16, 1877.

79. Sacred Penitentiary, February 19, 1896.

80. Marc n. 1782 thinks the absolution in this case is more probably invalid; cf. however *De sacramentis*³ n. 386.

81. Holy Office, January 13, 1892.

- e. Likewise one incurs censure by absolving an accomplice who here and now, when he absolves, does not know the priest absolving as an accomplice.
- 4. If they absolve outside the article of death and outside a case of most urgent necessity. Concerning the article of death it will be said below; with respect to the most urgent case, the opinion of those who teach that a priest does not incur censure who, having used epikeia in a truly most urgent case, absolves an accomplice, does not seem improbable: for it can reasonably be presumed that the legislator did not wish to comprehend even these cases in his law.

Cases of this kind are:

- a. If the accomplice person cannot omit annual confession and communion, or cannot abstain long from the sacraments, without danger of grave infamy and scandal, and at the same time no other priest is present to whom he can confess.
- b. If the accomplice person is in a place where the accomplice confessor is alone, but the person cannot turn aside elsewhere to seek a confessor, nor is there hope that another priest will come there, so that even in Easter time he would have to abstain from the sacraments.
- 5. One absolving an accomplice in the article (danger) of death incurs excommunication if another priest, although not approved, can hear the confession without some grave infamy and scandal about to arise.

Although an accomplice confessor of himself cannot absolve his own accomplice with impunity even in the article of death, nevertheless he licitly absolves him:

- a. If no other priest is present or can be called, not even a simple priest.⁸²
- b. If another priest cannot be called without grave scandal or infamy of the accomplice priest. Nevertheless in this case the accomplice priest is bound to forestall the danger of scandal or infamy if he can, e.g. by withdrawing under some pretext. But if he omits to do this when he can, or if he invents danger where there is none, he incurs the censure by absolving.
- c. If the dying person refuses to confess to another, so that sacrilegious confession is to be feared.
- d. If another is unwilling to hear the confession of the dying person.

Eleventh excommunication. Those usurping or sequestrating jurisdiction, goods, revenues pertaining to ecclesiastical persons by reason of their churches or benefices.

64. There are four excommunications carried against those who dispose of ecclesiastical goods unjustly or illicitly: a. against those usurping or sequestrating goods of ecclesiastical persons (I. 11); b. against those invading, etc., the temporal dominion of the Roman Church (I. 12); c. against those usurping goods of any benefice or pious place (II. 19); d. against those alienating ecclesiastical goods without license of the apostolic see (IV. 3).

- a. Jurisdiction is understood to be both spiritual and temporal; goods are both movable and immovable, such as beneficial lands; revenues are natural and civil fruits which come from ecclesiastical goods. These constitute the matter of this excommunication insofar as they pertain to ecclesiastical persons, and indeed either by reason of the church over which they preside, or by reason of the benefice which

Notes

82. There are some who say that even a suspended or excommunicated priest is to be preferred to an accomplice priest, because in the bull it is said: "when then any other priest, who can perform the office of confessor, is lacking." Others, however, more rightly gather from the same bull that only one not approved must be preferred to the accomplice in absolving the dying person, since it says: when any priest, who can perform the office of confessor, is lacking.

they possess. Therefore here do not belong: a. goods of pious places, because they do not pertain to ecclesiastical persons; b. goods of monasteries, because they do not pertain to regulars by reason of a church; c. goods which by another title, e.g. of stipend, pension, pertain to ecclesiastical persons.

- b. Usurpers are called those who occupy by authority, as if by right owed to themselves, a thing still existing in the power of its owner. Therefore they do not incur this censure: a. thieves and robbers;⁸³ b. those who buy a thing from a usurper or receive it by another title.⁸⁴ Sequestrators are both judges and magistrates who command sequestration, and their ministers who execute the mandate.

Twelfth excommunication. Those invading, destroying, detaining, either by themselves or through others, cities, lands, places, or rights pertaining to the Roman Church, or usurping, disturbing, retaining supreme jurisdiction in them, and also those furnishing help, counsel, favor for each of the aforesaid things.

65. a. This censure intends to protect the temporal dominion of the apostolic see; wherefore temporal jurisdiction, and indeed supreme temporal jurisdiction, is to be understood.

- b. They incur the censure: a. those who occupy or retain some temporal right of the holy see or some place of the temporal dominion; b. those who exercise supreme jurisdiction in occupied lands, of which kind are the kings of Italy, ministers of the kingdom, prefects of provinces, etc.; c. cooperators, who spontaneously, not by compulsion, concur in the aforesaid things.

§ 2. From the Constitution *Romanus Pontifex*

Thirteenth excommunication. By excommunication of a sentence already passed, specially reserved to the Roman pontiff, are punished:

- a. Dignitaries and canons of cathedral churches who shall have dared to concede and transfer the administration of the church or diocese to a bishop nominated and presented, before the exhibition of apostolic letters.
- b. The bishop nominated and presented who dares to take up administration of the church without waiting for confirmation of the apostolic see.
- c. All those who shall have obeyed the aforesaid persons (canons or bishop), or furnished counsel, help, favor.

66. a. When the cultural struggle had begun in Germany and the illegitimate institution of bishops was to be feared, Pius IX issued the constitution *Romanus pontifex* on August 28, 1873, by which he intended to protect the right of capitular vicars against intruders who had been nominated or presented by lay power to episcopal sees, lest they be established for the government of an episcopal church before they had been confirmed by the apostolic see.

- b. Those marked by episcopal character (therefore also one nominated and presented to a vacant church, if he is a bishop) incur not excommunication, but suspension.

Article Four

On Excommunications Reserved in the Ordinary Mode

To the second series belong nineteen excommunications, of which eighteen were imposed by the constitution *Apostolicae sedis*, but one by the Council of Trent.

Notes

83. Holy Office, March 9, 1870.

84. Holy Office, July 8, 1874.

§ 1. From the Constitution *Apostolicae sedis*

First ordinary-mode excommunication. Those teaching or defending, either publicly or privately, propositions condemned by the apostolic see under the penalty of excommunication of a sentence already passed; likewise those teaching or defending as licit the practice of asking 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; *Ad eradicandum*, September 29, 1746.

67. a. In order that someone incur the censure of the first part, three things are required: a. that he teach or defend, either orally or in writing; b. a proposition condemned by the apostolic see, i.e. either by the supreme pontiff himself or by a congregation at the command of the supreme pontiff; c. condemned under excommunication of a sentence already passed. Therefore they do not incur this censure: a. those who hold such a condemned proposition as true, but do not teach or defend it; b. those who teach or defend a proposition condemned by an ecumenical council, by a Roman congregation, or even by the supreme pontiff, but not under the penalty of excommunication: for propositions condemned by a council are not customarily said to be condemned by the apostolic see.

b. In order that someone incur the censure of the second part, it is required: a. that he teach or defend as licit; b. the practice of asking the name of an accomplice, as it was condemned by Benedict XIV. But the condemned practice contains two things at once: to ask the name of the accomplice and to demand its revelation under penalty of denying absolution. Therefore they do not incur this censure who hold this practice licit, indeed not even those who exercise it.

Note. The propositions condemned by the apostolic see under penalty of excommunication are:

1. The 41 errors of Luther condemned by Leo X, by the constitution *Exsurge Domine*, May 16, 1520.
2. The 79 propositions of Michael Baius condemned by Pius V, by the constitution *Ex omnibus*, October 1, 1567.
3. One proposition concerning sacramental confession and absolution to be obtained by letters, condemned by Clement VIII through a decree of the Holy Office, July 20, 1602.
4. The 45 propositions condemned by Alexander VII through a decree of the Holy Office, September 24, 1665 and March 18, 1666.
5. The 65 propositions condemned by Innocent XI through a decree of the Holy Office, March 2, 1679.
6. The 68 propositions of Michael Molinos condemned by Innocent XI by the constitution *Coelestis pastor*, November 20, 1687.
7. Two propositions condemned by Alexander VIII, August 24, 1690.
8. The 31 propositions condemned by Alexander VIII through a decree of the Holy Office, December 7, 1690.
9. The 5 propositions concerning dueling condemned by Benedict XIV by the constitution *Detestabilem*, November 20, 1752.
10. The 65 propositions condemned by Pius X on July 3, 1907 through the decree *Lamentabili*, and also the propositions, opinions, and doctrines condemned by Pius X through the constitution *Pascendi*, September 8, 1907.

Second ordinary-mode excommunication. Those, at the devil's urging, laying violent hands upon clerics or monastics of either sex, except, as to reservation, the cases and persons concerning whom by law or privilege it is permitted that another bishop absolve.

68. This excommunication contains the privilege established by canon 15 of the Second Lateran Council (1139), on account of which it has customarily been called the privilege of the canon.⁸⁵

This censure differs from others in two ways: a. because it makes the striker one to be avoided, if it is certainly established that the striker has fallen into excommunication, even if he has not been denounced by name; b. because it is not of strict but of broad interpretation, both because it contains a favor granted to the clerical order, and because it is to be interpreted in that manner in which the ancient doctors were accustomed to interpret the canon of the Lateran Council; but they always interpreted it most broadly.

Four things are to be explained in order concerning this matter: a. what persons enjoy this privilege; b. what actions are punished by the censure; c. what the clause “at the devil’s urging” signifies; d. who can absolve from this censure.

69. Persons: clerics or monastics of either sex.

1. Clerics, i.e. all who by first tonsure have been enrolled among the clergy and have not lost the privilege of the canon, therefore also excommunicated, suspended, and interdicted clerics.

There are those who affirm (St. Alphonsus n. 271) that seminarians also and boys in minor seminaries enjoy this privilege, even if they have not yet received first tonsure; nevertheless this cannot be demonstrated.

2. Monastics of either sex, under which name are comprehended:

- a. Religious men, whether of solemn or simple vows, whether clerics or laymen or novices;
- b. Nuns, both professed and also novices;
- c. Brothers and sisters of the Third Order of St. Francis and St. Dominic, and those who are called oblates, provided they wear the religious habit and live with cloistered persons;
- d. Persons living in a religious congregation approved by a bishop.

70. Actions are comprehended by this clause: *violent laying-on of hands*, which signifies any external and gravely sinful injury which is inflicted upon the person of a cleric not by words alone but by deeds. An injury of this kind can be inflicted in a threefold way:

1. By injury to the body: by killing, wounding, striking, throwing down, pursuing so that he falls on that account, etc.;
2. By injury to liberty: by imprisoning, by detaining in custody, even in a private place;
3. By injury to dignity: by bringing force in any way whatever, by tearing clothing, by defiling with spittle or filth, by violently stopping a carriage in which an ecclesiastical person is being carried, by taking away a hat, purse, staff, etc.
 - a. To incur this censure it is not required that the actions themselves be gravely sinful in themselves, but it suffices that they gravely injure clerical honor, which can happen even through actions light in themselves, by which in the moral estimation of men clerical dignity is gravely injured.
 - b. Whether those cooperating, namely those mandating or counseling, and those ratifying the striking of a cleric, are also punished by this censure, or only those striking in fact, is disputed.

Those who affirm use this argument: before the constitution *Apostolicae sedis*, this censure, not indeed by the words of the canon, but by a comprehensive interpretation of them occurring in the law itself, was

Notes

85. C. *Si quis suadente* 29. c. 17. q. 4.

extended also to cooperators and ratifiers; but the new law, which corresponds to the ancient canon, is to be extended in the same way, and this all the more because that law, as favorable to the clerical state, is of the broadest interpretation. Those who deny say thus: if the legislator had wished to comprehend cooperators also by this censure, he would have named them expressly, just as above (I. 5) he names them; therefore, because he does not mention cooperators, it is a sign that he did not wish to comprehend cooperators.

- c. By a similar reason they dispute whether those not yet pubescent incur this censure. And indeed before the constitution *Apostolicae sedis* by statute of law they incurred it, with all consenting; now, however, several authors except them, because the legislator does not mention those not yet pubescent here; but if he had wished to comprehend them, he would have named them expressly, as a little below (II. 6) he names them. From these things it is gathered that the negative opinion is safe in practice, although theoretically the affirmative seems to be preferred.⁸⁶

71. “At the devil’s urging” signifies that, in order to incur the censure, the injurious actions must be sacrilegious and gravely sinful also interiorly, not only exteriorly, if not by injury to the body, at least by injury to honor.

Wherefore this excommunication is not incurred:

- a. If the striking is done from a just cause, as if someone strikes a cleric for the sake of just defense and with due moderation; or if it is done for the sake of correction, as if a father or teacher, either by himself or through another, moderately strikes a cleric constituted in minor orders; or if someone affects a cleric, even a priest, with a just penalty for his delicts, e.g. of prison.
- b. If it is done without sacrilege, as if someone is ignorant that the one whom he strikes is a cleric.
- c. If it is done without grave fault, as if someone strikes a cleric without full advertence from sudden anger, or if he does it in jest.

Note. Someone is of the opinion that a cleric who has struck himself, not led by the spirit of penance but with a depraved mind, incurs excommunication; but rightly St. Alphonsus judges it probable that the canon speaks only of another striking a cleric.⁸⁷

72. On absolution from this censure. Although this excommunication is reserved simply to the Roman pontiff, nevertheless our constitution willed that there should remain in its vigor the faculty of absolving which belonged to bishops and regular prelates before this constitution was issued.

1. To explain this faculty, the distinction of striking into slight, grave, and enormous must be premised; this distinction is not to be understood of culpable injury, which must always be grave, even exteriorly, but of material violence or bodily injury, which can be of diverse gravity.

Slight striking is that which does not leave a trace of itself, which therefore is done with fist, palm, foot, or staff, but brings no mark and leaves no bruise of flesh and is done without the shedding of abundant blood.

Grave striking is that which indeed leaves a trace of itself, but without mutilation or grave harm, as if a tooth is knocked out, or a quantity of hair is torn out, or a quantity of blood is shed without grave injury.

Enormous striking is present if mutilation intervenes, or great wounding, or another grave injury.⁸⁸

Notes

86. Cf. Lehmkuhl, *Casus* I. n. 999 s. n. 1042 s.

87. Cf. St. Alphonsus l. 7. n. 274.

88. St. Alphonsus l. 7. n. 277.

Nevertheless it can happen that a striking which is slight by reason of the physical injury becomes grave or enormous by reason of the person who is struck, e.g. a bishop, or by reason of the circumstances, as if a priest clothed in sacred vestments is struck.⁸⁹

2. Bishops by common law can absolve: a. if the striking was slight, even if public; b. if it was occult, even if enormous; c. if there is question of clerics or religious living in community, provided the striking was not enormous. But by special privileges (triennial faculties) bishops have still broader faculties.
3. Regular prelates by common law indeed have a limited faculty of absolving from this censure,⁹⁰ but from privileges which have not been abrogated by the Pian constitution, they can absolve their subjects, even novices, from any striking of a cleric, even enormous and public, and even if the one struck belongs to another order or to the secular clergy.⁹¹

Third ordinary-mode excommunication. Those perpetrating a duel, or simply challenging to it, or accepting it, and any accomplices, or those furnishing any assistance or favor whatever, and also those deliberately watching it and those permitting it or, as far as lies in them, not prohibiting it, of whatever dignity they may be, even royal or imperial.

73. Persons who incur the censure. Since it is already established in what the nature of the crime of private duel consists, which is struck by this excommunication,⁹² it remains only that the persons who incur it be indicated.

1. Those perpetrating it, namely those who commit a duel, whether seconds are employed or not employed, provided it is truly and properly a duel.
2. Those challenging; and these indeed incur excommunication whether the other accepts or does not accept, whether the challenger himself determines the place, time, and weapons or leaves these to be determined by the other, whether the duel in fact follows or does not follow.
3. Those accepting; these likewise incur excommunication, even if the duel in fact does not follow: for since the censure simply affects those challenging and accepting, the challenge itself and the acceptance seriously made are struck by the censure.
 - a. It makes no difference from what intention or from what motive those challenging and accepting act, provided they wish to enter upon a duel; but if the challenge or acceptance is not made with the intention of entering upon a duel, but fictitiously, e.g. in order to avoid the mark of cowardice here and now, excommunication is not incurred.
 - b. Grave fear does not excuse those accepting a duel from incurring the censure: for when the common good demands that a penal law bind, even though grave harm must be undergone on account of its observance, fear does not excuse from the law and therefore neither from the penalty; but the common good demands that a law prohibiting duel, even insofar as it is human, not cease on account of fear of grave evil.
4. Accomplices are understood to be: a. seconds or witnesses; b. those counseling; c. those mandating, provided the counsel or mandate had a true influence upon the duel, or upon the challenge, or upon the acceptance, and the duel in fact followed.

Notes

89. All these things are drawn from the constitution *Perlectis* of John XXII.

90. *C. Monachi* 2. *C. Quum illorum* 32. *C. Canonica* 50. *De sententia excom.* (V. 39).

91. Cf. Ballerini-Palmieri VII. n. 300.

92. Cf. *De praeceptis* 8 n. 347.

They do not incur excommunication who accept the office of witness or second in order to induce reconciliation; who accompany the duelers to the place of combat with the sole end of preventing the duel; or, where they know that the duelers have resolved to fight even to death, in order to put an end to the combat as soon as either one has received a wound.

5. Those furnishing assistance or favor are understood to be those who in any way cooperate more proximately in the duel, provided the duel in fact follows. Wherefore they incur excommunication: those who provide a place for the duel; those who remove public guards lest they impede the duel; those who accompany the duelers and thus add courage to them; those who write or carry letters of challenge; physicians who by agreement with the duelers assist at the duel or remain in a nearby place, even with the intention of more quickly ending the fight or binding wounds;⁹³ confessors who by agreement with the duelers stand in a nearby place in order to provide their ministry to the duelers, if there should be need.⁹⁴
- a. Although prior constitutions extend excommunication to accomplices and cooperators even when the effect has not followed, this constitution does not seem to extend the censure to the same persons when the effect has not followed: for since it is established that the supreme pontiff wished to restrict the censures, cooperators are not to be comprehended under the censure unless they are expressly named.⁹⁵
- b. They do not incur excommunication who cooperate only remotely in the duel, as fencing masters who teach the art of swordsmanship to those about to duel, or who sell or rent weapons to them, provided they do this indiscriminately toward all by reason of their art and office; drivers who convey duelers to the place of the duel.
6. Those deliberately watching, i.e. those who purposely and openly, with the duelers aware of it, are present at the duel.

Therefore they do not incur excommunication who, passing by by chance, stop and look on from curiosity, or who watch from afar or from a hidden place, or who intervene in order to prevent the duel, nor soldiers who from mere curiosity watch comrades dueling in barracks,⁹⁶ because all these by their presence do not increase courage for the fight.

7. Those permitting or not prohibiting are understood to be not private men, but men endowed with public authority, whether civil or military, who either positively permit the duel or, when they could, do not impede it, as princes in their territories or commanders among their soldiers.

Fourth ordinary-mode excommunication. Those giving their name to the Masonic or Carbonari sect, or to other sects of the same kind, which plot against the Church or legitimate powers, whether openly or clandestinely, and also those furnishing any favor whatever to the same sects, and those not denouncing their hidden coryphaei and leaders, until they have denounced them.

To explain this excommunication two things must be set forth: a. what sects are prohibited under censure; b. what persons are punished by censure on account of these sects.

74. Sects prohibited under censure. 1. Societies prohibited indeed under grave sin but without censure,

Notes

93. Holy Office, May 28, 1884.

94. Holy Office, l. c.

95. Lehmkuhl II. n. 949.

96. Genicot II. n. 595.

and societies prohibited under censure, must be distinguished.⁹⁷ To prohibited societies belong:

- a. Bible societies, condemned several times by the supreme pontiffs;
- b. Three American societies of workers, whose names are: a. Odd Fellows (*Socii singulares*); b. Sons of Temperance (*Filii temperantiae*); c. Knights of Pythias (*Equites Pythiae*);⁹⁸
- c. The society called "Independent Order of Good Templars" (*Guttempler-Orden*);⁹⁹

This society, founded in America in 1851, was soon propagated in the larger states of Europe, especially Norway and Switzerland. It aims especially at fighting drunkenness, but since it is wholly imbued with the spirit of Protestantism, it is prohibited to Catholics.¹⁰⁰

- d. Societies whose purpose is to promote the use of burning human corpses.¹⁰¹

To prohibited societies certainly belong all those which exact from their followers an oath of preserving secrecy and of rendering obedience in every way to hidden leaders. For an oath of this kind is sinful, because secrecy is promised to be preserved even when it ought to be manifested to legitimate superiors, and because obedience is implicitly promised even for illicit things. But where such an oath is not exacted, a society is not to be declared prohibited by private authority alone without consulting the holy see.

- 2. In order that a society be prohibited under censure, it is required that it bear a likeness to the Masonic and Carbonari sect by reason of hidden organization and by reason of its end, or that it be of the same kind, i.e.: a. that the members, united by a social bond, have hidden statutes and be governed by hidden leaders; b. that they intend to assail and overthrow the Church or the republic. Societies of this kind are:

- a. The Masonic society;

Freemasons have been excommunicated several times by the Roman pontiffs. Clement XII was the first to impose a censure upon them by the constitution *In eminenti*, April 28, 1738; then Benedict XIV by the constitution *Providas*, May 18, 1751; Leo XII by the constitution *Quo graviora*, March 13, 1825; Pius VIII by the encyclical letters *Traditi*, May 24, 1829; Pius IX by the constitution *Apostolicae sedis* established the penalty now in force; finally Leo XIII by the encyclical letters *Humanum genus*, April 20, 1884, renewed the penalties of his predecessors.

To those comparing the penal law now in force with the ancient law it will immediately be clear that a twofold change was introduced by this our constitution: a. In order that societies be prohibited under censure, it is not required that they pursue their end secretly; but all are censured which plot against the Church or legitimate powers, whether openly or clandestinely. Therefore it also makes no difference whether they exact from their followers an oath of preserving secrecy or not.¹⁰² b. The obligation of denouncing all Freemasons and their supporters is no longer imposed under excommunication, but only of denouncing hidden coryphaei and leaders.

- b. The Carbonari society;

Notes

97. Holy Office, May 10, 1884.

98. Holy Office, August 20, 1894.

99. Holy Office, August 9, 1893.

100. Holy Office, August 17, 1899.

101. Holy Office, May 19, 1886.

102. Holy Office, May 10, 1884.

Pius VII excommunicated the Carbonari by the constitution *Ecclesiam*, September 15, 1821, and Leo XII by the constitution *Quo graviora*, March 13, 1825.

c. The society of the Fenians;

The Holy Office declared on January 12, 1870, that this American and Irish sect was prohibited under excommunication.

d. Nihilistic and anarchistic societies.

That these sects, propagated especially in Russia, are prohibited under censure is clear from the end which they pursue.

Whether socialistic societies are prohibited under censure or simply prohibited is disputed. Some (D'Annibale, Ballerini-Palmieri) think that all societies which by their end assail the Church or the republic are subject to this censure; but others (Vermeersch, Lehmkuhl, Koch) not improbably are of the opinion that the two marks recounted above are required in order that a society be prohibited under censure, and therefore they except Bible societies, clerico-liberal societies, the neo-Protestant society of the Old Catholics, likewise communistic and socialistic societies, which others declare subject to censure. Socialists, however, who constitute rather a political faction than a seditious sect, as socialists in Belgium, do not contract excommunication. Yet those who adhere to these societies, knowing their principles and end, incur excommunication reserved to the Roman pontiff in a special mode on account of heresy.¹⁰³

75. Persons who are censured on account of these sects. It is clear that one does not incur the censure unless he knows that the society is prohibited under censure, i.e. unless he knows that the society plots against the Church or the government and that societies of this kind are subject to censure.

1. Those giving their name, i.e. those who enter a sect prohibited under censure, because they constitute themselves members of it.

If someone in good faith has given his name to a sect prohibited under censure and, once the matter is discovered, does not leave it, he does not incur excommunication if meanwhile unwillingly, in order to avoid very grave evils, he remains in it until he can leave it without grave inconvenience.

2. Those furnishing favor. Favor can be furnished to these sects by many and diverse actions; nevertheless, in order that excommunication be incurred, it is required both that the favor be true or efficacious, and that the action constitute grave sin.

a. They incur excommunication who take care to propagate sects of this kind; who without grave cause make power available to them to hold meetings in their buildings; who exhort others to be aggregated to societies of this kind or to be present at their meetings; who are present at their meetings; who help the societies themselves or their members in any way whatever, e.g. by propagating papers and pamphlets written in their favor, by contributing money to them, by acting as servant in their meetings, etc.

b. They do not incur excommunication who once or again are present at their meetings for the sake of curiosity, unless from peculiar circumstances the attendance yields to the commendation of the sect; nor those who from a grave cause sell or rent a house to a condemned sect, that it may have its meetings there.¹⁰⁴

3. Those not denouncing hidden coryphaei and leaders.

Notes

103. Lehmkuhl, *Casus consc.* I. n. 1058 s.

104. Cf. Genicot II. n. 596.

- a. This obligation of denouncing exists for all who know those leaders in any way whatever, even only from the trustworthy report of others, unless they have learned this from those who themselves have either already denounced or certainly are going to denounce.
- b. By the name of coryphaeus and leader is signified not only the supreme head of the society, but anyone who exercises some power in those sects.
- c. Hidden coryphaei and leaders are to be denounced; therefore the obligation of denouncing ceases where the true coryphaei and leaders are publicly known. But it does not cease if indeed the members of the sects are publicly known, but their leaders are not known; nor does it cease in those regions in which sects of this kind are tolerated by the government and their leaders cannot be punished by the ecclesiastical power.¹⁰⁵
- d. The denunciation is to be made to the ordinary of the place, and indeed, unless grave inconvenience permits delay, within a month after the obligation of denouncing has been known.
- e. As to the mode of denouncing, it suffices that the names of those persons be manifested to the ordinary either by letter or through the confessor; and once the denunciation has been made, not only the reservation ceases, but also the excommunication itself.¹⁰⁶

76. On the absolution of a Freemason. In order that one who is enrolled in the Masonic sect or another sect of the same kind may be absolved, the holy see is accustomed to require these conditions when it grants the faculty of absolving a penitent of this kind from censures:

- a. That he bid farewell to the prohibited sect and break off every communication with sectaries. But if without grave inconvenience this cannot be done at once, material communication, with scandal and his own spiritual detriment excluded, is meanwhile to be permitted to him; namely, he can defer formal renunciation, persevere in paying the tax, and from a most grave cause even frequent the meetings of sectaries, until the danger of grave harm has ceased.¹⁰⁷
- b. That he hand over to the confessor the books, manuscripts, and signs of the sect, if he retains any; the confessor will take care that these are transmitted to the ordinary as soon as possible, or, if this cannot be done, burned.
- c. That he denounce the hidden leaders of the sect to the ordinary, if it can be done without grave inconvenience.

It will rarely happen that someone in good faith has given his name to the sect of Freemasons and, on account of ignorance, has not contracted the censure. Nevertheless, if a penitent occurs who, ignorant of the depraved end of the sect, in good faith gave his name to it, he must by all means be admonished concerning the law of the Church prohibiting it and concerning the obligation of bidding farewell to the sect and breaking off every communication with it, on account of the continual danger of sinning which threatens him from this communication, and on account of the scandal of others. But if in a very rare case, on account of the peculiar circumstances of the person, each inconvenience truly ceased, the admonition, which would be foreseen as harmful, could be omitted.

Fifth ordinary-mode excommunication. Those commanding the immunity of ecclesiastical asylum to be violated with rash daring, or those violating it.

Notes

105. Holy Office, April 11, 1893.

106. Holy Office, February 1, 1871.

107. Holy Office, January 18, 1896.

77. a. All those commanding that an offender be extracted from ecclesiastical asylum command the immunity of asylum to be violated, once the effect of violation has followed; those violate it who in fact violently extract the guilty person from asylum. Because rash daring is required, magistrates who, being compelled, conform themselves to the prescription of law do not contract the censure, nor soldiers and other servants who only fulfill commands.

b. Although the right of asylum today is scarcely any longer recognized, nevertheless the holy see has declared that the law of asylum “as to substance” is not abrogated by contrary custom.¹⁰⁸ Hence this censure is scarcely ever incurred, whether on account of abrogation or on account of ignorance of the law.

Sixth ordinary-mode excommunication. Those violating the enclosure of nuns, of whatever kind or condition, sex or age they may be, by entering their monasteries without legitimate license; and likewise those introducing or admitting them; and likewise nuns departing from it outside the cases and form prescribed by St. Pius V in the constitution *Decori*.

78. a. The censure refers to papal enclosure, such as nuns with solemn vows have, and, from special privilege, some monasteries of simple vows. To contract the censure it is required that the enclosure be violated through entrance into the monastery without legitimate license. But those thus violating enclosure contract the censure, whoever they may be, even women and those not yet pubescent, except kings and their wives and children, and probably also infants not yet having the use of reason. License from the prescription of the Council of Trent had to be granted in writing; but since this constitution says nothing about license to be obtained in writing, it seems to some authors that license can be given even orally. Nevertheless it must be obtained on each occasion: for general license cannot be granted except to a confessor, physician, and workmen. They are said to introduce who open the door to one wishing to enter. Those receiving are said to admit who, when they could and ought, do not impede entrance, namely superioresses and doorkeepers, but not private nuns. The same must be said of those who detain or do not expel those who have entered.

b. They interpret this censure more rigorously than is proper who, admitting no smallness of matter, teach with St. Alphonsus (n. 229) that a nun who departs from enclosure, or one who enters enclosure by one step only, incurs excommunication. Pius V permits departure: a. from the cause of a great fire; b. of the infirmity of leprosy; c. of epidemic; and since these seem to be stated by way of example, in general departure will be licit in a great common danger which threatens either the life or the virtue of nuns.

Seventh ordinary-mode excommunication. Women violating the enclosure of regular men, and superiors or others admitting them.

79. With respect to nuns, the entrance of any outsiders whatever and the departure of nuns is prohibited under censure; with respect to religious men, only the entrance of others is prohibited under censure, and indeed only of women. Regulars are understood to be those who emit solemn vows, because these alone in the strict sense are called regulars and are subject to the law of enclosure. All women, even those lacking reason, after the years of puberty are understood, because it is not added, as in the preceding article, “of whatever age”; queens, however, etc., are excepted. Those admitting are not only superiors, but also subjects, such as doorkeepers, who, when they can and by office ought, do not impede women entering, or who detain those who have entered, lest they depart quickly.

Eighth ordinary-mode excommunication. Those guilty of real simony in any benefices whatever, and their accomplices.

Notes

108. Holy Office, December 22, 1880.

80. The censure punishes simony of divine law, which alone in the strict sense is simony. In all benefices indeed, whether double or simple, whether greater or lesser, whether of right of patronage or of free collation, but only in benefices properly so called; offices and dignities in religious orders are not of this kind. Accomplices are those by whose cooperation the simoniacal contract is perfected.

Ninth ordinary-mode excommunication. Those guilty of confidential simony in any benefices, of whatever dignity they may be.

81. The guilty can be those giving and receiving benefices, and likewise those resigning; not indeed accomplices as in the preceding article, but nevertheless cardinals and bishops.

Tenth ordinary-mode excommunication. Those guilty of real simony on account of entrance into religion.

82. Those guilty of simony which is punished by this censure are those receiving and those giving. Entrance is properly made in profession, not in admission to the novitiate. Although even in entrance into the novitiate simony of divine law can be committed, nevertheless this is not subject to the censure. Religion is understood as such strictly, but equally a religion of men and of women.

Eleventh ordinary-mode excommunication. All who, making gain from indulgences and other spiritual graces, are punished by the censure of excommunication in the constitution of St. Pius V *Quam plenum*, January 2, 1569.

83. a. From the cited constitution this censure is incurred by those who are inferior to bishops; bishops were punished by suspension, which, however, is not renewed in the constitution *Apostolicae sedis*. He is said to make gain who, after a price has been received, makes some profit, and indeed by conceding indulgences and other spiritual graces to those paying money, likewise by publishing or commanding to be published that graces of this kind are conceded to those paying money, even if these things are done under the pretext of a good work.

b. The spiritual graces of which the cited constitution speaks are these:

c. Of choosing for oneself a confessor by whom one can be absolved even from cases reserved to the pope or bishop;

d. Celebration of Mass and ecclesiastical burial in time of interdict;

e. Use of prohibited foods;

f. Assumption of several sponsors in baptism;

g. Absolution from simony reserved to the pope.

Twelfth ordinary-mode excommunication. Those collecting alms of greater price for Masses and seeking profit from them, by causing them to be celebrated in places where Mass stipends are customarily of lesser price.

84. Explanation. a. This censure is drawn from the constitution *Quanta cura* of Benedict XIV (July 30, 1741), who took care to eliminate the abuse of a certain commerce concerning Mass stipends, and therefore struck clerics, and them alone, exercising such commerce, with the penalty of suspension. The censure of the Pian constitution affects both clerics and lay persons and punishes both with excommunication.

b. Several actions which contain some traffic concerning Mass stipends are prohibited by the Church, yet not all under censure; the actions prohibited under censure are: to collect and to seek profit, by causing them to be celebrated for a lesser stipend.

1. Those collecting and seeking profit.
 - a. Those are said to collect who deliberately try to gather Mass stipends, whether they receive many or few. Intention properly makes the collector, not the abundance of stipends which he receives by collecting: for he who receives few collects few; he who receives many collects many. By the intention itself, therefore, he is distinguished from one who receives stipends spontaneously offered to him; nor is the latter for that reason called a collector because many are offered to him.
 - b. Those seeking profit are said to be those who without license retain for themselves, as their own, a part of the stipend.
 - c. To incur the censure it is required that the quantity which is retained suffice to constitute the grave sin of theft, and bring notable profit to him by whom it is retained; this can also coalesce from small profits.
 - d. Therefore they do not incur excommunication who retain for themselves part of the stipend in those cases where this can licitly be done. Likewise they do not incur excommunication, although they act illicitly, who retain part of the stipend in order to expend it for pious uses, because they do not properly take profit.
 - e. To incur the censure both things are required, namely, that stipends be collected and that they be given to others with profit: for the delict must be complete.
 - f. Therefore they indeed sin, but do not incur the censure, who receive Mass stipends from those spontaneously offering, even in greater number, and hand them over to others with profit, because they did not collect the stipends. But those incur excommunication who, while collecting, receive only a few, but hand them over to others with great profit.
 - g. Therefore he does not incur excommunication who indeed collects stipends with the depraved intention of making profit, but afterward, with his will changed, hands over the whole stipend to others.
2. For Masses, namely manual Masses: for the stipends of these are properly said to be collected; yet here it must be noted that founded Masses also, or Masses left by legacy, which do not adhere to some benefice, pertain to manual Masses.¹⁰⁹
3. By causing them to be celebrated for a lesser stipend. Formerly several interpreters were of this opinion, that to incur the censure it was required that the Masses be celebrated in another place, where stipends are customarily of lesser price; but now it is established that those also incur excommunication who cause Masses to be celebrated for a lesser price in the same place where they had collected the stipends.¹¹⁰

Thirteenth ordinary-mode excommunication. All who are punished with excommunication in the constitutions of St. Pius V *Admonet nos*, of Innocent IX *Quae ab hac sede*, of Clement VIII *Ad romani pontificis curam*, and of Alexander VII *Inter ceteras*, concerning the alienation and infeudation of cities and places of the holy Roman Church.

85. a. This censure tends to this, that the temporal dominion of the holy see be preserved unharmed; therefore one is punished by the censure who dares in any way to impel the supreme pontiff to alienate the temporal dominion or to hand it over in fief. Therefore the object of the constitution is infeudation (*Lehensgebung*) or alienation (*Verausserung*), by which namely indirect dominion is transferred to another;

Notes

109. S. C. C., August 22, 1874.

110. Holy Office, January 15, 1892.

there is no question of abdication of temporal dominion, whether of the whole or of a part, of which at that time no one was thinking.

- b. The actions which are punished by the censure are: a. to treat, counsel, or otherwise speak words concerning alienation, so that at the same time it is proposed to choose orators to be sent to the supreme pontiff about this matter; b. to suggest or advise an alienation of this kind to the supreme pontiff, whether this is done by oneself or through another.
- c. Therefore they do not incur this censure: a. those who advise the supreme pontiff to renounce temporal dominion; nor b. those who propose to the supreme pontiff reconciliation with the Italian government.
- d. All incur this censure, both ecclesiastics and seculars, of whatever dignity and order they may be, even cardinals, bishops, and legates, who do such things.

Fourteenth ordinary-mode excommunication. Religious presuming, outside the case of necessity, to minister to clerics or lay persons the sacrament of extreme unction and of the Eucharist by way of viaticum without the pastor's license.

86. Religious properly so called, who have emitted solemn vows; therefore not novices, nor those simply professed, whether in some congregation or in religion properly so called, except scholastics of the Society of Jesus. To clerics or lay persons; therefore they do not contract the censure if they administer the last sacraments to other religious, even of a different order, clerics or laymen, who are of their family, or to travelers staying as guests in houses of religious. Outside the case of necessity. Necessity is present if the sick person is in danger of death and the pastor cannot easily be called. Without license, at least presumed, which the pastor, if asked, is believed about to give.

Fifteenth ordinary-mode excommunication. Those extracting relics from the sacred cemeteries or catacombs of the city of Rome and its territory without legitimate permission, and those furnishing help or favor to them.

87. To incur this censure it is required: a. that true relics be extracted, bodies or parts of the body, even very small parts, of holy martyrs; b. that they be extracted without legitimate permission, which permission the cardinal vicar grants.

Sixteenth ordinary-mode excommunication. Those communicating with one excommunicated by name by the pope in a criminal crime, namely by expending help or favor upon him.

88. a. Although communication with any excommunicated person to be avoided is prohibited, nevertheless only he falls into the censure who communicates with one excommunicated by name by the pope; of this kind is judged to be both one whom the pope excommunicated by a particular sentence, and one whom the pope, after he has contracted excommunication of a sentence already passed, denounces to be excommunicated.

b. Yet only that communication is punished by the censure which consists in help or favor shown to the excommunicated person, so that he may persist in his crime.

Seventeenth ordinary-mode excommunication. Clerics knowingly and spontaneously communicating in divine things with persons excommunicated by name by the Roman pontiff, and receiving them in offices.

89. This censure is incurred by clerics who, knowing that someone has been excommunicated by name by the pope, spontaneously, not driven by force or fear, communicate with him in divine things, because they receive him in divine offices, i.e. admit him to performing divine offices. Therefore a cleric does not incur excommunication who together with one excommunicated by name by the pope assists at offices or hears

his Mass, because he does not receive him in offices; rather the rector of the church does, who admits him to saying Mass.

Eighteenth ordinary-mode excommunication. Those presuming, outside the article of death, to absolve from excommunications reserved in a special mode to the apostolic see without due faculty, even under any pretext whatever.

90. This censure, which is established by the constitution *Apostolicae sedis* itself, is incurred by confessors who knowingly and spontaneously, without faculty, absolve a penitent from excommunication reserved in a special mode to the Roman pontiff, outside danger of death and outside a truly urgent case.

§ 2. From the Council of Trent

Nineteenth ordinary-mode excommunication. If anyone of the clerics or laymen, with whatever dignity he may excel, even imperial or royal, has been so occupied by cupidity, the root of all evils, that he has presumed to convert to his own uses and usurp, by himself or through others, by force or fear struck in, or even through supposed persons of clerics or laymen, or by any art or under whatever color sought, the jurisdictions, goods, revenues and rights, even feudal and emphyteutic, fruits, emoluments, or any income whatever of some church, or of any secular or regular benefice, montes pietatis, and other pious places, which ought to be converted to the necessity of ministers and the poor, or to impede them from being received by those to whom they pertain by right, let him lie under anathema for so long as he has not fully restored to the church and 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 has obtained absolution from the Roman pontiff. But the cleric who has been the maker of such nefarious fraud and usurpation, or consenting to it, is subject to the same penalties. Sess. 22. c. 11. *De reform.*

91. a. This censure protects ecclesiastical goods taken in the broadest sense, namely any temporal goods and rights whatever pertaining to churches, religious places, or pious places; to these also in part article 11 and 12 of the first series refer. Therefore in cases which pertain to both censures, the censure reserved in a special mode is contracted.¹¹¹

b. Clerics and laymen contract the censure who usurp the goods of the Church, by authoritatively occupying them as owed to themselves by right, or who impede them from being received by those to whom they pertain by right, by occupying them as if pertaining to themselves and converting them to their own uses. Clerics incur the censure if they even only consent to these actions.

c. In this matter they dispute whether all usurpations are punished by this censure, or only authoritative ones, namely those which are done through public authority. From the declaration of the holy see, thieves and robbers do not incur this censure.¹¹²

d. Finally, those also incur this censure who have bought goods of this kind from usurpers or have acquired them under another title (donation, inheritance, legacy, etc.).¹¹³

Notes

111. Holy Office, July 8, 1874.

112. Holy Office, March 9, 1870.

113. Holy Office, July 8, 1894.

Article Five

On Ordinary Reserved Excommunications

The third series from the constitution *Apostolicae sedis* contains three excommunications, to which a fourth was added from the decree *Vigilanti* of Leo XIII, May 25, 1893. These censures, since they are reserved by the Roman pontiff, are properly to be called papal; nevertheless bishops can absolve from them by force of power delegated to them by ordinary law.¹¹⁴

§ 1. From the Constitution *Apostolicae sedis*

First ordinary reserved excommunication. 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.

92. a. Some thought: a. that to incur the censure it is required that no other impediment stand in the way of such a marriage; but the holy see declared that the censure is contracted even if, besides order or vow, other diriment impediments are present, e.g. of affinity or consanguinity;¹¹⁵ b. that the censure is not incurred if they contract civil marriage in a place where the Tridentine law on clandestinity is in force; but again the holy see declared that the censure is contracted through civil marriage, even in a place where the Tridentine law is in force.¹¹⁶

b. Presuming. Since in clerics and religious ignorance of the law prohibiting marriage is impossible, only ignorance of the penalty, or ignorance of the order or vow by which the other party is bound, will be able to excuse.

Second ordinary reserved excommunication. Those procuring abortion, once the effect has followed.

93. **Explanation.** From the very words of this censure three things are required for incurring it: a. that there be true abortion; b. that the abortion has been procured; c. that the effect has followed.

1. That there be true abortion. From those things which have been said elsewhere concerning the nature of abortion,¹¹⁷ it is established that for true abortion it is required: a. that the fetus be expelled: for if it is not certainly established that what is expelled is a fetus and not only a mole, excommunication is not incurred; b. that it be expelled before the seventh month of gestation: for after the seventh month of gestation there is not abortion, but accelerated birth.
- a. Therefore excommunication is not incurred if semen is expelled immediately after intercourse, because conception is not yet certain; nor if a fetus already dead is expelled, even if the one procuring did not know that it was already dead.
- b. The surgical operation which is called craniotomy is not so much the procuring of abortion as direct homicide; for that reason one who performs craniotomy does not incur the excommunication by which those procuring abortion are struck.

Notes

114. The Sacred Congregation of Propaganda, on August 18, 1893, extended also to the faithful of the Eastern rite the censure established by the decree *Vigilanti*.

115. Holy Office, January 13, 1892.

116. Holy Office, December 22, 1880.

117. Cf. *De praeceptis* 8 n. 342.

- c. It makes no difference at what time after conception abortion is procured, because the words of the constitution do not distinguish between an animated and unanimated fetus, but say absolutely: those procuring abortion.
- 2. That it has been procured. Those are said to procure abortion who, whether by themselves or through another, from the direct intention of abortion, try to produce it by an action efficacious of itself; as if a physician or lover provides a remedy to a woman for the end of abortion or strikes fear into her: for one is said to procure something who deliberately seeks it.

Therefore they do not incur excommunication who from anger, hatred, or another motive, although gravely sinful, strike a pregnant woman in such a way that abortion follows accidentally, even if it was foreseen.

- a. Whether from recent law a mother who procures abortion for herself incurs excommunication is disputed. Nevertheless all agree that a mother who has been induced by grave fear to procure abortion for herself is immune from the censure.

Those who affirm say that our constitution without distinction strikes all procuring abortion, therefore also the mother. Those who deny this say that in the ancient decrees, with all consenting, the mother was not comprehended under the name of those procuring, although the same term “those procuring” was used; therefore since the Pian constitution wishes rather to restrict than to extend excommunications, the mother also in the recent decree is not judged to be comprehended.

- b. Not only those who by themselves, but also those who through another effect that a woman expel the fetus, are said to procure abortion; therefore those mandating, both to the woman that she procure abortion for herself, and to others that they procure abortion for the woman, are struck with excommunication. But those cooperating in abortion, whether physically or morally, do not incur excommunication from recent law, because in our constitution, otherwise than happened in the ancient decrees, cooperators are not contained.
- 3. That the effect has followed. Therefore two things are required from this head for incurring the censure:
 - a. that the abortion has in fact followed from the means employed; b. that it is certainly established that it has followed from this very means and not rather from another.
- a. From the opinion of St. Alphonsus (n. 40), he does not incur excommunication who repents of the procured abortion before the effect follows, because in this case the delinquent is no longer contumacious when the sin becomes consummated in act. Nevertheless repentance indeed effects that the sin previously committed ceases, but it cannot prevent the censure from being incurred on account of the sin committed previously with depraved and contumacious will. Nor is it an obstacle that the penalty is contracted when the sin has already been remitted: for penalty is not the effect of a sin persisting, but of a sin previously committed (n. 21).
- b. The distinction between an animated and unanimated fetus is no longer attended to: for recent laws are judged to prescind from the ancient and obsolete hypothesis of an unanimated fetus. Therefore excommunication is incurred at whatever time abortion takes place.

Third ordinary reserved excommunication. Those knowingly using false apostolic letters, or cooperating in the crime in this matter.

94. Those falsifying apostolic letters contract excommunication reserved in a special mode to the pope (I. 9); those knowingly using false letters, i.e. exhibiting them in order to obtain the effect contained in them, even if they do not obtain the effect, whether they are clerics or laymen, and likewise those knowingly and efficaciously cooperating by work or counsel in their use, incur this excommunication.

95. On absolution from censures reserved to the bishop by law.

- a. In an urgent case the penitent can be directly absolved by any confessor (unless the bishop has reserved to himself the sin to which a papal censure is annexed); nevertheless afterward he is bound, by himself or through the confessor, under penalty of reincidence, to have recourse to the bishop and to stand by his mandates, as has been established concerning other papal cases.
- b. One constituted in the article of death can be absolved by any confessor, nor does the obligation of approaching the bishop remain if the absolved person has recovered, unless the bishop has reserved the censure to himself under this condition.
- c. Regulars have power of absolving from these cases, unless bishops have reserved them to themselves; for before the Pian constitution, by force of privilege they were able to absolve from reserved cases (except episcopal ones); but by the aforesaid constitution the privilege of absolving from cases reserved to the Roman pontiff is revoked. Therefore the faculty of absolving from cases not reserved to the Roman pontiff remains.

§ 2. From the Decree *Vigilanti*

Fourth ordinary reserved excommunication. They incur excommunication:

1. Booksellers and other lay merchants collecting Mass stipends in any way whatever, who repay to the priests to whom they commit Masses to be celebrated not money, but books or other merchandise.
2. Likewise lay persons handing over Mass alms received from the faithful or from pious places to booksellers, merchants, and other collectors, whether they receive or do not receive anything from the same persons by name of reward.

96. It does not excuse from incurring the penalty that the number of Masses corresponds to the collected alms without any diminution having been made, or that poor priests lacking Mass alms are assisted in such a way, or that the profit from the exchange of merchandise with alms is expended not for the private advantage of those collecting, but for the use or increase of pious institutions and good works.

- a. By the decree *Vigilanti*, May 25, 1893, several actions concerning Mass stipends are punished by penalties, either because through them commerce is exercised, or because an occasion is easily furnished for illicit commerce. But the penalties are:
- b. For priests (cardinals and bishops are not comprehended), suspension from divine things simply reserved to the pope;
- c. For clerics who are not priests, suspension from orders received and inability to receive higher orders, likewise simply reserved to the pope;
- d. For lay persons, excommunication reserved to the bishop.
- e. By the decree *Ut debita*, May 11, 1904, the same penalties are renewed and the actions prohibited under censure are determined more accurately, so that the following incur the censure:
- f. Those knowingly handing over obligations of Masses and their alms, received from the faithful or from pious places, to any persons whatever, even ecclesiastical men, who request Masses not taxatively that they may celebrate them, whether by themselves or through priests subject to them, but for any other end, although best; likewise those knowingly accepting them.
- g. Those separating the alms of manual Masses and Masses after the manner of manual Masses from their celebration, or commuting them into other things, or diminishing the alms, namely by not handing them over to the celebrant whole and in their own kind.

- h. Those selling books, sacred utensils, or any other things whatever, or buying them, and entering into associations with newspapers and periodicals by means of Masses to be celebrated or celebrated, whenever this latter thing passes into a usage by habit and turns into support of some commerce.
- i. Those subtracting anything from the alms of Masses which the faithful are accustomed to hand over to more celebrated sanctuaries, so that provision may be made for their dignity and ornament.

Article Six

On Excommunications Reserved to No One

In the fourth series thirteen excommunications are numbered, of which five were imposed by the constitution *Apostolicae sedis*, seven by the Council of Trent, to which is added the excommunication imposed by Pius X in the Motu proprio *Praeestantia*.

§ 1. From the Constitution *Apostolicae sedis*

First non-reserved excommunication. Those commanding or compelling that notorious heretics, or persons excommunicated or interdicted by name, be handed over to ecclesiastical burial.

97. a. Those commanding or compelling are understood to be those who, endowed with public authority, either command burial by authority, or by force or fear compel others to bury. Therefore those burying or assisting at burial do not incur the censure.

b. Ecclesiastical burial is had if the deceased is placed in a sacred place and with a sacred rite; indeed even if he is placed without a sacred rite, provided this is done in a sacred place, the censure is already incurred; but it is not incurred if he is buried with a sacred rite in a profane place. They dispute whether, to contract the censure, the place ought to be consecrated by the bishop or in his name, or whether it suffices that it be simply blessed by a priest, or only destined by the bishop for the burial of the faithful. Since the matter is doubtful, it seems that it must be said that the place ought to be consecrated.

c. Notorious heretics (apostates, schismatics), even if they are not to be avoided and have adhered to no sect, provided it is publicly established that they were heretics and died in heresy, whether by notoriety of law or of fact.

Note. Since in Austria, from civil law, heretics in two cases must be buried in the cemetery of Catholics, it must be noted that they do not incur the censure who command burial, or compel others to bury, not in their own name but by force of civil law or in the name of a superior, because contumacy is lacking.

Second non-reserved excommunication. Those injuring or terrifying inquisitors, denouncers, witnesses, or other ministers of the Holy Office, or plundering or burning the writings of it or of its sacred tribunal, or furnishing help, counsel, or favor to any of the aforesaid.

98. a. This censure has been established for protecting the tribunal of the holy inquisition. Those incur it who injure in body or terrify, i.e. affect with very grave fear, judges, witnesses, or other ministers of the Holy Office. Those plundering or burning, or destroying in another way, but not secretly carrying away, the acts, even printed, of the same sacred tribunal.

b. Although bishops have been constituted inquisitors by the holy see, nevertheless their tribunal is not called simply the Holy Office; therefore the censure is not to be extended to the tribunals of bishops.

Third non-reserved excommunication. Those alienating, or presuming to receive, ecclesiastical goods without apostolic approval according to the form of the extravagans *Ambitiosae*, on ecclesiastical things not to be alienated.

99. Explanation. The constitution *Ambitosae* establishes two things: a. for ecclesiastical goods of great value to be alienated both licitly and validly, the license or approval of the apostolic see is required; b. those alienating and receiving ecclesiastical goods without license incur excommunication.¹¹⁸ Now, to explain the excommunication which our constitution renews, it must be set forth: a. what ecclesiastical goods are understood here; b. what actions are prohibited under censure; c. what persons are punished by this censure.

The constitution *Ambitosae* was received neither in Germany nor in France; for this reason before the constitution *Apostolicae sedis*, by custom legitimately introduced, any ecclesiastical goods whatever could be alienated without license of the holy see, without excommunication being contracted. But after the constitution *Apostolicae sedis*, the law of seeking this license and the censure annexed to it are in force even in Germany and France: for the Holy Office declared on December 22, 1880, that the custom had been entirely taken away by the *Pian* constitution.¹¹⁹

100. What ecclesiastical goods. 1. Ecclesiastical goods are here understood to be the goods of all places which are called sacred or pious, provided they have been erected by ecclesiastical authority, even if their goods are administered by lay persons.

Ecclesiastical goods are not pious legacies or other goods donated to the Church which have not yet been accepted by the Church or duly acquired, nor lay chaplaincies, although not even these can be alienated at will.¹²⁰ But goods which pertain to institutes of men and women, whether approved by the holy see or only diocesan, are ecclesiastical, which cannot be alienated without license of the holy see; and those alienating them thus incur excommunication.¹²¹

2. Nevertheless, not all ecclesiastical goods indiscriminately, but only immovable goods and precious movable goods (which can be preserved by being kept), are prohibited from being alienated without consulting the holy see.

a. Immovable goods are judged to be not only estates and buildings, but also those things which are held by the land, such as mines, fruit-bearing trees or things necessary for the estate, rights (the right of hunting and fishing) and servitudes, revenues, and money destined by donors for acquiring estates or precious movable goods.

b. Precious movable goods are judged to be gold or silver vessels, abundant libraries, ornaments which excel by antiquity or workmanship, etc., provided they are not of slight value. But goods are judged to be of slight value which do not exceed the sum of 300 florins, or 500 marks, or 600 francs.¹²²

But precious movable goods in order to this law are not judged to be: money, unless it has been given for buying immovable goods or precious movable goods; bonds and shares, which scarcely differ from money; notable relics, which are less properly called precious movable goods; old furnishings, which by custom can be alienated for procuring new ones equally precious; nor fruits and goods which cannot be preserved by being kept: for these are permitted to be alienated by this constitution itself.

101. Actions prohibited under censure are alienation and the corresponding reception or acquisition, presumptuous, of ecclesiastical goods. By the name of alienation is understood any contract by which the

Notes

118. C. *Ambitosae* un. *De rebus eccl. non alienandis* (Extrav. com. III. 4) of Paul II, March 1, 1468.

119. Cf. *Acta s. sedis* XV. p. 539.

120. S. C. C., February 8, 1871. Cf. *Acta s. sedis* VI. 476.

121. S. C. de Prop. Fide, January 15, 1903.

122. S. C. Epp. et Reg., May 1, 1840. The sum of 25 gold pieces, which in this decree the congregation mentions from older responses (from 1611 and 1698), with the value of money changed, is now rightly judged equivalent to the sum placed above.

right of ownership, or of use, or of usufruct, is transferred to another, or in any way diminished or burdened. Actions of this kind are:

- a. Sale, exchange (giving in payment), donation, hereditary transmission (*Vererbung*), etc., by which ownership is transferred to another;
- b. Pledging, hypothecation, imposition of servitude, etc., by which goods of the Church are burdened;
- c. Infeudation (*Lehensgebung*), lease beyond three years, emphyteusis, etc., by which useful ownership is transferred to another;
- d. Compromise, settlement, remission of servitude, cession of suit, etc., by which rights are ceded.
- e. If an ecclesiastical good (a house or field) had to be leased for a longer time, the administrator, to avoid the censure, would have to reserve to himself the right of rescinding the contract every three years. A promise to renew the contract after three years have passed does not induce the censure.
- f. To incur the censure it is required that the alienation be perfected from each side. Therefore if the alienation of an ecclesiastical good is made under reservation of apostolic approval, according to the opinion of many excommunication is not incurred, provided the contract is not put into execution before the apostolic license arrives: for what is still in the dominion of the seller cannot be said to have been alienated. In like manner, where sale is not perfected except by delivery of the thing, the censure is not incurred before the sale has been perfected by delivery of the thing; but where sale is perfected by the consent alone of the parties, the censure is incurred already before delivery of the thing.
- g. Whether alienations made between churches or pious places are subject to the censure is disputed. D'Annibale and Ballerini deny this: for the constitution *Ambitosae* by this prohibition intends to guard against detriment to divine worship, because ecclesiastical goods pass into the ownership of lay persons; but in an alienation of this kind, which is made between churches, divine worship suffers no detriment. Nevertheless the decree of S. C. C., January 24, 1632, stands against the denying opinion.

102. Persons who are punished by this censure are those alienating and those presuming to receive without approval of the holy see.

1. By those alienating are understood only those in whose name the alienation is carried out, pastors or rectors, but not their mandataries, nor those cooperating in some way in the alienation, e.g. by consent, nor those destroying or stealing goods of this kind.¹²³
- a. Lay persons administering ecclesiastical goods by force of civil laws, who themselves illicitly carry out the alienation of these goods, fall into excommunication; if a pastor or another ecclesiastical person carries out the alienation with lay persons only consenting, these do not incur excommunication.¹²⁴
- b. Authors do not agree whether bishops and abbots also, illicitly alienating ecclesiastical goods, incur this excommunication. By the constitution *Ambitosae* bishops and abbots are punished not with excommunication but with interdict from entrance into the church; but since this interdict is not renewed by the constitution *Apostolicae sedis*, it is established that bishops and abbots no longer incur this penalty. But several authors (Aichner, Lehmkuhl, Ballerini) contend that bishops and abbots today contract no censure: for Pius IX renews the censure according to the form of the constitution *Ambitosae*; but this constitution does not strike bishops and abbots with excommunication. Others, on the contrary

Notes

123. Holy Office, March 9, 1870.

124. Hollweck, l. c. p. 2412.

(D'Annibale, Buceroni, Hollweck), teach that bishops and abbots also incur this censure, because the constitution *Apostolicae sedis* does not except them, especially since another penalty is not established against them.

2. Those presuming to receive. Those receiving are said to be those who buy or lease ecclesiastical goods, or those for whose advantage a mortgage is imposed upon them. Nevertheless not all receiving persons are censured, but only those presuming to receive, therefore only those whom ignorance, even crass or supine, does not excuse; on the contrary, crass ignorance does not excuse those alienating from incurring the censure.
3. The approval or license of the apostolic see is not required: a. when an occasion occurs which does not allow awaiting the answer of the holy see; nevertheless in this case the license of the bishop is required; b. when immovable goods have been left to a monastery which is prohibited from retaining such things; c. when goods have been left to a church under the condition that they be sold. But license is required even if the alienation is done for a just cause and for the utility of the church: for by this law itself the holy see reserved to itself the judgment concerning the utility of the alienation to be made.

Note 1. Bishops, and others with their consent, can licitly alienate: a. immovable goods of slight value, provided they are not parts of a greater estate, lest in this way the whole be alienated successively by parts; b. precious movable goods of slight value; c. movable goods which cannot be preserved by being kept, such as fruits of estates, vineyards, flocks, timber of forests which it is licit to cut, etc., even if they are of greater value.¹²⁵

Note 2. To the bishops of Austria on May 8, 1900, for a decade, power was granted of conceding the faculty: a. of alienating ecclesiastical goods up to the sum of 6000 florins, to archbishops up to the sum of 8000 florins; b. of imposing burdens upon ecclesiastical goods up to 12000 florins, to archbishops up to 15000 florins; c. of entering contracts of letting and hiring that would be valid for 15 years; d. in cases of urgent necessity or utility, of alienating goods and imposing burdens upon them up to the sum of 12000 florins, to archbishops up to 15000 florins. With respect to goods of regulars, still broader faculties were received on September 18, 1901.

Fourth non-reserved excommunication. 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 predecessor Gregory XV in the constitution *Universi* and by Benedict XIV in the constitution *Sacramentum poenitentiae*.¹²⁶

103. For the explanation of this censure, confer the volume *De Sacramentis*^8 n. 393. Only this must be added. If the solicited person is worthy of faith and seriously promises that he will denounce within a month, he can be absolved from sins; indeed, if he culpably delayed denunciation beyond a month and now seriously promises that he will denounce as soon as possible, he can likewise be absolved from the censure, because it is not said: until he has denounced. But if afterward, with his will changed, he does not denounce, the censure does not revive, because there is nothing concerning reincidence.

Fifth non-reserved excommunication. Those who print, or cause to be printed, books treating of sacred matters without the approval of the ordinary. This censure in the constitution *Officiorum* sounds thus: Those who, without the approval of the ordinary, print, or cause to be printed, books of sacred Scripture or annotations or commentaries on the same.

Notes

125. C. *Terrulas* 53. c. 12. q. 1.

126. Cf. *De sacramentis*^8 n. 387 ss.

104. a. To the question whether “books treating of sacred matters” in the constitution *Apostolicae sedis* are understood to be only the sacred Scriptures and their commentaries, or universally all books treating of religious matters, the Holy Office responded: affirmatively to the first part.¹²⁷ Therefore as to the matter the censure of each constitution is the same, yet it is expressed more clearly in the later constitution.

b. They incur the censure: a. printers or typographers, who undertake the care of printing, but not those cooperating in the printing; b. those causing to be printed, i.e. the author and the publisher, if he differs from the typographer and takes care that the manuscript be printed.

§ 2. From the Council of Trent

Sixth non-reserved excommunication. Whoever shall have presumed to teach, preach, or pertinaciously assert, or by disputing publicly defend, that sacramental confession is not to be premised to the sacrament of the Eucharist, when there is abundance of a confessor, if he whom consciousness of mortal sin burdens judges himself to be truly contrite. Sess. 13. c. 11.

105. He incurs the censure who denies that sacramental confession is necessarily to be premised; therefore he does not incur it who only denies that it is necessary by divine law, nor he, whether he is a cleric or layman, who does not premise confession where he is bound from the Tridentine decree.

Seventh non-reserved excommunication. Those who deny that clandestine marriages made by the free consent of the contracting parties are true and ratified, so long as the Church has not made them invalid. Whoever shall affirm that marriages contracted by children of the family without the consent of parents are invalid, and that parents can make them ratified or invalid. Sess. 24. c. 1. *De reform. matr.*

Eighth non-reserved excommunication. The abductor of a woman, and all those furnishing him counsel, help, and favor. Sess. 24. c. 6. *De reform. matr.*

106. Both the abductor and his cooperators incur the censure, even if marriage did not follow or was not attempted.

Ninth non-reserved excommunication. Those who in any way directly or indirectly compel their subjects or any others, so that they do not freely contract marriages. Sess. 24. c. 9. *De reform. matr.*

107. This censure protects the liberty of marriage. Temporal lords and magistrates incur it, who exercise jurisdiction in the secular external forum, but not private persons, such as parents who compel children, or masters who compel servants, to enter marriage.

Tenth non-reserved excommunication. Magistrates who refuse to furnish help to the bishop against those who violate the enclosure of nuns or prohibit them from being restored. Sess. 25. c. 5. *De regul.*

Eleventh non-reserved excommunication. All who in any way have compelled any 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 shall 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, in any way interpose their presence, or consent, or authority to the same act. Sess. 25. c. 18. *De regul.*

Twelfth non-reserved excommunication. Those who in any way, without just cause, shall have impeded the holy will of virgins or other women of receiving the veil or emitting a vow. Sess. 25. c. 18. *De regul.*

Notes

127. Holy Office, December 22, 1880.

108. a. These two censures protect the liberty of entering religion. There is question of religion strictly such, of solemn vows.

b. In law a twofold case is had in which a bishop can compel a woman to enter a monastery, not indeed that she emit profession there, but that she dwell there: a. a wife who, after her husband has emitted profession with her consent, is suspected of incontinence; b. an adulterous wife whom the husband is unwilling to receive though she is penitent.

§ 3. From the Motu proprio *Praestantia*

Thirteenth non-reserved excommunication. Those who contradict the things which are contained either in the decree *Lamentabili* (July 3, 1907), or in the constitution *Pascendi* (September 8, 1907).

Question Three

On Suspension¹²⁸

Article One

On Suspension in General

109. Nature. 1. Suspension is a censure by which a cleric is deprived of the use of power which he has by reason of order, office, or benefice.

- a. Because suspension is a penalty proper to the clerical state, it can fall upon clerics alone, but not upon the faithful generally, as happens in excommunication.
 - b. Suspension does not take away the right itself or the power itself, such as benefice or office, but only their use and exercise.
 - c. Since suspension consists in the privation of the use of clerical power, only he can carry suspension who can grant clerical power. Therefore superioresses of nuns, just as they can suspend no one, so also they themselves cannot properly be suspended.
 - d. Suspension differs from deposition and degradation, which are vindictive penalties, by which a cleric is deprived not only of the use of power but, as far as can be done, of the power itself, office, or benefice.
2. Suspension properly so called, since it is a most grave penalty, cannot of itself be licitly carried unless admonition has first been given, the cause has been declared, and it is done by writing.
3. From suspension properly so called, suspension improperly so called must be distinguished; the former has the nature of censure, the latter does not, but either is a vindictive penalty, or a mere prohibition, if it is carried without fault. This distinction is therefore of great importance, because only the violation of suspension which has the nature of censure produces the effect of irregularity.

Suspensions which are carried by way of universal and stable law, even if only for a time, for a year or for three years, have the nature of censure; but suspensions are not censures:

- a. Those which on account of past fault are carried either perpetually or by way of a particular sentence for a definite time;
- b. Those which are inflicted without previous admonition, or without the cause having been declared, or orally;

Notes

128. Kober, *Die Suspension der Kirchendiener* (Tubing, Laupp, 1862). Hollweck, l. c. p. 132 ff.

- c. Those which are inflicted upon a community;
- d. Those which are imposed from informed conscience in such a way that the cause of the suspension in no way, not even implicitly, becomes known to the delinquent. Ordinarily, however, its cause, without admonition on the part of the judge, is already known from elsewhere; wherefore this suspension ordinarily has the nature of censure.¹²⁹

110. Division. 1. Suspension is called general by which a cleric is deprived of the use of every power which he has either from order or from office or from benefice; it is called special by which a cleric is deprived of the use of power of one or another species only, namely by which he is suspended either from order or from office or from benefice.

- 2. Special suspension is either total, if it deprives a cleric of the use of every power of some species, namely either of order or of office or of benefice; or it is partial, if it deprives him of the use of only part of the power of some species, as if someone is suspended only from celebration, not from the whole order, or only from hearing confessions, not from the whole office.
- a. One totally suspended from order is deprived of the exercise of any order, except acts of minor orders which laymen also exercise; one totally suspended from office is deprived of the exercise of every order, of jurisdiction, such as dispensing, absolving, delegating, approving, etc., and of office, such as preaching, catechizing, caring for canonical books, etc. Suspension from office includes suspension from order; one totally suspended from benefice is deprived of the administration of the benefice and also of the right of receiving its fruits.
- b. Various partial suspensions occur in law:
- c. Suspension *a divinis* is understood by some (Hilarius a Sexten) of suspension from order, i.e. from every exercise of sacred order; by others (D'Annibale) of suspension from office, i.e. from every use both of order and of jurisdiction.
- d. Against prelates there is carried the partial suspension from pontifical order, by which they are deprived of the use of the power which arises from episcopal order, such as ordaining, confirming, etc.; or suspension from pontificals, by which they are deprived of the use of pontifical insignia, namely miter, staff, and pallium, and consequently also of those acts of episcopal order which are not exercised without the aforesaid insignia, such as conferring orders, consecrating a church, etc.; but they are not deprived of those acts which can be done without insignia of this kind, such as celebrating in the manner of priests, confirming without staff and miter.
- e. If someone is called simply and without addition suspended, suspension from office and benefice is to be understood, unless from the subject matter or from circumstances a limitation is gathered.
- 3. By reason of the subject, suspension which is carried against individual persons is distinguished from suspension which is carried against an entire community.

Concerning this last suspension two things must be noted: a. Unless at the same time it falls upon determined persons, through it only those ecclesiastical functions are prohibited which are exercised by the community insofar as it is a moral body. Thus a suspended chapter is prohibited from making elections, celebrating divine things solemnly, etc.

Notes

129. Cf. Benedict XIV, *De synodo* l. 12. c. 8. n. 5. *Acta s. sedis* XIX. 561. Ballerini-Palmieri VII. n. 343.

- b. If suspension of an entire community is at the same time carried against individual persons, it does not affect the innocent but only delinquents: for no one can be punished for another's fault.¹³⁰ Therefore as to the innocent this suspension has the nature of a prohibition.
- 4. Suspension from informed conscience¹³¹ is inflicted on account of causes known to the one carrying it, and therefore extrajudicially, with no admonition first given. The prelate is not bound to manifest these causes to the delinquent, but only to the holy see, if the suspended person has recourse to it.

111. Effects of suspension. 1. A suspended person who exercises an act prohibited to him by suspension sins gravely, unless smallness of matter excuses from grave sin.

- a. Acts of sacred orders are judged grave by their nature; for this reason in their exercise, if they are performed solemnly, there is no smallness of matter.
- b. A tolerated suspended person who exercises functions prohibited to him not spontaneously but when asked by the faithful does not sin; but a suspended person to be avoided, who has been publicly denounced as suspended, sins even if he is asked by the faithful, except in a case of urgent necessity.
- 2. An act of jurisdiction which one suspended from office places is invalid, if he is to be avoided, because he is deprived of jurisdiction; but if he is tolerated, the act is not invalid but illicit, and when it is requested by the faithful, the act is valid and licit. Acts which one suspended from benefice places, such as contracts, etc., are invalid, because the suspension itself deprives him of the power of administering the benefice and receiving its fruits.
- 3. One suspended from sacred order, but not likewise one suspended from jurisdiction and benefice, contracts irregularity if knowingly and solemnly, outside a case of grave inconvenience, he exercises the order from which he is suspended.

Since irregularity of itself is not incurred except through violation of censure properly so called, one suspended from order through exercise of the prohibited order does not incur irregularity if he violates suspension improperly so called (n. 109, 3), although he can sin gravely.

- 4. One suspended from order by sentence of his own ordinary is everywhere kept from the exercise of the prohibited order; but one suspended from jurisdiction is not prohibited from receiving jurisdiction in another diocese.¹³²

One suspended from order or from office is not prohibited from receiving the sacraments of penance and Eucharist, provided he truly sorrows for the fault on account of which the suspension was carried, nor is he deprived of the common suffrages of the Church.

Article Two

On Suspensions in Particular

112. The suspensions now in force are numbered nineteen in all:

- a. Seven are contained in the constitution *Apostolicae sedis*;
- b. Seven were carried by the Council of Trent;

Notes

130. Cf. St. Alphonsus n. 317.

131. Cf. concerning this suspension the canonists, especially Aichner, *Compendium iuris eccl.*⁹ (Brixen, Weger, 1900) p. 784 ss.

132. Ballerini-Palmieri VII. n. 347.

c. Five have been added after the constitution *Apostolicae sedis*.

Of these suspensions, two, n. 15 from the constitution *Romanus pontifex* and n. 19 from the decree *In perturbationibus*, are specially reserved; the suspensions from the bull *Apostolicae sedis* are simply reserved; of the Tridentine ones, some are reserved to bishops, others are not reserved.

§ 1. Suspensions from the Constitution *Apostolicae sedis*

1. **First suspension.** Chapters and convents of churches and monasteries, and all others who receive to the rule and administration of those churches or monasteries bishops or other prelates concerning the aforesaid churches or monasteries provided in any way at the same holy see, before they themselves have exhibited the apostolic letters concerning their promotion, incur by the fact itself suspension from the perception of their benefices, at the good pleasure of the holy see.

This suspension from benefices, possessed in common, carried against a community, chapters and convents, for an indefinite time, at the good pleasure of the holy see, does not have the nature of censure; nevertheless it also affects individual beneficiaries both within and outside the chapter who are guilty of the same delict, so that they are deprived even of the perception of the fruits of their own benefices.

2. **Second suspension.** Those ordaining someone without the title of benefice or patrimony, with the pact that the ordained person not seek support from them, incur by the law itself suspension for three years from the conferral of orders.

Only the one ordaining incurs suspension from the conferral of orders, both major and minor, but not of tonsure, for three years, if with a pact that the ordained person not seek support from him, he conferred major orders. If he confers orders only without the title of order, he does not incur the censure. After three years have elapsed, the suspension ceases of itself.

Note. In antiquity those who had been ordained without title were by the fact itself suspended from the exercise of order; afterward this suspension was restricted to those clerics alone who, having been ordained without title, had promised that they would not seek support from the one ordaining. Today, however, since the constitution *Apostolicae sedis* carries suspension against the one ordaining alone, neither one ordained without title, nor one who, having lost the former title, does not substitute another title, incurs any penalty, even if they acted in bad faith, nor consequently are they prohibited from the exercise of order.¹³³ Another thing has been established for professed regulars losing title.

3. **Third suspension.** Those ordaining another's subject, even under the pretext of a benefice immediately to be conferred or already conferred but in no way sufficient, without the dimissorial letters of his bishop; or even their own subject who has dwelt elsewhere for so long a 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 a year from the administration of orders.

Those incur suspension from the conferral of orders for a year who confer orders upon another's subject without dimissorial letters, or if they ordain their own subject without testimonials. Who is another's subject, and how long the dwelling in another diocese must be so that testimonial letters are necessary, is said elsewhere.¹³⁴

Notes

133. Cf. D'Annibale, *Summula* I. n. 412 note 42. Gasparri, *De sacra ordinatione* I. n. 613. Instruction of S. C. de Propag. Fide, April 27, 1871.

134. Cf. *De sacramentis* 8 n. 478 ss. 491.

4. **Fourth suspension.** He who, except in the case of legitimate privilege, shall have conferred sacred order without the title of benefice or patrimony upon a cleric living in some congregation in which solemn profession is not emitted, or even upon a religious not yet professed, incurs by the law itself suspension for a year from the conferral of orders.

Those incur suspension from the conferral of orders for a year who without the title of benefice or patrimony confer sacred order either upon a religious of an institute of simple vows, unless he has already emitted perpetual vows, or upon a religious of an order of solemn vows, unless he has already emitted solemn vows, except in the case of special privilege.

5. **Fifth suspension.** Religious ejected from religion and dwelling outside religion incur by the law itself perpetual suspension from the exercise of orders.

Ejected religious strictly so called, i.e. solemnly professed, who have been expelled from a just cause and with the legitimate form observed, incur suspension from the exercise of orders in perpetuity, i.e. for as long as they remain in the same condition. Apostates or fugitives do not incur it; nor those who have been expelled unjustly or without the prescribed form having been observed. Therefore, since the suspension can cease because the ejected person enters either the same or another order, nothing prevents this suspension from having the nature of censure.

Note. By the decree *Auctis admodum* (November 2, 1892), another twofold suspension is imposed upon certain religious constituted in sacred orders:

- a. Upon those, whether solemnly or simply professed, who because of their delicts have been ejected or dismissed, until the holy see dispenses with them. Dispensation is granted if this twofold condition is verified: that they have found a bishop who is willing to enroll them in his clergy, and that they have provided for themselves concerning ecclesiastical patrimony.
 - b. Upon those simply professed who depart spontaneously, if they depart from the cloister before they have found a bishop who receives them and have provided for themselves concerning ecclesiastical patrimony.
6. **Sixth suspension.** 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 has been ordained by any of them does not have the exercise of the order thus received until he is dispensed.

Those who in bad faith receive order from an excommunicated person, etc., incur partial suspension from the order received; nevertheless ignorance both crass and supine and affected excuses them, since it says “have presumed to receive.” Those who do this in good faith, i.e. with ignorance that the one ordaining is excommunicated, etc., do not incur the censure, but are prohibited from exercising the order received unless they have been dispensed by the bishop or by the holy see.

7. **Seventh suspension.** Secular foreign clerics dwelling in the City beyond four months, ordained by someone other than their own ordinary himself without the license of the Cardinal Vicar of the City or without previous examination completed before him, or even by their own ordinary after they have been rejected in the aforesaid examination; and also clerics pertaining to any of the six suburbicarian bishoprics, if they are ordained outside their own diocese, with dimissorials of their own ordinary directed to someone other than the Cardinal Vicar of the City; or if spiritual exercises for ten days in the urban house of priests called of the Mission have not been premised before sacred order is received, 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 the use of pontificals for a year.

A twofold suspension is inflicted:

- a. From orders received, against secular foreign clerics dwelling at Rome beyond four months, and against suburbicarian clerics, if without the norm prescribed by the holy see having been observed they receive order from another's bishop or even from their own bishop;
- b. From the use of pontificals for a year, against bishops who confer orders upon them without the same norm having been observed.

§ 2. Tridentine Suspensions

8. **First Tridentine suspension.** A bishop who exercises pontificals in another's diocese without the express license of the ordinary of the place incurs suspension from the exercise of pontificals; those thus ordained are by the law itself suspended from the execution of orders. Sess. 6. c. 5. *De reform.*

Concerning the reservation of this suspension, some say that the suspension from pontificals which the bishop incurs is reserved to the pope, and that the suspension from orders which one thus ordained incurs is reserved to the bishop whose rights were injured; but others teach that each is reserved to the pope, others that each is reserved to the bishop.

9. **Second Tridentine suspension.** Those who have not been constrained by occasion of a benefice received or to be received, and, the see being vacant, within a year from the day of vacancy have been initiated in major orders through dimissorial letters received from the chapter, are by the law itself suspended from the execution of orders at the good pleasure of the future prelate. Sess. 7. c. 10. *De reform.*

They incur suspension from the exercise of order who receive sacred order through dimissorial letters granted while the see is vacant within a year. Yet clerics are excepted who, on account of a benefice either to be received or to be retained, would have been compelled to receive sacred order. The suspension is reserved to the future bishop.

10. **Third Tridentine suspension.** Titular bishops who, even under pretext of familiarity and of their continuous sharing of table, shall have promoted another's subject to any sacred or minor orders, or first tonsure, without the express consent or dimissorial letters of his own prelate, incur suspension from the exercise of pontificals for a year; but one promoted in this way is by the law itself suspended from the execution of orders thus received until it shall have seemed good to his prelate. Sess. 14. c. 2. *De reform.*

Titular bishops who ordain another's subject, even to first tonsure only, without license or without dimissorial letters of the proper bishop, incur suspension from pontificals for a year. Those ordained thus are suspended from the exercise of the order received until it shall have seemed good to their own prelate.

11. **Fourth Tridentine suspension.** He who ordains another's subject without testimonial letters, i.e. letters by which the probity and morals of the one to be ordained are commended by the testimony of his ordinary, incurs suspension from the conferral of orders for a year; but the one ordained is suspended from the execution of the orders received for as long as it shall seem expedient to his own ordinary. Sess. 23. c. 8. *De reform.*

Bishops who ordain another's subject without testimonial letters incur suspension from the conferral of orders, but not also of tonsure, for a year. One thus ordained is suspended from the exercise of the order received for as long as it shall have seemed good to his own bishop.

12. **Fifth Tridentine suspension.** Abbots and other exempt persons, or colleges or chapters of any kind, even of cathedral churches, granting dimissorial letters to any secular clerics so that they may be ordained by others, are by the law itself suspended from office and benefice. Sess. 23. c. 10. *De reform.*

Regular abbots and others, however exempt, incur suspension from office and benefice for a year if they grant dimissorial letters to secular clerics so that they may be ordained by others. Just as abbots existing within the boundaries of some diocese and exercising jurisdiction over seculars cannot confer orders upon their secular subjects, so neither can they grant dimissorial letters to them, unless they have obtained a special privilege. The same holds for chapters which by special right exercise jurisdiction in some part of a diocese.

13. **Sixth Tridentine suspension.** If any pastor or other priest, whether regular or secular, even if he contends that this is licit to him from privilege or immemorial custom, shall have dared to join or bless in marriage spouses of another parish without the license of their pastor, let him remain suspended by the law itself for so long as he is not absolved by the ordinary of that pastor who ought to have assisted at the marriage, or from whom the blessing was to be received. Sess. 24. c. 1. *De reform. matr.*

This suspension (n. 6), which is suspension from office and benefice, has either been entirely abrogated or restricted to priests who are not pastors, through the decree *Ne temere*, August 2, 1907.

14. **Seventh Tridentine suspension.** Bishops who have not abstained from the crime of concubinage and, having been admonished by the provincial synod, have not amended themselves, are by the fact itself suspended. Sess. 25. c. 14. *De reform.*

Concubinary bishops incur suspension from office and benefice, but only if they have been warned in vain by the provincial synod.

Note 1. Some authors refer here the suspension which is carried against those promoted by leap; but this suspension is a mere prohibition.¹³⁵

Note 2. In like manner, suspension from office which is inflicted upon superioresses of monasteries who do not make the bishop more certain a month beforehand concerning the profession of their novices, is a prohibition and a penalty, since women are not subject to suspension.

§ 3. Suspensions Imposed after the Bull *Apostolicae sedis*

113. The unjust morals of our times have given the holy see occasion for carrying these five suspensions.

15. **First later suspension.** From the bull *Romanus pontifex*, August 28, 1873.

Bishops who are guilty of that crime which by the constitution *Romanus pontifex* is punished in others by excommunication, incur not excommunication, but suspension from pontificals reserved in a special mode (n. 66).

16. **Second later suspension.** From the decree *Vigilanti* of S. C. C., May 25, 1893, and from the decree *Ubi debita* of the same sacred congregation, May 11, 1904.

Those who sin against these decrees¹³⁶ incur: a. if they are priests, suspension *a divinis* or from office, reserved to the pope; b. if they are clerics not yet priests, likewise suspension from orders and, in addition, inability to receive higher orders.

17. **Third later suspension.** From the bull *Orientalium dignitas*, November 30, 1894.

Latin missionaries, whether secular or regular, who induce any Eastern person by counsel or help to embrace the Latin rite, incur suspension *a divinis*.

Notes

135. Council of Trent, sess. 23. c. 14. *De reform.*

136. What these decrees establish, see n. 96.

18. **Fourth later suspension.** From the decree *Anteactis temporibus* of S. C. C., December 22, 1894.

They incur suspension *a divinis*:

- a. Secular clerics and priests, and also regulars dwelling outside cloisters, who establish a stable domicile in the City without permission of the holy see.
- b. Clerics and priests of another diocese who are chosen for an ecclesiastical office which requires residence in the City, without testimonial letters of their bishop and without permission of the holy see already obtained.
- c. Those who for a just cause with the license of the ordinary are staying in the City, but as soon as a cause of this kind has ceased, or if they are recalled by their own bishop, do not return to their own diocese.

19. **Fifth later suspension.** From the decree *In perturbationibus* of S. C. C., July 12, 1900.

Priests and clerics who, in order to bring assistance in any way whatever to internal wars and political conflicts, even if they have not taken up arms, have deserted their own place of residence, and those who in civil war have voluntarily given their name to military service, contract suspension from order, from office, and from benefice, specially reserved.

Question Four

On Interdict

Article One

On Interdict in General

114. Nature. Interdict is a censure by which the use of divine offices, of certain sacraments, and of ecclesiastical burial is prohibited.

- a. In the definition are enumerated three effects which a total interdict can produce. Divine offices are understood to be all those things for the performance of which a consecrated minister is required, such as Mass, blessings, processions. The sacraments which are prohibited through interdict are the Eucharist, with viaticum excepted; extreme unction, except in the case in which the dying person could not confess; and order. Therefore baptism, confirmation, penance, and matrimony can be administered, with the nuptial blessing, however, omitted.
- b. From interdict which is a censure, there must be distinguished interdict which is a mere vindictive penalty or a mere prohibition. Now only a particular personal interdict is a true censure; but a local interdict and a general personal interdict are not censures, but vindictive penalties, and with respect to the innocent mere prohibitions.
- c. Interdict differs: a. from suspension, because the latter affects clerics alone, and because it prohibits not the use of sacred things, but the exercise of ecclesiastical power; b. from excommunication, both because excommunication deprives one of spiritual goods, and of many more of them, not immediately but consequently, namely insofar as it prohibits communion with the faithful, and because excommunication affects not places, but persons alone.
- d. Similar to interdict, yet essentially diverse, is cessation *a divinis*, which is not a censure nor properly a penalty, but a mere prohibition made to clerics of celebrating Mass, administering sacraments, and performing divine offices in some determined sacred place. Cessation *a divinis* is enjoined on account of a most grave and public delict committed in that place, as a sign of mourning and for repairing the injury.

115. Division. 1. One interdict is local, which immediately affects a place; another personal, which immediately affects persons; another mixed, which immediately affects place and persons.

2. A local interdict can be general, if it affects an entire territory, e.g. a city, parish; or particular, if it affects a determined place, e.g. a parochial church.
3. A personal interdict in like manner can be general, if it is carried against an entire community, e.g. against a chapter, university; or particular, if it is carried against one or several determined persons.
4. One interdict is total, which prohibits all sacred things that are enumerated in the definition; another partial, which prohibits only some of those.

The interdict from entrance into a church deserves special mention. This interdict is particular personal, and indeed partial, which has the nature of true censure. He who is struck by this interdict: a. cannot perform divine offices in a church, nor be present at them in a church, nor be given ecclesiastical burial, unless he has died penitent; b. outside a church, however, he can licitly perform all things which were otherwise licit: therefore he can celebrate or receive sacraments in a private oratory; indeed probably he can also pray privately in a church, receive sacraments privately, hear a sermon.

116. As to the effects of interdict, these few things suffice:

- a. A local interdict personally affects those who gave cause for the interdict; but it does not affect the rest except by reason of place. Therefore outside the interdicted place they can assist at all sacred functions or perform them.
- b. A personal interdict subjects a certain person to the same effects by which a local interdict subjects a certain place. Therefore the interdicted person cannot perform or hear divine offices, nor administer or receive the above-mentioned sacraments, namely Eucharist, extreme unction, order, nuptial blessing, nor be given ecclesiastical burial.
- c. If the interdicted person is to be avoided, it is not licit for the faithful to hear his Mass, since he must be avoided in acts prohibited to him. But if an interdicted person to be avoided assists at a divine office, the faithful are not bound to go out nor to expel him, since this pertains to the ministers of the Church, not to simple faithful.

117. How interdict can be loosed. 1. A reserved interdict, whether imposed by law or by man, can be loosed by the one carrying it, by a superior, by a successor, and by a delegate.

A particular personal interdict, inflicted by man for a determined time or expressly in perpetuity, is by its nature reserved.

2. Any local interdict and a general personal interdict, if they are not reserved, can be loosed by a superior having jurisdiction of the external forum over the place or over the persons. A confessor, although privileged, can do nothing concerning these interdicts, because a place and a community are not subject to the forum of penance.
3. A particular personal interdict simply carried and not reserved can be loosed by any confessor. For this, the ordinary form of absolution suffices, or the form which is contained in the Roman Ritual can be employed.¹³⁷

Notes

137. Roman Ritual, tit. 3. c. 5.

Note. In the article of death a personal interdict can be loosed by any confessor; nevertheless, if it is reserved to the pope in a special mode, there remains the obligation, under penalty of reincidence, of recurring to the holy see when the illness has ceased.

Article Two

On Interdicts in Particular

Interdicts in force. Interdicts are numbered only five, of which the first two are reserved to the Roman pontiff in a special mode, but the three later ones are reserved to no one.

§ 1. From the Constitution *Romanus pontifex*

1. **First interdict.** But if any of the aforesaid are marked with episcopal character, they fall by the very fact, without any declaration, into the penalty of interdict from entrance into a church, likewise reserved to the holy see in a special mode.

118. Bishops who commit the delicts recounted above (I. 13) incur not only suspension from the use of pontificals (n. 6), but also interdict from entrance into a church.

§ 2. From the Constitution *Apostolicae sedis*

2. **Second interdict.** 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 to the Roman pontiff in a special mode.

119. If those appealing from the ordinances of the Roman pontiff to a future council are not physical persons but moral persons, they contract not excommunication (I. 4), but interdict, by which nevertheless the individual members are bound.

3. **Third interdict.** 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 admitting those excommunicated by name to divine offices, or ecclesiastical sacraments, or ecclesiastical burial, incur by the law itself interdict from entrance into a church, until they have competently satisfied at the judgment of him whose sentence they have contemned.

120. This censure is incurred by: a. clerics who celebrate or cause celebration in an interdicted place, except on the days and in the places in which this is licit; b. clerics who admit one excommunicated by name to divine offices, even only to assist, to the sacraments, except penance and viaticum in the article of death, or to ecclesiastical burial, which pertains only to those who have care of the church or cemetery.

§ 3. From the Council of Trent

4. **Fourth interdict.** The metropolitan is bound to denounce to the Roman pontiff, within three months by letters or messenger, bishops absent beyond the time of the second six-month period, and the older resident suffragan bishop is bound likewise to denounce an absent metropolitan, under penalty of interdict from entrance into a church to be incurred by that very fact. Sess. 6. c. 1. *De reform.*

121. Bishops to whom it pertains contract the censure if they do not denounce to the Roman pontiff within three months a bishop absent from his diocese without just cause beyond a year.

5. **Fifth interdict.** Chapters of churches are subject to ecclesiastical interdict if, the see being vacant, within a year from the day of vacancy they have granted license of being ordained or dimissorial letters to someone who was not constrained by occasion of an ecclesiastical benefice received or to be received. Sess. 7. c. 10. *De reform.*

122. A chapter can grant dimissorial letters, and therefore contract this censure, only in the first eight days after the death of the bishop; for when these have elapsed, the whole power is transferred to the capitular vicar.

Question Five

On Irregularities¹³⁸

Article One

On Irregularities in General

123. Notion. Irregularity is an impediment established by ecclesiastical law, which of itself and directly prohibits the reception of orders, and indirectly their use, perpetually.

- a. Irregularity is established of itself and directly on account of the dignity and reverence of the divine ministry, namely to avoid indecency in the same divine ministry. For the dignity and excellence of the Christian religion demand that its ministries be performed with great decency, lest the faithful be offended and their reverence toward sacred functions be diminished. For this end it was necessary that all be kept from sacred ministry who, according to the judgment of the Church, could not exercise it with due decency and dignity.
- b. Therefore of itself irregularity does not have the nature of penalty, neither vindicative nor medicinal, but only of inability; the Roman Catechism calls it a stain,¹³⁹ which makes a man unfit to be received into the clerical state. Hence it happens that irregularity is frequently contracted without any fault.
- c. Only an inability which has been introduced by ecclesiastical law is called irregularity; for irregularity affects those who by reason of natural and divine law are indeed fit for receiving orders, such as illegitimate persons, bigamists, etc., but by ecclesiastical law are kept from receiving them. But if it affects those who are prohibited from orders by divine natural or positive law, by divine law they are indeed unfit or unworthy, yet not irregular. Hence it is held as an axiom: no irregularity is incurred unless it is expressed in law.¹⁴⁰
- d. By the name of order from which irregularity keeps one, first tonsure also is understood; for although this is not properly an order, nevertheless by statute of law first tonsure also is here comprehended under the name of order,¹⁴¹ because it would be given in vain to those who are kept from orders.
- e. Perpetually. Whether perpetuity belongs to the nature of irregularity is disputed; but the opinion of those who with Laymann establish that temporary impediments which can cease by the fact itself without dispensation, such as the impediment of age, knowledge, canonical title, etc., are not irregularities properly so called, seems to be preferred.¹⁴²

Notes

138. Suarez, *De censuris*, Disp. 40. Laymann, *Theol. moralis* I. 1. tr. 5. part. 5. *De irregularit.* Holzmann, *Theolog. moralis* t. III. tr. 2. disp. 3. *De irregularit.* St. Alphonsus I. 7. n. 231 ss. Gasparri, *De sacra ordinatione* I. n. 155 ss. Hilarius a Sexten, *De censuris eccl.* (Mainz, Kirchheim, 1898). Appendix *de irregularit.* Ballerini-Palmieri, *Opus theol. mor.* VII. c. 5. Boeninghausen, *De irregularitatibus*, 3 fasc. (Munster, Theissing, 1863). Fr. Wernz, *Ius decretalium* II. p. 118 ss. Eichert, *Die Anfänge der Irregularitäten* (Freiburg, Herder, 1901).

139. *De baptismo* n. 57.

140. C. *Is qui* 18. *De sentent. excomm.* in 6. (V. 11).

141. C. *Cognoscamus* 14. dist. 34.

142. Cf. Gasparri I. n. 169.

- f. It prohibits of itself: for although censure also often prohibits from receiving or exercising orders, nevertheless it does this not of itself, but consequently to the penalty imposed; irregularity, however, is established of itself and directly for keeping the unfit from the clergy.

124. Effects of irregularity. 1. The immediate effect of irregularity is that of itself and directly it impedes the reception of orders: for of itself it keeps one from the clerical state; but indirectly it also impedes the exercise of orders received. For he who is prohibited from receiving orders is consequently prohibited also from exercising orders, if as irregular he has received any or already had them.

Irregularity now does not prohibit the exercise of all orders, but only of sacred orders: for since today the offices of minor orders are commonly performed by laymen, it has happened that irregular clerics are no longer kept from their exercise.

2. Irregularity does not render the reception of orders invalid, but only illicit, since it is not an invalidating impediment, but only a prohibiting one.

Therefore both he who promotes an irregular person, even to tonsure alone, and the irregular person who receives or exercises an order, sin gravely, unless smallness of matter or grave inconvenience excuses, because both transgress a precept of the Church in a grave matter.

3. Irregularity prohibits the collation and reception of a benefice to which there is annexed an office which the irregular person is forbidden to exercise.
- a. Since a simple benefice does not have annexed the exercise of sacred order, but only the recitation of hours or an office which even an irregular person can exercise, therefore it can of itself licitly be conferred upon an irregular person and accepted by him.
- b. Authors dispute whether the collation and acceptance of a benefice which requires the exercise of sacred order is only illicit or also invalid. The opinion denying that the collation is invalid is probable, because by no certain law can it be proved that a collation of this kind is invalid. Wherefore both he who confers such a benefice upon an irregular person and the irregular person who accepts it indeed sin, but the collation and acceptance are valid.¹⁴³
4. A supervening irregularity does not render one incapable of retaining or receiving ecclesiastical jurisdiction, whether ordinary or delegated. Wherefore an irregular person can also licitly exercise acts of jurisdiction which do not require the exercise of order; thus he can confer upon another the faculty of absolving, can dispense in vows, etc.

125. Division of irregularity. 1. One irregularity is from defect, which proximately arises from defect of a quality required for the reception of orders; another is from delict, which proximately arises from one's own delict. For the indecency which irregularity intends to guard against can arise both from defect alone without delict and from delict.

- a. Irregularity from defect sometimes supposes a delict, whether another's, as irregularity from defect of birth, or one's own, as infamy contracted on account of an enormous delict.
- b. Although irregularity from delict is not a penalty, nevertheless it has itself after the manner of penalty: for it is inflicted on account of fault, namely insofar as from certain delicts a stain is contracted which renders the delinquent incapable for sacred ministry. Wherefore, if fault is not present, neither is irregularity present; and what excuses from fault likewise excuses from contracting irregularity.

Notes

143. Cf. Gasparri I. n. 172 ss.

- c. Sometimes it is uncertain whether an irregularity is to be numbered among those which arise from defect or among those which arise from delict. But if each is probable, the irregularity is to be called from delict, both because this is more difficultly contracted, and because dispensation is more easily granted in it.
2. Irregularity is either total, which impedes the reception of every order or the use of every order received, as homicide; or partial, which impedes either only ascent to a higher order or only the exercise of some order. Thus a deacon who lacks the left eye, according to the opinion of some, is incapable for priesthood, yet can exercise his own order; and a priest who without fault is deprived of a thumb is prohibited only from celebration, but not from hearing confessions.
3. Irregularity is perpetual, which of itself always endures unless it is removed by dispensation; and it is temporal, which endures only for some time, because it ceases either spontaneously or by the effort of the irregular man, as irregularity from defect of age or from defect of knowledge.

Note. Concerning these divisions it must be noted that only total and perpetual irregularity is irregularity properly so called; others ought to be called irregularities improperly. For it belongs to the nature of irregularity that it simply keep one from the clerical state or from the exercise of clerical ministry, unless it is removed by dispensation. But he who is entangled by partial or temporal irregularity is not simply kept from the clergy or from clerical ministry. What keeps one only partly from clerical ministry is rather a prohibition or privation, and is called irregularity only improperly.

126. Subject of irregularity. 1. The subject of irregularity is every and only baptized male subject to ecclesiastical law.

Because only a baptized male is capable of order, therefore he alone is called the subject of irregularity. Therefore all baptized male human beings, whether laymen or clerics, even bishops and cardinals, can contract irregularities established in law; but neither the supreme pontiff nor boys before the completed seventh year, because they are not subject to common law. Therefore one mutilated, e.g. before baptism or before the use of reason, is not irregular except fundamentally, i.e. he has a defect on account of which, when baptism or the use of reason has been received, he becomes formally irregular.

2. Someone can contract several irregularities at the same time, all of which must be expressed in the petition for dispensation. But irregularities are multiplied: a. from causes diverse in species; b. but if the cause is of the same species, irregularities from defect are not multiplied; c. irregularities from delict, however, are multiplied from repeated acts upon a diverse subject, but not from repeated acts upon the same subject.
 - a. From homicide and repetition of baptism, likewise from defect of birth and defect of liberty, a twofold irregularity is contracted, because there is a twofold diverse cause.
 - b. A judge who has condemned ten men to death contracts one irregularity from defect of lenity.
 - c. He who rebaptizes several times, or who commits several homicides, contracts several irregularities.
 - d. He who several times rebaptizes the same person contracts only one irregularity; likewise a suspended person who celebrates several times.
3. All irregularities, once the required conditions have been placed, are contracted by the fact itself, even if the action on account of which it is contracted is entirely occult: for there is no irregularity which by disposition of law demands a sentence of a judge, not even a declaratory one.

127. Conditions required for contracting irregularity. 1. That the irregularity be certain; therefore a doubtful irregularity, whether the doubt is of law or of fact, is no irregularity: for impediments, as

odious things, are not to be established unless they are certainly established. Nevertheless an irregularity contracted from homicide is excepted.

- a. Although one who has a doubtful irregularity can licitly receive orders, nevertheless in doubt of fact it is to be advised that dispensation be sought, lest the one ordained be impeded in the exercise of order if perhaps afterward the fact itself, and therefore the irregularity contracted, has been established.
 - b. By disposition of law irregularity is contracted in doubt of fact concerning homicide, i.e. if someone doubts whether he committed homicide. Nevertheless two things must be noted concerning this matter:
 - c. The disposition of law refers to this doubt of fact, namely if someone is indeed certain concerning the homicide, e.g. concerning the abortion that followed, but doubts whether his action was its cause; for he who doubts concerning the homicide itself is not irregular.
 - d. This disposition of law affects priests alone and keeps them from celebration alone, but not from other ministries. Therefore a layman who doubts whether a homicide certain in itself has followed from his action is not irregular.
2. That the action by which irregularity from delict is contracted be gravely culpable: for since irregularity from delict is after the manner of penalty, the law establishing this irregularity must be restricted to a gravely sinful act; but irregularity from defect is contracted without fault.
 3. That the action on account of which irregularity is contracted, whether from delict or from defect, be external and consummated, because there is question of an odious law.
- a. Therefore everything that excuses from mortal sin also excuses from irregularity to be incurred from delict, such as inadvertence, good faith, smallness of matter, grave fear, ignorance, concerning which a special question follows.
 - b. Therefore just as no one becomes irregular on account of a merely internal intention of killing another, so also on account of a gun discharged at an enemy no one incurs irregularity unless he has in fact killed or mutilated him. Likewise, to contract irregularity from defect on account of a sentence of death, it is required that the action be external and consummated.

128. Whether ignorance excuses from contracting irregularity. 1. Ignorance does not excuse from contracting irregularity from defect, not even invincible ignorance: for irregularity from defect is mere inability; but inability is contracted even by those who are ignorant of the law.

2. Ignorance of the ecclesiastical law prohibiting the delict certainly excuses from contracting irregularity from delict, unless it was crass.
- a. The delicts on account of which irregularity is inflicted are already prohibited by the law of nature, which cannot be unknown to the delinquent. The question concerns ignorance of ecclesiastical law, which is twofold: prohibiting the delict and inflicting irregularity after the manner of penalty.

Of itself, indeed, knowledge of ecclesiastical law would not be necessary for contracting irregularity, because there is no question of punishing contumacy against the power of the Church, but of removing the indecency which crime induces, even if it is committed against natural law alone. Nonetheless it must be said that ignorance excuses from contracting irregularity.¹⁴⁴

Notes

144. Suarez, *De censuris* disp. 40. sect. 5. n. 10.

- b. The positive reason for this opinion is drawn from the disposition of law: for it is established that the Church established this irregularity in such a way that it would not be incurred by those who were ignorant of the law of the Church.¹⁴⁵ Suarez (l. c.) proposes the internal reason in this way: irregularity which has the nature of penalty is not inflicted except upon a transgressor of law; but certainly not upon a transgressor of natural law, but upon a transgressor of ecclesiastical law. But one who is ignorant of ecclesiastical law does not transgress ecclesiastical law. Therefore irregularity is not inflicted upon those who are ignorant of the law of the Church. For the Church, establishing a penalty on account of a delict prohibited by the law of nature, adds a new law to divine law. Therefore one who sins with ignorance of ecclesiastical law indeed sins against divine law and incurs the penalty of divine law; but he does not sin against ecclesiastical law and does not incur the penalty of ecclesiastical law.
3. Ignorance of the ecclesiastical penalty alone, namely irregularity, probably also excuses from contracting irregularity from delict, unless it was crass: for irregularity has the nature of a vindicative penalty, and indeed of an extraordinary and exorbitant one, since it is very hard to be perpetually kept from certain offices; but a vindicative penalty, if it is extraordinary and exorbitant, is not incurred by those ignorant of it.

129. Note. The older theologians, in recounting irregularities, not rarely exceed measure. Further, to eliminate those which have been invented gratuitously, and to establish those which really exist, one must especially insist first upon the principle that there is no irregularity which is not expressed in law; then irregularity, especially that which is from delict, must be carefully distinguished from suspension, with which it can easily be confused.¹⁴⁶ For suspension is a censure which is directly inflicted on account of fault; irregularity is a canonical impediment which is directly established on account of reverence for the divine ministry. Suspension affects clerics alone; irregularity affects clerics and laymen. Suspension primarily keeps one from the exercise of order or jurisdiction, or from a benefice; irregularity primarily keeps one from the collation and reception of orders, and only secondarily from the exercise of orders and from the collation of a benefice. Suspension removes jurisdiction; irregularity does not remove it. One violating suspension through the exercise of order becomes irregular; one violating irregularity contracts no irregularity.

Article Two

On Irregularities from Delict

130. Irregularities are numbered eleven in all, of which four are contracted from delict, but seven from defect. Irregularities from delict arise: a. from repetition of baptism; b. from violation of censure; c. from usurpation of order; d. from unjust mutilation or from unjust homicide, all of which are comprehended in this little verse:

Fonte reus, sacris, censuris, crimine, leto.

Fonte reus - sacrilegious repetition of baptism.

Sacris reus - illicit usurpation of orders.

Censura reus - violation of censure through the exercise of sacred order.

Notes

145. C. *Proposuiti* 2 dist. 82, from which it is established that the supreme pontiff Innocent I declared incontinent clerics, whom Pope Siricius had made irregular, immune from irregularity because they had been ignorant of the law of Siricius, but declared them affected by irregularity if after the law had been known they had sinned against it.

146. Cf. D'Annibale, *Summula* I. n. 399 s. Gasparri I. n. 175 s.

Crimine reus - crimes which by the law itself induce irregularity.¹⁴⁷

Leto reus - homicide and mutilation.

§ 1. Repetition of Baptism

131. Culpable, absolute, and public repetition of baptism induces irregularity.¹⁴⁸

1. Repetition of baptism: for from the repetition of other non-repeatable sacraments, namely confirmation and order, no irregularity is incurred, because none is expressed in law.
2. Culpable: for where there is no fault, irregularity from delict is not incurred; therefore one who rebaptizes from ignorance either of law, namely that repetition of baptism is prohibited, or of fact, namely that baptism had already been conferred, does not become irregular.
3. Absolute: for the words of penal law are of strict interpretation; but one who does not baptize absolutely is not strictly said to baptize. Therefore one who rebaptizes under condition does not become irregular, even if he sins gravely, namely if rashly and without due investigation concerning the validity of the first baptism he baptizes again.

With Benedict XIV, authors commonly affirm that he becomes irregular who rebaptizes under condition where there is no reason for doubting the validity of the first baptism.¹⁴⁹ But the opinion denying irregularity in this case is probable, because this irregularity was established against the error of those rebaptizing; but by the condition added that error is excluded.¹⁵⁰

4. Public,¹⁵¹ so that concerning each baptism, the conferral and the repetition, it is publicly established.

There are those who, for contracting irregularity from the crime of rebaptism, demand that the second baptism be solemn;¹⁵² nevertheless the text of law only says that it must be public. But in order that the repetition of baptism be public, it is required that each baptism be public.¹⁵³

Note. This irregularity is not perfect, since according to the probable opinion of several authors it prohibits only the reception of further orders, but not likewise the exercise of orders received.¹⁵⁴

132. Persons who contract irregularity are: the one rebaptizing, those ministering to him from office, and those rebaptized.

1. The one rebaptizing and those ministering to him incur only partial irregularity, namely one impeding ascent to higher orders, but not the use of orders received; but the rebaptized person contracts total irregularity.
2. Only those ministers become irregular who minister from office, namely clerics; wherefore parents, sponsors, and any others who cooperate in the repetition of baptism do not become irregular.

Notes

147. By these words is signified irregularity from defect of reputation.

148. C. *Confirmandum* 65. dist. 50.

149. *De synodo* l. 7. c. 6. n. 3.

150. Gasparri I. n. 329. D'Annibale, *Summula* I. n. 410.

151. C. *Ex litterarum* 2 *De apostatis et reiterant. bap.* (V. 9).

152. Salmanticenses tr. 10. c. 8. n. 60. 64. and St. Alphonsus n. 356.

153. Gasparri I. n. 324. D'Annibale, *Summula* I. n. 410.

154. Busembaum apud St. Alphonsus l. 6. n. 356. Lehmkuhl, *Theol. m.* II. n. 1006.

3. In order that the rebaptized incur irregularity, they must be knowingly rebaptized: for where sin is not committed, penalty is not incurred. Wherefore only adults, but not infants who have been rebaptized, become irregular.

Irregularity is incurred not only from repetition, but also from unworthy reception of baptism, namely where an adult receives baptism from a declared heretic outside the case of necessity; but infants baptized by heretics in a heretical sect are not irregular.¹⁵⁵

§ 2. Usurpation of Order

133. A cleric who knowingly and solemnly exercises a sacred order which he does not have becomes irregular.¹⁵⁶

1. Cleric: for since the title in the body of law has: “concerning a cleric not ordained who ministers,” this irregularity is restricted to clerics alone. Therefore a layman does not become irregular who exercises sacred order, e.g. celebrates Mass, acts as subdeacon or deacon in solemn Mass, although he sins most gravely.

Some canonists¹⁵⁷ contend that laymen also contract this irregularity who solemnly exercise sacred order; nevertheless several canonists, and especially moralists, teach that clerics alone contract it. Therefore, since with regard to laymen this irregularity is doubtful by a doubt of law, in practice it is not to be established.¹⁵⁸

2. Knowingly, i.e. knowing both that he lacks the order which he exercises and that a cleric exercising an order which he lacks becomes irregular: otherwise he would not sin gravely.
3. Solemnly, i.e. as from office and with the ceremonies and ornaments proper to the order which he exercises.

To discern whether an order is exercised solemnly, attention must be paid to this: if the act can be exercised only by those who have such an order, it is always exercised solemnly; thus absolution, extreme unction, which is administered by a priest alone, and confirmation, which is administered by a bishop alone, are always said to be administered solemnly. But if the action can also be exercised by others who do not have the order, it is said to be performed solemnly when it is performed in that form in which the same act is customarily exercised by ordained persons alone. Thus if an inferior cleric acts as subdeacon without maniple, or at the washing of feet on the Lord’s Supper chants the gospel without stole, he does not become irregular, because he does not minister solemnly.¹⁵⁹

4. Sacred order: for since from today’s custom minor orders are commonly exercised solemnly even by laymen, a cleric solemnly exercising some order from the minor orders which he does not have does not become irregular.

Therefore a priest becomes irregular who solemnly exercises a pontifical function, e.g. consecrates a church or chalice, confers minor orders or tonsure; a deacon who sacramentally absolves; a subdeacon who solemnly baptizes, solemnly chants the gospel with stole, supplies the ceremonies of baptism, acts as hebdomadary in choir by saying the prayer with *Dominus vobiscum*; a cleric who solemnly chants the epistle

Notes

155. C. *Placuit* 3 and C. *Qui apud* 4. c. 1. q. 4.

156. C. *Si quis* 1 *De clerico non ordin. ministrante* (V. 28).

157. Wernz II. n. 137. Scherer. Their reason is that c. *Si quis* 1 *De clerico non ordin. ministrante* (V. 28) does not restrict it to clerics alone, and that restriction from the rubric is not to be admitted.

158. Gasparri I. n. 334.

159. Ballerini-Palmieri VII. n. 426.

with maniple, because all these solemnly exercise an order which they do not have. But a simple priest is not irregular who sacramentally absolves; a deacon who without commission of the pastor solemnly baptizes or distributes holy communion; a subdeacon who chants the gospel without stole; a cleric who chants the epistle without maniple, because they do not exercise, or at least do not solemnly exercise, the order which they lack.¹⁶⁰

Note. The older theologians, relying on C. *Veniens* 1. *De eo, qui furtive ordin. suscipit* (V. 30), nearly all had taught that those illicitly promoted to orders are irregular. Thus, according to the testimony of St. Alphonsus (n. 361), one bound by censure who receives order, one having a wife and being ordained in sacred orders while she is unwilling, one who receives order from a bishop excommunicated, suspended, or interdicted by name, not his own, one who is ordained by leap or before the age or in another's diocese, one who receives major orders without title or on one and the same day, or one who is ordained outside the times, contracts irregularity. But more recent authors, following Suarez, show that these penalties established in law are not irregularities, but suspensions, or at least doubtful irregularities, and therefore none.

§ 3. Violation of Censure

134. A cleric who, bound by censure, solemnly exercises an act of sacred order, becomes irregular.¹⁶¹

1. He is said to violate censure who, entangled by a censure which prohibits the use of order, exercises order, whether the censure is excommunication, or suspension from order, or personal or local interdict, e.g. one celebrating in an interdicted place.
 - a. Therefore one who violates another suspension which is not suspension from sacred order does not become irregular; if, for example, a bishop suspended from pontificals celebrates in pontificals, he indeed acts against suspension, but does not become irregular.
 - b. Since grave fault is required for contracting this irregularity, an excommunicated tolerated person who is requested by others does not become irregular, nor an excommunicated person to be avoided who exercises order in order to avoid grave inconvenience.
2. Act of order: for incurring irregularity, any violation whatever of censure does not suffice, but it must be violated through an act of order. Therefore a cleric who violates censure through reception of a sacrament, even of order, does not become irregular.

There are those who are of the opinion that he becomes irregular who in the very reception of sacred order exercises order. From which it would follow that one who receives the presbyterate always becomes irregular, because he must concelebrate with the ordaining bishop. But this opinion is not to be admitted, because the action placed in the ordination itself is not properly held as the exercise of the order received, but as a ceremony which pertains to the reception of order.¹⁶²

3. Of sacred order: the law indeed does not distinguish between sacred and minor orders; but authors rightly restrict this censure to sacred orders. For irregularity from delict supposes grave sin; but a cleric who in censure exercises, even solemnly, some order from the minor orders, does not sin gravely, since the office of minor orders is commonly exercised solemnly even by laymen.

Notes

160. S. C. R., December 18, 1784 (n. 2525), responded: "Outside the case of absolute and precise necessity it cannot be permitted by superiors that a cleric in minor orders supply for a subdeacon in solemn Masses, vested without maniple," and that the bishop must take care that contrary custom be cut off. The same S. C. R., July 17, 1894 (n. 3832), resolved that a cleric can act as subdeacon in solemn Mass, provided he has been initiated with at least clerical tonsure, does not wear the maniple, and true necessity presses.

161. C. *Quum medicinalis* 1. C. *Is, qui* 18. C. *Is, cui* 20. *De sententia excom.* in 6. (V. 11).

162. Cf. S. C. C., January 31, 1688. Benedict XIV, *De synodo* l. 12. c. 3. n. 7.

4. Solemnly exercises, i.e. from office and with the insignia of the proper order, as we said above.

Therefore a censured bishop who approves confessors, dispenses in vows, or a pastor who in censure assists at marriage without nuptial blessing, does not become irregular, because these are not acts of order, but of jurisdiction or of simple power, the exercise of which does not violate censure.

§ 4. Homicide or Mutilation

135. Voluntary homicide. Unjust homicide directly, or at least indirectly, voluntary and gravely sinful, once the effect has followed, induces irregularity.¹⁶³

1. Homicide is the killing of a human being done by a human being.

For homicide in this question it makes no difference whether he whose life is taken away has been born or has not yet been born; therefore also the procuring of abortion of an animated fetus is homicide.¹⁶⁴ Likewise it makes no difference by what means life is taken away: by fire, iron, poison, hunger, etc. He also contracts irregularity on account of homicide who is only the cause because of which death follows or is inflicted more quickly.

- a. Homicide is voluntary when homicide itself is intended, and it is casual when it happens beyond the intention.
- b. Casual homicide is either entirely involuntary and inculpable, or it is indirectly voluntary and culpable, namely if due diligence is not employed to guard against foreseen homicide.
- 2. Real homicide. a. To contract irregularity from homicide it is required that death in fact follow: for where there is question of a penalty to be incurred, the words of law are to be taken strictly and properly.

C. Pro humani 1. De homicidio in 6. (V. 4), where one mandating killing through assassins is declared irregular even if perchance death does not follow, seems opposed to this doctrine. But it is a special case in which the supreme pontiff on account of an enormous crime established that irregularity be incurred even if death has not followed. But an exception does not weaken, but confirms, the rule.

- b. Not only he who is the physical cause of homicide, but also he who is its moral cause, by mandate, counsel, or consent, provided he is an efficacious cause, incurs irregularity.¹⁶⁵
- c. Those who excite themselves to homicide are all irregular, even if only one is killed, because they are to be regarded after the manner of those counseling. Therefore if in an unjust war even one of the adversaries is killed, supposing grave sin, all become irregular who cooperated proximately in the killing by mutually exciting themselves; those nearer to the one killing are judged such. A soldier who is certain that he killed no one, because he either did not discharge or discharged into the air, is not irregular.
- d. There are those who say that he also becomes irregular who does not impede a homicide which from justice he is bound to impede, even if he does not positively influence the homicide. Therefore they judge irregular a hired physician, a guard of roads, an advocate, who does not impede the death of a sick person, a traveler, or a client, which he could impede and from justice ought to impede. But since irregularity which is contracted from negative cooperation is nowhere read as expressed in law, it is rather to be denied.

Notes

163. *C. Si quis 1 De homicidio (V. 12)*.

164. Constitution *Effraenatam* of Sixtus V, October 29, 1588.

165. *C. Is qui 3 De homicidio in 6. (V. 4)*.

- e. Homicide induces irregularity even if it remains occult. Likewise, from a special disposition of law, doubtful homicide also constitutes a priest irregular, as was explained above (127); but irregularity is not incurred where it is doubtful whether the moral cause, mandate or counsel, was the efficacious cause of the homicide.
- 3. Unjust, i.e. joined with sin against justice: for homicide which is not against justice is not strictly and rigorously homicide.

Therefore he who kills another in defense of himself and with the moderation of blameless defense having been observed, or he who kills another from legitimate power, as soldiers in a just war or executioners, do not become irregular from this title, because they do not commit the sin of homicide.

136. Casual homicide. Not only voluntary homicide, but also casual homicide, provided it is gravely culpable, induces irregularity.

- 1. If casual homicide is entirely involuntary, no irregularity is incurred: for there is no irregularity from delict where no fault intervenes.
- 2. If the omission of diligence in guarding against homicide is gravely culpable, irregularity is contracted, whether someone applies his work to a licit or illicit thing, provided he foresaw the homicide: for the omission of diligence, not the prohibition of the action which someone exercises, effects that homicide is indirectly voluntary and therefore culpable and inducing irregularity. The case is to be excepted in which the thing is illicit on account of the danger of homicide.
 - a. He who discharges a gun where the people are customarily numerous; he who throws a tile from a roof and does not warn passersby by voice or sign, becomes irregular if a human being is killed for that reason.
 - b. Therefore he does not become irregular who in good faith gives food or drink to a sick person, or moves him, or transfers him to another place, or does something else about him, from which death follows beyond intention, because there is no irregularity from delict where there is no fault; but in the case supposed, due diligence is not omitted.
 - c. An unskilled physician or surgeon who exercises the medical or surgical art becomes irregular if the death of the sick person follows, even if he employed every diligence to guard against it; but a skilled physician or surgeon does not, even if, with necessary diligence supposed, the death of the sick person follows from the remedy which he employs. Benedict XIV reports that physicians wishing to be promoted to orders are customarily granted dispensation for caution, because perhaps in the exercise of their art they did not always employ due diligence concerning those who died during their care.¹⁶⁶
 - d. A cleric constituted in major orders and a religious who exercises the medical or surgical art joined with cutting or cauterizing becomes irregular, even if without his fault the death of the sick person follows. The reason for this irregularity is that he applies his work to an action prohibited to clerics for this reason, that it easily induces homicide or mutilation.¹⁶⁷ But he does not become irregular if he exercises, short of cutting or cauterizing, an art which he knows well, although the sick person whose care he conducts dies.

137. Procuring abortion. Those procuring abortion, and those cooperating for it, once the effect has followed, also contract irregularity.

Notes

166. *De synodo* l. 13. c. 10. n. 4.

167. *C. Dilectus* 13 *De homicidio* (V. 12).

- a. Those procuring abortion do not contract irregularity unless the fetus is animated. Since there is question of an odious thing, concerning the animation of the fetus judgment can be made from the ancient and thus far unchanged canonical laws, which establish that the male fetus is informed by a rational soul after 40 days from conception, but the female fetus after 80 days. In doubt whether the fetus was animated or not, and in doubt whether the fetus was male or female, one must stand for the minimum; therefore that it was not animated, or was female.
- b. In antiquity those procuring abortion and those cooperating in it incurred excommunication and irregularity; excommunication through the constitution *Apostolicae sedis* was restricted to those alone procuring abortion. But because concerning irregularity the ancient law was not changed through the said constitution, those cooperating also contract this irregularity.

138. Notion of mutilation. Mutilation is the cutting off of a member. By the name of member is understood a part of the body having a proper and distinct office, such as eye, arm, foot, hand, tongue, ear, etc.

In applying this definition, difficulty arises where it must be determined what part of the body has its own function and therefore is signified by the name of member. For since almost all members of the body are duplicated, it is asked whether one part, such as an eye, ear, leg, can be judged a member having its own office. But now, with common estimation considered, it seems to be said that those parts which are distinct and separate from each other, such as the eyes, have their own function; but those which are not distinct and separate from each other, such as nostrils, do not have their own function and therefore are not members. And indeed, where an eye is torn out, we say a member is cut off; where a nostril is cut off, we say part of a member, the nose, is cut off.¹⁶⁸

- a. Therefore he who injures some member or renders it useless, e.g. does not dig out the eye but blinds it, does not become irregular, because he does not cut off the member: for mutilation is cutting off or separation from the body.
- b. He who knocks out a tooth, cuts off the outer ear, the cartilage of the ear, or a finger, and a fortiori he who tears out nails, beard, or hair, does not become irregular, because he does not cut off a member: for these do not have their own function in the human body. According to the mind of St. Alphonsus (n. 379), not even the knocking out of all the teeth is judged mutilation; but the cutting off of fingers certainly is mutilation.

139. Unjust mutilation induces irregularity. He who unjustly mutilates himself or another by a physical or moral action, or cooperates in it, becomes irregular.

1. What has been said above concerning homicide holds also concerning mutilation, with this case excepted: in doubt of fact whether a priest was the efficacious cause of mutilation or not, he does not become irregular; on the contrary, if the same doubt concerns homicide, irregularity is contracted.
2. He who freely mutilates or castrates himself, from a special disposition of law, becomes irregular,¹⁶⁹ even if he has not cut off for himself a member having its own office, but only a finger or joint of a finger.¹⁷⁰

140. Note. To these must be added the irregularity which is established by the decree *Vigilanti* of S. C. C., May 25, 1893, and renewed by the decree *Ut debita* of the same sacred congregation, May 11, 1904. Besides the penalty of suspension (n. 113), clerics not yet initiated to the priesthood contract it who exercise

Notes

168. Ballerini-Palmieri VII. n. 444 ss.

169. C. *Ex parte* 3 *De corpore vitiatis* (l. 20).

170. C. *Qui partem* 6. dist. 55.

shameful commerce concerning Mass stipends, so that they are incapable of receiving higher orders unless they have received dispensation from the Roman pontiff or from S. C. C.

The actions by which shameful commerce concerning Mass stipends is exercised are these:

- a. Knowingly handing over the intention of Masses received from the faithful or from pious places to those who request them not in order that they may satisfy them, but for any other end whatever; likewise knowingly accepting them.
- b. Separating stipends of manual Masses from their celebration, commuting them into other things, or diminishing them, namely by not handing them over wholly and in their own kind.
- c. Selling or buying books or other things and entering into associations with newspapers and periodicals by means of Masses to be celebrated or celebrated, if this latter thing is done habitually and turns into the support of some commerce.
- d. Subtracting something from the stipends of Masses which the faithful are accustomed to hand over to more celebrated sanctuaries, so that provision may be made for their dignity and ornament.

Article Three.

On Irregularities from Defect.

The seven defects on account of which irregularity is contracted are these: 1. defect of body; 2. defect of soul; 3. defect of liberty; 4. defect of birth; 5. defect of sacrament; 6. defect of reputation; 7. defect of mildness.

§ 1. Defect of Body.

141. From defect of body those are irregular who, on account of some bodily fault, cannot perform the sacred rite either at all or becomingly.

- a. Therefore this irregularity arises from a twofold head: from impotence for exercising an order, and from indecency in its exercise. He who labors under impotence for celebrating is not indeed properly irregular, because he is kept from the reception of orders not by ecclesiastical law but by natural law; nevertheless authors are accustomed to refer here also those who are unable to celebrate.
- b. This irregularity absolutely prohibits the reception of orders: for even if the defect impeded the exercise of only one order, e.g. the priesthood, nevertheless no order, not even first tonsure, can licitly be received. But the exercise of orders already received is not prohibited absolutely: hence if the defect supervenes after the reception of orders, the ordained man is prohibited from exercising only those orders for the exercise of which he has been made unfit, or which he cannot exercise without offense and scandal. Therefore nothing prevents, for example, one who cannot celebrate publicly without scandal from celebrating privately.

142. Therefore from defect of body the following are irregular:

1. **The mutilated**, who lack a foot, hand, or fingers, likewise those who lack the thumb or index finger either entirely or in part, so that they cannot break the host.¹⁷¹
- a. He who lacks one of the three posterior fingers is not irregular; indeed, according to the opinion of some, neither is he irregular if two fingers are lacking. But if all three are lacking, he is irregular, not indeed

Notes

171. C. Thomas 7 *De corpore vitiatis* (I. 20).

on account of impotence, but on account of deformity. A priest, however, does not become irregular nor is he prohibited from celebrating, even if he has lost all three posterior fingers.¹⁷²

- b. He who lacks the index finger will more easily obtain a dispensation, because the middle finger can supply the place of the index finger in the sacred ministry. But a priest who has lost the index finger can use the middle finger in sacred functions, which, since the whole hand of the priest is consecrated, is consecrated equally with the index finger.¹⁷³
- c. Authors judge him to be irregular who has a wooden foot, because he cannot celebrate without great indecency; but since today artificial feet are constructed so aptly that he who is furnished with a foot of this kind can perform sacred functions without indecency, this irregularity, at least after orders have been received, no longer seems to have to be urged.
- d. He was said to be irregular whose one eye was wholly taken away or torn out; yet because today a glass eye can be so aptly substituted that no deformity appears, he who is furnished with a glass eye does not seem to have to be called irregular.

143. 2. The debilitated, who indeed have all their members, but for whom one or another member which is required for sacred ministry has become useless, as if someone's arm or hand has become stiff.

- a. Therefore the mute are irregular; the blind, who are deprived of the power of seeing in both eyes, but not those with failing sight, provided they can read in the missal with the help of an ocular instrument; the deaf, who lack hearing in both ears, so that they cannot hear the server responding. But those who are hard of hearing are not irregular, nor those who lack hearing in only one ear;¹⁷⁴ stutterers are not irregular, unless either they have a tongue that is very lisping or altogether stumbling, or they move others to laughter. Those who have hands so trembling that they cannot celebrate without danger of spilling the Blood are irregular.
- b. He is not irregular who lacks the power of seeing in one eye only, whether it is the right or the left eye; for what is established by some authors, namely that he is absolutely irregular who lacks the canonical eye, i.e. the left, lacks foundation, since no text of law declares him irregular. Therefore this irregularity must be restricted to the case in which one who lacks the left eye cannot read the canon without indecency with the right eye.¹⁷⁵
- c. A priest who has become blind is not prohibited from hearing confessions; indeed, if it is established that he will not err, he can receive license from the supreme pontiff for celebrating, with another priest nevertheless assisting. A priest who has become deaf is not prohibited from celebrating, even if he does not hear the server responding.¹⁷⁶

144. 3. The deformed, who have a deformity in some member which cannot easily be hidden, to such a degree that they cannot discharge the sacred ministry without indecency, or they excite horror in others or move them to laughter. Therefore the following are irregular:

- a. Those whose noses or outer ears have been cut off, unless, by hair aptly grown out, the defect of the ears can be covered.

Notes

172. Cf. Ballerini-Palmieri VII. n. 478.

173. Cf. Ballerini-Palmieri I.c.

174. Cf. *Acta s. sedis* IV. p. 595.

175. Cf. S. C. C. Sept. 17, 1887. *Acta s. sedis* XX. p. 380 ss.

176. Cf. St. Alphonsus n. 405.

- b. Those who have a notable spot on the face or in the eye.¹⁷⁷
- c. Pygmies, who are so small in stature that they cannot perform the sacred rite upon the altar; likewise giants.
- d. The hunchbacked, who have so notable a hump on the back that they cannot raise the head.
- e. The lame, who cannot approach the altar or stand at the altar without a staff; but the lame who do not need a staff are not irregular, unless the limping is enormous and notably deforming.

A priest who has become lame can celebrate privately, although he needs a staff.

It pertains to the bishop to judge whether the deformity is great or small, if the one to be ordained is a secular or a non-exempt regular; but if he is an exempt regular, the judgment pertains to the regular prelate. Nevertheless the bishop who confers orders is not bound to stand by the judgment of the prelate.

145. 4. Those laboring under a grave and incurable disease:

- a. Paralytics, that is, the paralyzed and the gouty, if namely the paralysis is so great that they cannot hold the sacred vessels or break the sacred species. Those who, on account of stiffness of the elbow, cannot bend the arm are irregular.¹⁷⁸

But if paralysis does not wholly impede the exercise of an order, a distinction must be made: if it supervenes upon ordination, it does not impede celebration; if it precedes ordination, it will belong to the bishop to declare whether the infirm man is irregular; for in law nothing has been established on this matter.

- b. Epileptics, or those laboring under the falling sickness,¹⁷⁹ as long as they are subject to the disease, cannot be ordained; but if it is established that they have been healed without probable danger of relapse, with the license of the bishop added, they can be ordained.
- c. A priest who after ordination is seized by this disease is not prohibited from celebrating privately, if the disease returns rarely, i.e. once in a month or every fifteen days; if, however, he is not safe from an attack of the disease for this interval, a fasting priest must assist him, who, if the disease rushes upon him, may complete the Mass.
- d. Epilepsy which began before puberty is not rarely healed completely; therefore he is not judged irregular who labored under this disease before puberty, but afterward, in the judgment of a physician, recovered entirely. But epilepsy which began after puberty, not from an accidental cause, e.g. from an inflicted wound, but from congenital disposition, according to the opinion of physicians is scarcely ever fully healed, i.e. without danger of relapse.
- e. Those who abstain from wine, who cannot take even a little wine without danger of vomiting. It is clear that these cannot be dispensed even by the pope.
- f. Lepers, because they bring in horror and scandal; but a priest who is infected with leprosy can celebrate in a private place.

146. On account of deformity the following are not irregular.

Notes

177. C. *Quum 2 De corpore vitiatis* (I. 20).

178. It is established from the declaration of S. C. C., Jan. 26, 1867. Cf. Aichner l.c. p. 210.

179. Those who are seized are in reality epileptics; but by the ancients they are numbered among the demoniacs, because in antiquity they thought this disease to be caused by a demon.

- a. Those who have six fingers or some joined together, or who lack one finger, provided they can fittingly perform the sacred rite.
- b. Those who have a spot on the face or in the eye that is not very deforming.
- c. Those who lack the nail of the thumb, provided they can hold and break the host.
- d. The one-eyed, or those looking obliquely, provided the deformity is not notable.
- e. Those who lack testicles (eunuchs, the castrated, the cut), whether these have been cut by another, or lost by reason of disease or by accident.

Those are irregular who cut off their own testicles, or cause them to be cut off, in order to preserve a boyish voice (139).

§ 2. Defect of Soul.

147. A threefold defect of soul induces irregularity: defect of the use of reason, defect of knowledge, and defect of firm faith.

Defect of the use of reason and of knowledge can be perpetual, on account of an incapacity of nature, or temporary, which ceases with the passage of time. If the defect is temporary, the supreme pontiff can dispense during the defect, so that, for example, an infant or boy may be ordained, provided that he abstain from the exercise of the order until he has arrived at due knowledge and the required age.

1. From defect of the use of reason the insane are irregular. If the insanity is perpetual, the irregularity cannot be removed; if the temporary insanity now seems to have ceased, a distinction must be made: if the insane man has already been ordained, after a space of time in which, by the judgment of the bishop, recovery from the disease is proved, he can again minister in the orders received; if he has not yet been ordained, the matter must be defined by the judgment of a physician and the decision of the bishop. For if, by the judgment of a physician, it is established that the insanity has ceased, with the bishop consenting, ordination is licit.
2. From defect of knowledge the unlettered are irregular, who lack that instruction which is required by the Council of Trent for the several orders.¹⁸⁰
3. From defect of firm faith the following are irregular:
 - a. Neophytes, i.e. those who from Jews, pagans, or other sects have been converted to the faith in adult age and recently baptized,¹⁸¹ until their firm faith is established from the declaration of the bishop.

How long the ordination of neophytes must be deferred, so that they can be judged sufficiently firm in faith and Christian virtue, is permitted to the judgment of the bishop, whose part it is to issue an authentic declaration on this matter. There are those who say that after ten years from conversion a neophyte is no longer irregular.¹⁸²

- b. The non-confirmed, because before confirmation they are not yet Christians in the full sense (sheep and soldiers of Christ).

Notes

180. Cf. sess. 23. c. 4. 11. 13. *De reform.*

181. 1 Tim. 3, 6.

182. Cf. St. Alphonsus l. 7. n. 402.

183. Sess. 23. c. 4. *De reform.*

The Council of Trent established irregularity from defect of confirmation.¹⁸³ There are indeed those who deny this irregularity (Suarez, Reiffenstuel); nevertheless recent authors (Gasparri, Aichner, Wernz), appealing to repeated declarations of the Holy See,¹⁸⁴ affirm that it exists and must be removed by dispensation of the Holy See.

§ 3. Defect of Liberty.

148. He who lacks the liberty required by law for receiving orders is irregular.

This irregularity is not an irregularity properly so called; for it is induced because defect of liberty cannot be reconciled with the obligations of the clerical state. For he who intends to satisfy clerical obligations must necessarily neglect the duties of the state which induces the defect of liberty.

From defect of liberty the following are irregular:

1. **Slaves or bondsmen**, unless they first have obtained liberty from their master.¹⁸⁵
2. **Married men**, upon whom not even tonsure may be conferred, unless they wish either to enter religion or to receive sacred orders.¹⁸⁶
 - a. A married man can receive sacred orders if he has been released from his wife; but he is judged released from his wife: a. if divorce has been juridically effected on account of the wife's adultery, for in this case the wife has perpetually lost her right over the husband; b. if the wife freely and expressly consents that the husband receive orders or enter religion.
 - b. From a wife consenting to the husband's ordination or religious profession it is required by the statute of law either that she enter religion, or that she profess continence, i.e. that she emit a vow of perpetual chastity.¹⁸⁷ That she enter religion and profess continence in religion is required in a twofold case: a. if the husband is to be promoted to the episcopate;¹⁸⁸ b. if the wife is young or suspected of incontinence. Whether a wife is to be called young does not depend upon a determinate year of age, but must be judged from the circumstances by the prudent judgment of the bishop, namely from health, strength, the custom of her past life, etc.¹⁸⁹
3. **Court officials**, i.e. those who, either by an oath emitted or by a stipend accepted, are bound to serve the courts of princes as presidents, judges, advocates, or soldiers, as long as they discharge this office.¹⁹⁰

Since today, with ecclesiastical immunity disregarded, both clerics and religious are compelled to undergo military service, the Holy See has established the following concerning their admission to sacred orders or to religious profession (for Italians):

- a. Those who have served for the space of one year or a longer time in the first class (category), and have remained firm in their vocation, are not to be admitted to sacred orders or to solemn profession unless they have proved constancy in their vocation for the space of at least one year.

Notes

184. S. C. C. Sept. 27, 1601; May 15, 1802.

185. C. *Instruendi* 1 *De servis non ordinandis* (I. 18).

186. C. *Nullus* 4 *De tempor. ordinat.* in 6° (I. 9).

187. C. *Coniugatus* 5 *De convers. coniugat.* (III. 32).

188. C. *Sane* 6. tit. cit.

189. S. C. C. Aug. 28, 1830.

190. C. *Aliquantos* 2; C. *Praeterea* 3 Dist. 51.

- b. They are to bring testimonial letters from the ordinaries in whose dioceses they have lived for at least three months.¹⁹¹
4. **Those bound to reckonings or to rendering accounts**, namely those who, from their office, are bound to render an account of another's money administered, whether public or private, such as magistrates, administrators, curators, and tutors, unless first they have rendered the account and have resigned the office.¹⁹²

Yet those who bear offices and administrations which are not prohibited to clerics can be ordained, even if they have not rendered an account nor resigned the office; thus they licitly bear the administration of the money of their own blood relatives, of miserable persons, and of pious causes.

§ 4. Defect of Birth.

149. All illegitimate persons, even hidden ones, are irregular.¹⁹³

The reason for establishing this irregularity is chiefly alleged as threefold: a. reverence for the ecclesiastical order, for illegitimate persons by reason of their origin are reputed low; b. detestation of the paternal crime, as a sign of detestation of which even the sons are affected by a privative penalty; c. danger lest the sons imitate the paternal incontinence.¹⁹⁴

From defect of birth the following are irregular:

1. **Illegitimate persons.** In general those are called illegitimate who have not been begotten from legitimate marriage, i.e. from one either truly or at least putatively valid.¹⁹⁵

Those who were born from parents between whom, at the time of conception or birth, a valid marriage could have existed are called natural; but those who were born from parents between whom at that time a valid marriage could not have been had (as if they were born from adultery, sacrilege, or incest) are called spurious.

2. **Those doubtfully illegitimate**, whose illegitimate origin is not certain, are not irregular: for no one ought to be judged illegitimate unless this is proved certainly; moreover no one can be deprived of his right of receiving orders unless it is established that he is impeded.
 - a. Therefore exposed children of themselves are not irregular, and so they can be ordained without dispensation; nevertheless, as a precaution, they are usually dispensed if they cannot indicate their parents.
 - b. If it is uncertain whether the offspring was conceived or at least born when marriage had already been contracted, or before it, the offspring is not irregular, because he is presumed at least to have been born after the marriage.
 - c. He who was born in marriage, although from adultery, and this known to the husband himself, is not irregular unless he is juridically demonstrated to be spurious: for the father is he whom the nuptials show.

Notes

191. S. C. sup. disc. reg. Nov. 27, 1892.

192. C. Magnus un. *De obligatis ad ratiocinia* (I. 19).

193. C. *Is qui 1 De filiis presbyt.* in 6°. (I. 11).

194. Cf. Council of Trent, sess. 25. c. 15. *De reform.*

195. C. *Ex tenore 14 Qui filii sint legitimi* (IV. 17). Marriage which was contracted without due proclamations and without dispensation of the ordinary must be excepted: for in this case the offspring is held to be illegitimate. C. *Cum inhibitio 3 De clandestina despons.* (IV. 3).

- d. Someone is judged certainly illegitimate in a twofold case: a. if he has arisen from an unmarried mother; b. if he has arisen from a married mother, but his illegitimate origin has been juridically demonstrated.
- 3. Even hidden illegitimate birth induces irregularity, provided the matter is certain. Therefore if someone knew that he had arisen from unmarried parents, or from parents joined in appearance only, inasmuch as a diriment impediment had stood between them, he could not approach orders without dispensation.

150. This irregularity ceases not only by dispensation, as the others do, but also:

- 1. **By subsequent marriage:** for those born from fornication, or natural children, if afterward their parents contract a legitimate marriage, cease by the law itself to be illegitimate and therefore also irregular.¹⁹⁶

But the spurious, whose parents afterward contract marriage after the impediment has been removed, do not cease to be irregular or illegitimate, because the laws did not concede a privilege of this kind to the spurious.

- 2. **By religious profession.**¹⁹⁷ Solemn profession alone produces this effect, but not simple profession, unless a special privilege is present.¹⁹⁸ Nevertheless, by the cited canon, religious profession removes irregularity only with respect to orders, but not with respect to prelacies. Hence if an illegitimate religious is to be promoted to a prelacy either outside the order or within the order, he needs dispensation.

Legitimation which civil law induces cannot remove irregularity. For since the question concerning the legitimacy of offspring is joined with the question concerning legitimate marriage, and this belongs to the Church alone, that also must be said to pertain to the Church alone.

§ 5. Defect of Sacrament.

151. Declarations. Irregularity from defect of sacrament, namely of marriage, is also called irregularity from bigamy, because it has its origin from bigamy.

- 1. A threefold bigamy is distinguished: true, interpretative, and similitudinary.
 - a. True bigamy is had when someone successively contracts two valid marriages and consummates them by carnal copula. A bigamist is called a man who successively has had two wives and has known each; a man who successively has had three wives will be a trigamist, and so on.
 - b. Interpretative bigamy is had when someone indeed contracts only one marriage, which nevertheless by interpretation of law is twofold, and consummates it. But a marriage is judged twofold if a man marries a wife who already previously was known by another man (as if he marries a widow known by a previous husband, or a woman already corrupted by another), or if he approaches his own wife after she has committed adultery: for a woman who has known two or more is, as it were, a twofold wife.
 - c. Similitudinary bigamy is had: a. when someone contracts two marriages, one valid, the other invalid, and consummates each; b. when someone, after his wife has died, receives sacred order and then (invalidly) marries another wife and knows her; c. when someone, never before married, after religious profession or after sacred orders have been received, contracts marriage (invalidly) with a virgin and consummates it. In this case there is a twofold marriage, one spiritual with Christ, the other carnal with a woman.

Notes

196. S. C. C. June 27, 1857. The case is excepted in which illegitimate persons were to be promoted to the episcopate or cardinalate.

197. C. *Ut filii 1 De filiis presbyterorum* (I. 17).

198. S. C. Ep. et Reg. Jan. 20, 1860. Gregory XIII granted a privilege of this kind to the Society of Jesus by the constitution *Ascendente Domino*, in which irregularity from defect of birth ceases through simple profession.

This bigamy is called similitudinary, because in an invalid marriage there is indeed not a sacrament, but nevertheless some likeness of a sacrament.

2. In order that the reason for this irregularity may be declared, it must be noted that marriage, from its institution, according to the Apostle, signifies the union of Christ with the Church, and this as one and indivisible.¹⁹⁹ The man represents Christ, the woman the Church. This signification is had fully and perfectly only in a marriage entered and consummated with a virgin. For just as Christ is joined to only one Church, so the man who contracts and consummates marriage with a virgin is joined to only one wife.

But bigamy is not suitable for perfectly representing the union of Christ with the Church, because the bigamist has joined himself to two wives. On account of this defect, which by its nature inheres in bigamy, a bigamist is declared irregular by the Church. And because the defect is in this, that bigamy cannot perfectly exhibit the signification which belongs to the sacrament of marriage from its institution, it is called irregularity from defect of sacrament, or rather from defect of the signification of the sacrament. Therefore the reason of the irregularity is the defect inhering in the sacrament which the bigamist has received, not the incontinence of a man passing to second nuptials. Therefore a man who has carnal knowledge of a woman outside marriage does not become irregular.

152. True, interpretative, and similitudinary bigamy induce irregularity.

1. Concerning true bigamy.

- a. Irregularity from true bigamy is not established by divine law, but by ecclesiastical law. For although from Sacred Scripture a bishop or priest ought to be the husband of one wife,²⁰⁰ nevertheless by these words the Apostle does not promulgate a divine law; but these words gave the Church occasion for establishing a law by her own authority.²⁰¹ For a law in which the Church truly dispenses cannot be divine law, but must be ecclesiastical law. On account of the analogy which each other bigamy has with true bigamy, the Church extended irregularity also to them.
- b. Bigamy constitutes irregularity even if someone married two wives before baptism, or one before baptism and the other after baptism. For the defect on account of which irregularity was established inheres also in an unbelieving bigamist and cannot be washed away by baptism. Before baptism a bigamist is not indeed irregular except radically, but once baptism has been received he becomes formally irregular, as Innocent I expressly declared.²⁰²

2. Concerning interpretative bigamy.

The individual cases of interpretative bigamy are expressly established in law; namely, he is irregular: a. who marries a widow;²⁰³ b. who marries a corrupted woman;²⁰⁴ c. who has known an adulterous wife.²⁰⁵

This irregularity applies also to a cleric constituted in sacred orders who marries a widow or a corrupted woman, even if his marriage is invalid.²⁰⁶

Notes

199. Eph. 5, 32.

200. 1 Tim. 3, 2. In verse 12 it is established: deacons are to be husbands of one wife.

201. C. *Ut bigami* 1 *De bigamis* (I. 21).

202. C. *Si quis viduam* 13. dist. 34.

203. C. *De bigamis* 3 *De bigamis* (I. 21).

204. C. *Debitum* 5 *De bigamis* (I. 21).

205. C. *Si cuius* 11. and C. *Si laici* 12. dist. 34.

206. C. *A nobis ult.* *De bigamis* (I. 21).

3. Concerning similitudinary bigamy.

- a. The first case of similitudinary bigamy, which is had if someone enters two marriages, one valid, the other invalid, St. Alphonsus refers to interpretative bigamy. But according to St. Alphonsus himself as witness, this irregularity is not had as expressed in law; authors establish it on account of similitude with another particular case expressed in law. But since an irregularity which is not expressed in law is not to be established, and since it is not licit to conclude from a case to a similar case, this irregularity is asserted gratuitously, or at least is doubtful.
- b. The particular case expressed in law is this: if a cleric constituted in sacred orders, who before ordination had been joined in marriage and had known his wife, marries another wife (certainly invalidly) and knows her.²⁰⁷
- c. The second case of similitudinary bigamy, which is had if someone after solemn profession or after sacred order has been received contracts marriage with a virgin and knows her, is indeed established by the common opinion of authors; but with Suarez as witness this case is not contained in law.²⁰⁸

153. Therefore no bigamy intervenes, and consequently no irregularity from bigamy, in the following cases.

- a. If someone contracts espousals with two women, even if he has known them carnally, because the union of Christ with the Church is signified only by marital copula, not by fornicatory copula.
- b. If someone enters marriage with two women, but consummates it with only one, because a division of flesh into two wives is not made.
- c. If someone marries a widow carnally known neither by her husband nor by another, because she is not a twofold wife.
- d. If someone marries a woman previously corrupted by himself, but not by another, because she is not a twofold wife.
- e. If someone, whether unmarried or married, has fornicated with a prostitute, because fornicatory copula does not signify the union of Christ with the Church, or because a division of flesh into several wives is not made.

§ 6. Defect of Reputation.

From defect of reputation those contract irregularity who are infamous in any manner whatsoever, whether by law or by fact.

The ministers of the Church ought to be irreprehensible and without crime. Therefore in antiquity any delict whatever kept a guilty man from the sacred ministry and constituted him irregular. But today only graver delicts, and indeed those which are expressed in law, make one irregular; nor properly the delicts themselves, but the infamy which is contracted on account of the delicts.

154. Declarations. 1. Infamy is the privation or diminution of good reputation or good estimation.

2. One infamy is of law (legal), which is inflicted by the authority of law on account of a delict; the other is of fact (popular), which is contracted from public knowledge of a crime committed.

Notes

207. C. *Nuper* 4 *De bigamis* (l. 21).

208. Suarez disp. 49. sect. 4. n. 3.

- a. Infamy of law is contracted either by the fact itself, namely by the very commission of the crime before every sentence of the judge;²⁰⁹ or by sentence of the judge which decrees infamy. The former infamy is called by some immediate, or of *latae sententiae*; the latter mediate, or of *ferendae sententiae*.
- b. Infamy of fact is contracted by its nature from public notice of a crime committed. This notice can become public in a twofold mode: either by sentence of a judge condemning the guilty man concerning the crime, or by actual divulgation.

No infamy is contracted from an office which someone discharges or has discharged, although in the estimation of men that office is low and abject, such as the office of butcher, executioner, actor, etc. He who discharges an office of this kind is kept from orders by natural law, unless he has renounced it.

3. Infamy of law induces irregularity, even if the delict is hidden;²¹⁰ but infamy of fact by its nature requires that the delict be publicly known, either by sentence of a judge or by actual divulgation.

Infamy of fact actually existing induces irregularity, even if the sentence of the judge is unjust or the judgment of men concerning the crime committed is false; for an unjust sentence and a false estimation generate infamy equally with a just and true one.

4. Irregularity arising from infamy of law, whether it is of *latae sententiae* or *ferendae sententiae*, is an irregularity properly so called, perpetual of itself, which cannot be removed except by dispensation. But irregularity arising from infamy of fact is not an irregularity properly so called: for it does not need dispensation, but is removed by amendment of life, which has been proved and has become notorious by perseverance for three years. For when infamy is removed by amendment of life, the irregularity also, which arises from it, is removed.

155. Irregularity from infamy of law. 1. In antiquity, by canon law, those were held infamous whom Roman civil law marked with infamy (immediate) on account of delict. But, Roman law having been abrogated, the ancient canon: *All are said to be infamous whom the laws of the age call infamous*²¹¹ does not seem to have to be extended to recent civil laws, so that today according to the mind of the Church those are not marked with infamy of law except those who are declared infamous by canon law.²¹²

2. By the law itself chiefly the following are declared infamous:

- a. Duelists and their seconds.²¹³
- b. Ravishers of women and their cooperators.²¹⁴
- c. He who has two wives at the same time, as one who attempts civil marriage while his legitimate wife is living.²¹⁵

Notes

209. By law indeed a declaratory sentence of the crime committed, or rather of the infamy contracted, is required; but since declaratory sentences of this kind today are rarely issued, authors commonly teach that immediate infamy of law is contracted without sentence of a judge.

210. Gasparri I. n. 288, following Suarez.

211. C. *Omnes* 2. c. 6. q. 1.

212. Moreover, modern civil codes establish the penalty of infamy rarely, if ever.

213. Council of Trent, sess. 25. c. 19. *De reform.* From the declaration of S. C. C., Aug. 9, 1890, academic duels also are to be numbered among the duels to which infamy of law is annexed.

214. Council of Trent, sess. 24. c. 6. *De reform.*

215. C. *Nuper 4 De bigamis non ordinandis* (I. 21).

d. Heretics, apostates, and those favoring heretics. More will soon be said concerning irregularity from heresy.²¹⁶

156. Irregularity from infamy of fact. 1. Infamy of fact is contracted by any enormous delict which is publicly known, whether by sentence of a judge condemning the delinquent or by actual divulgation.

2. Delicts of this kind are: homicide, perjury in court, adultery, sodomy, simony, robbery, preparation of arms against parents, public exercise of usury, etc.²¹⁷

Therefore one who is accused on account of a crime of this kind and is condemned by an ecclesiastical judge contracts infamy, even if no mention of infamy is made in the condemnatory sentence. But if a cleric is condemned by a civil judge on account of a crime of this kind, by this condemnatory sentence itself he is not yet of himself infamous; but the ordinary, after the cause has been examined in the ecclesiastical forum, must either absolve or condemn the cleric, and when this has been done the condemned man will be infamous.²¹⁸ Ordinarily, however, already by the sentence of a civil judge, at least on account of the actual divulgation of the crime, he is held infamous.

157. Concerning irregularity from heresy. 1. Heretics who publicly adhere to a condemned sect are irregular from infamy of law.²¹⁹

a. All affirm that heretics are irregular; but they dispute whether they are irregular from the crime itself of heresy, or from the infamy of law which is annexed to heresy. But because in law there is no canon which declares heretics irregular on account of heresy itself, it seems it must be said that they become irregular on account of infamy, which is annexed by law to the crime of heresy.

b. Heretics who have not defected to a condemned sect, even public ones, are not irregular: for there is no text of law from which this irregularity can be proved. Therefore Catholics who have denied one or more articles of faith, even publicly, are not judged to be irregular, neither they themselves nor their sons.

2. Also the sons and grandsons of heretics are irregular if they descend from a heretical father; the sons alone, but not also the grandsons, if they descend from a heretical mother;²²⁰ and this indeed if the sons were born after the parents had lapsed into heresy, and if the parents die in heresy.

It was the common opinion of authors that this irregularity is not contracted in Germany and England and places of this kind, where heresy spreads unpunished and heretics themselves are not marked with infamy. But the following response of the Holy Office given to the bishops of Germany is opposed to this opinion: "heretics converted to the Catholic faith, and the sons of heretics who persist in heresy or have died in it, to the first and second degree through the paternal line ... are irregular even in Germany and in the other places concerning which inquiry is made, and therefore need dispensation in order to be promoted to tonsure and to orders."²²¹

§ 7. Defect of Mildness.

158. According to the mind of the Church it is plainly unfitting that he who has shed another's blood, or has cooperated in the killing or mutilation of a man, should represent the person of the most meek Christ,

Notes

216. Cf. Aichner p. 216 s.

217. Cf. St. Alphonsus n. 363.

218. Cf. instruction of S. C. Ep. et Reg., Jan. 11, 1880.

219. C. *Excommunicamus* 13 *De haereticis* (V. 7).

220. C. *Quicumque* 2 and C. *Statutum* 15 *De haereticis* in 6° (V. 2).

221. S. Officium, Dec. 4, 1890.

who never injured anyone. Therefore she established an irregularity proceeding from a twofold head: from just war and from judgment of blood. That is called a judgment of blood in which a case is treated that is concluded by the imposed penalty of death or mutilation. This irregularity is usually called from defect of (Christian) mildness: for this defect is contracted only after baptism has been received.

159. Irregularity from judgment of blood. He who in a just judgment concurs directly, proximately, and efficaciously, from public authority, toward the killing (or mutilation) of a man becomes irregular. Although there is no text of law which clearly establishes this irregularity, nevertheless from the practice of the Church its existence cannot be doubted.

1. A just judgment: for if the judgment is unjust, irregularity is not contracted from defect of mildness, but from the delict of homicide or mutilation.
2. Toward killing: to incur this irregularity some other penalty is not sufficient, such as flogging, even if joined with the shedding of blood; but killing or mutilation is required, and this really following, even if it is accomplished without the shedding of blood. Nevertheless the penalty of mutilation is no longer inflicted in recent law.
3. From public authority: for he who kills or mutilates a man by private authority does not become irregular from defect, but from delict.
4. He concurs directly, proximately, and efficaciously who by his action influences the effect; but he influences the effect by his action who places an action necessary for the judgment, either by conducting the trial, or by rendering the sentence, or by executing it.
 - a. Therefore, of those who concur in a judgment of blood, whether by reason of the trial, or by reason of the sentence, or by reason of execution, the following become irregular from defect of mildness:
 - b. The judge pronouncing the sentence of death.
 - c. The accuser and witness deposing against the accused.
 - d. The advocate and procurator acting against the accused.
 - e. Assessors, or at the present time especially jurors, who by their vote concur toward the death of the guilty man.
 - f. Lictors and executioners themselves, who as ministers of justice put the guilty man to death.
 - g. Of those who cooperate in some way in a judgment of blood, the following do not become irregular:
 - h. The prince who made the law concerning a crime to be punished by death, because he concurs only remotely.
 - i. The jurist who, privately asked whether the accused has merited the penalty of death, replied that according to the laws he is to be punished by death, because he does not act in court nor by public authority.
 - j. The confessor who accompanies the guilty man to the place of punishment, even if he exhorts him to acquiesce in the sentence, to ascend the ladder, to bend his neck, etc., because he acts outside the judgment and by private authority.
 - k. Spectators of the fatal execution, even if they are clerics, both because by watching they do not cooperate, and because they act outside the judgment and lack public authority.

160. Irregularity from just war. He who in an offensive just war himself by his own hand kills or mutilates someone (in the sense explained above) becomes irregular.

1. In a just war: for he who in an unjust war kills or mutilates someone, just like he who by his own authority kills or mutilates another, does not become irregular from defect, but from delict.
2. Offensive: for he who in a defensive war, even by his own hand, kills or mutilates another does not become irregular, unless he is a cleric, just as neither does he who kills or mutilates an unjust aggressor in order to defend himself. Nevertheless clerics who voluntarily serve as soldiers in a defensive war and kill or mutilate someone become irregular.²²²
3. By his own hand: for those who kill or mutilate no one, even if they are present at the battle, indeed even if by words or deeds they add courage to the soldiers, whether they are laymen or clerics, do not become irregular. For against those who themselves kill or mutilate no one, even if they concur physically or morally in a just war toward homicide, the Church has established no irregularity.

Article Four.

On the Cessation of Irregularity.

161. How irregularity ceases. A contracted irregularity ceases: a. by removal of the cause; b. by religious profession; c. by dispensation.

- a. Irregularity properly so called is removed only by dispensation: for irregularity is established by law; but a law in force can be removed only by relaxation of the law, or dispensation. Hence irregularities which are removed otherwise than by dispensation are not irregularities properly so called.
- b. There are those who say that irregularity is also removed by baptism. But this manner of speaking seems less apt, because irregularity is induced by ecclesiastical law; therefore, since the not yet baptized are not subject to the power of the Church, before baptism no irregularity is contracted which is removed by baptism. Therefore he who before baptism committed a delict from which irregularity otherwise arises is not irregular once baptism has been received; but he who before baptism labors under a defect which induces irregularity is irregular once baptism has been received, if the defect perseveres after baptism. Thus a bigamist after baptism has been received is irregular, because even as baptized there inheres in him the defect of representing Christ, the one spouse of the Church.

162. 1. By removal of the cause a temporary irregularity ceases; thus irregularity from defect of liberty or reputation ceases when liberty or reputation has been recovered.

2. By religious profession irregularity arising from defect of birth ceases, yet in such a way that the illegitimate person becomes capable of receiving orders, but not of prelacies (n. 150).
 - a. The dispensation which a religious irregular from defect of birth needs in order that he can be promoted to the ordinary prelacies of his order can be granted by the general in a general chapter and by the provincial in a provincial chapter.
 - b. Not only religious profession, but also dispensation of itself avails only for receiving orders, not also for obtaining dignities and prelacies. Indeed in apostolic rescripts commonly even benefices with care of souls are excepted, for the obtaining of which the dispensed man needs a new dispensation of the Holy See.²²³
3. By dispensation any irregularity properly so called can be removed.

Notes

222. C. *Petitio tua* 24 *De homicidio* (V. 12).

223. Aichner l.c. p. 225.

In order that dispensation may be granted licitly, these things are required:

- a. The irregular person must manifest the circumstances of his person and the cause from which the irregularity arose.
- b. He who has contracted several irregularities must set forth all of them.
- c. A just cause for dispensing must be present. The chief cause is constituted both by shortage of priests and by the good morals of the one to be ordained.
- d. The one dispensing must impose a salutary penance upon the dispensed person.²²⁴
- e. A determinate form by which the dispensation is granted is not prescribed. This or a similar one can be used: I dispense with you in the irregularity which you incurred on account of this cause, in the name of the Father and of the Son and of the Holy Spirit. Amen.

Note. A dispensation upon irregularity from defect of birth on account of the heresy of parents, once granted for receiving tonsure and minor orders, avails also for receiving major orders.²²⁵

163. Who can dispense. 1. The supreme pontiff can dispense in every irregularity: for since every irregularity arises from the law of the supreme pontiff, it can also be removed by the same.

- a. Nevertheless there are irregularities in which the supreme pontiff is accustomed to dispense very rarely, such as a. irregularity from true bigamy; b. irregularity from voluntary homicide, unless it is so hidden that it cannot be proved in judgment; c. irregularity from defect of body which is very deformed.
 - b. To obtain this dispensation, recourse must be had to the Congregation on the Discipline of the Sacraments, if the irregularity is public and dispensation is sought for the external forum; but to the Penitentiary, if the irregularity is hidden and dispensation is sought for the internal forum alone.
2. Bishops can dispense either by themselves or through their delegate:
- a. In all irregularities arising from hidden delict, except irregularity on account of homicide (simply voluntary, from c. *Liceat*).²²⁶
 - b. In irregularities from similitudinary bigamy relative to sacred orders, and from illegitimate birth relative to minor orders.
 - c. In irregularities, whether from delict or from defect, which are doubtful, as a precaution; nor must recourse be had to the supreme pontiff if afterward it has been established that the irregularity certainly was present. In a case of urgent necessity, if access to the supreme pontiff is not open, and the irregular person cannot abstain from the reception or exercise of an order without grave inconvenience. Some bishops have still broader faculties from special privilege.
3. Regular prelates can dispense with their subjects in all irregularities in which bishops can dispense: for they have quasi-episcopal jurisdiction, by force of which they can dispense with their subjects in those matters in which bishops can dispense with their diocesans.²²⁷

Notes

224. Council of Trent, sess. 24. c. 6. *De reform.*

225. S. Officium, Dec. 5, 1906.

226. Council of Trent, sess. 24. c. 6. *De reform.*

227. St. Pius V granted this power by the constitution *Ad immarcescibilem*, Feb. 6, 1567.

4. Regular confessors can dispense all seculars, whether clerics or laymen, from all irregularities arising from hidden delict (except hidden homicide), from which bishops can dispense their own subjects.²²⁸ But other confessors have no power concerning irregularities.

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A. M. D. G.

To the greater glory of God.