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according to the principles of St. Thomas Aquinas

for the use of schools

by Dominic M. Prümmer, O.P.

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Part II. On The Sacraments In General And In Particular

Prologue

Connection of the matter to be treated. After we treated human acts and the virtues in the first part of this Manual insofar as they are ordered to attaining the supernatural end, it remains to treat the proximate and supernatural aids without which it is impossible to obtain this end. These aids indeed are divine grace, which is conferred upon us principally in the sacraments instituted by Christ. Therefore, in this second part of this Manual we must now treat the sacraments and all those things that affect their administration or reception (censures, indulgences, irregularities, etc.).

1. The usefulness of this treatise is very great. Hence the Roman Catechism[1] wisely says: "As every part of Christian doctrine requires knowledge and diligence, so the discipline of the sacraments, which is both necessary by God's command and most abundant in usefulness, demands singular ability and industry from the parish priest, so that, by an accurate and frequent understanding of it, the faithful may become such that the most excellent and most holy things can be imparted to them worthily and salutarily, and that priests may not depart from that rule of the divine prohibition: 'Do not give that which is holy to dogs, neither cast your pearls before swine.'"[2] And truly! For although the sacraments are not the sole means of attaining grace and glory, since graces may also be merited by prayer and the exercise of other virtues, nevertheless the Council of Trent[3] rightly calls them the greatest aids, "through which all true justice either begins, or, once begun, is increased, or, once lost, is restored." For through the sacraments graces are conferred more certainly and more abundantly. But nearly the whole priestly life is spent in administering and receiving the sacraments. Would not a priest, therefore, completely fail in his office if he did not perfectly know the doctrine and discipline of the sacraments? Perhaps from insufficient knowledge, but certainly from an insufficient spirit of faith, proceeds that detestable quasi-mechanical administration of the sacraments which is practiced by certain priests to the scandal of the people. Therefore, in this Manual, while indeed striving for brevity, we endeavor to hand down a sufficiently complete doctrine concerning this matter.

The division of this part is seen so clearly from the very nature of the matter that it has been the same among all authors for centuries, namely, the sacraments are treated first in general and then the individual sacraments in particular.

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[1] Part 2, 1, q. 1.

[2] Matt. 7:6.

[3] Session 7, Decree on the Sacraments.

Treatise I. On The Sacraments In General

Literature. On this extensive matter very many authors, both ancient and modern, have written, of whom we cite only a few, but the principal ones, namely: St. Thomas, *S. theol.* 3, q. 60-65; St. Alphonsus, *Theol. mor.* l. 6, n. 1-94; Drouven, O.Pr., who learnedly composed two large volumes on sacramental matters (2nd ed., Venice 1756); Christian Pesch, *Praelectiones dogmaticae*, vol. VI; August Lehmkuhl, *Theol. mor.* (12th ed.), n. 3-43; Gihr, *Die heiligen Sakramente der kath. Kirche* (2nd ed.), I, 1-178; Schanz, *Die Lehre von den Sakramenten der kath. Kirche* (1893); Pourrat, *La théologie sacramentaire* (4th ed.), Paris 1910.

We divide the treatise on the sacraments in general into six chapters: 1. on the essence and existence of the sacraments; 2. on the number and division of the sacraments; 3. on the efficacy and effects of the sacraments; 4. on the institutor of the sacraments; 5. on the minister of the sacraments; 6. on the subject of the sacraments. At the end of the treatise, by way of an appendix, we shall treat the sacramentals.

Chapter I. On The Essence And Existence Of The Sacraments

We subdivide this chapter into four articles: 1. on the name of sacrament; 2. on the real definition of a sacrament; 3. on the matter and form of the sacraments; 4. on the existence of the sacraments.

Article I. On The Name Of Sacrament

2. The word *sacrament* is employed in many and diverse senses by writers, both secular and sacred. There is no reason for us to linger long over the meanings in which secular writers use this word. For these meanings can easily be seen in any good Latin dictionary. The principal ones are: a) a pledge deposited by litigants in a sacred place; b) an obligation to military service; c) an oath of perseverance imposed upon soldiers.[1]

In Sacred Scripture and among the ancient ecclesiastical authors, the word *sacrament* is employed in so many diverse senses that great circumspection is not rarely needed to perceive the author's true sense.[2] The principal and more frequent senses seem to be the following three:

1. **Sacrament signifies the same thing as the Greek word μυστήριον, that is, a sacred hidden or secret thing.**

In this sense the Incarnation is called "the sacrament of the will of God,"[3] and St. Ambrose entitles his treatise on the Incarnation: *Book on the Sacrament of the Lord's Incarnation.* Likewise, the truths of faith are called a sacrament, and therefore St. Paul says: "To me, the least of all the saints, was given this grace ... to enlighten all as to what is the dispensation of the sacrament hidden from ages in God."[4] Christ Himself is called "the great sacrament of piety."[5] The holy Fathers also frequently employ the word *sacrament* in this sense. Thus, for example, St. Cyprian calls ecclesiastical union "the sacrament of unity." Hugh of St. Victor, writing on theology, gave it the title: *On the Sacraments* [that is, on the mysteries] *of the Christian Faith.*

Sometimes, but very rarely, the name *sacrament* is also taken for an evil secret or mystery, for example: "And the Angel said to me: Why do you wonder? I will tell you the sacrament of the woman and of the beast that carries her."[6]

2. **Sacrament signifies a sign or symbol of some hidden sacred thing.**

In this sense Christian matrimony is called by St. Paul[7] a great sacrament, because it signifies the union of Christ with the Church. Likewise, the figures of the Old Testament, for example, manna and the passage of the Jews through the Red Sea, are called sacraments by St. Ambrose.[8]

3. **Sacrament signifies human sanctification,**[9] so that a sacrament is not only a holy sign, but also a sign of sanctification actually to be given.

Several such signs were already possessed in the Old Testament, and therefore St. Thomas, speaking of the sacraments of the Old Law, says: "Those things are properly called sacraments which were employed for the worshipers of God for a certain consecration, by which, namely, they were in some manner deputed to the worship of God."[10] Nevertheless, the sacraments of the Old Law were unable of themselves to produce the true interior sanctification of the recipient; but the sacraments of the New Law not only signify sanctification but also produce it *ex opere operato*. Moreover, a fuller discussion of the efficacy of the sacraments will return below. In the following articles, the name *sacrament* signifies nothing other than **a practical sign of our sanctification**.

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[1] *Fahneneid, military oath.* Cf. Cicero, *De offic.* 1, 11; *Pro domo* 29; *Pro Milone* 27.

[2] In St. Cyprian alone, the word *sacrament* can be perceived as employed in ten diverse acceptations, namely: 1. for an oath; 2. for a profession of faith; 3. for the cause of our salvation; 4. for a prophetic figure; 5. for a symbol; 6. for a commemorative sign; 7. for a prophecy; 8. for a testimony; 9. for the deposit of faith; 10. for a bond. Cf. J. B. Ponkens in *Bulletin d'ancienne litt. et archéol. chrét.* II, 289, and especially Ghellinck, S.J., who with several associates wrote an entire learned work: *Pour l'histoire du mot Sacramentum* (Louvain 1924).

[3] Eph. 1:9.

[4] Eph. 3:8ff.

[5] 1 Tim. 3:16.

[6] Apoc. 17:7.

[7] Eph. 5:32. Nevertheless, from this text it can be solidly proved that matrimony is a true sacrament of the New Law. Cf. below, n. 643.

[8] *De sacr.* l. 1, c. 4ff. (Migne, *Patr. lat.* 16, 420ff.).

[9] This acceptation is more common after St. Augustine, to whom the definition of a sacrament was attributed: it is a visible sign of invisible grace; yet this definition is found in St. Augustine not word for word, but only as to its sense (cf. Gietl, *Die Sentenzen Rolands*, p. 155). Hugh of St. Victor, who assuredly is eminent among theologians treating the sacraments, has these words: "Three genera of sacraments present themselves to be distinguished in a first consideration. For there are certain sacraments in which salvation principally consists and is received: the water of baptism and the reception of the Body and Blood of Christ. There are others which, although they are not necessary for salvation (because salvation can be had without them), nevertheless conduce to sanctification, because by these virtue can be exercised and more abundant grace can be acquired, such as the water of sprinkling, the reception of ashes, and similar things. Again there are other sacraments which seem to have been instituted for this alone: that through them those things which are necessary for sanctifying and instituting the other sacraments may in some manner be prepared and sanctified, whether concerning persons to be perfected in sacred orders, or in those things which pertain to the equipment of sacred orders to be initiated, and other things of this kind" (*De sacr.* l. 1, c. 7; Migne, *Patr. lat.* 176, 327).

[10] *S. theol.* 1, 2, q. 102, a. 5.

3. The common opinion of theologians admits that there were true sacraments even in the Old Testament, which, although they were much more imperfect than the seven sacraments of the New Testament, nevertheless cannot be reduced to a mere analogy of sacrament.[11] Hence St. Thomas[12] simply teaches: "Before the coming of Christ it was necessary that certain sacraments be instituted," and the Council of Trent[13] defines: "If anyone says that these same sacraments of the New Law do not differ from the sacraments of the Old Law except that the ceremonies are different and the external rites are different, let him be anathema." It is established, therefore, that there existed true sacraments both in the New and in the Old Law, and yet that there is an essential distinction between the two. Therefore, a quasi-generic definition is to be sought which includes all the sacraments both of the Old and of the New Law. The Scholastics labored greatly to find such a definition, but they departed into various opinions.[14] The definition given by St. Thomas[15] seems better to us:

Generic definition. A sacrament is a sign of a sacred thing insofar as it sanctifies men.

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[11] The younger St. Thomas seems to have taught that the sacraments of the Old Law were not sacraments in a univocal sense with the sacraments of the New Law; nevertheless, when he had grown older, he retracted this opinion, as Cajetan, Dominic Soto, and John of St. Thomas clearly show (cf. Billuart, *De sacr.* diss. 1, a. 1).

[12] *S. theol.* 3, q. 61, a. 3.

[13] Session 7, canon 2 on the sacraments in general (Denz., n. 845).

[14] See Lugo, *De sacr. in gen.* disp. 1, sect. 1.

[15] *S. theol.* 3, q. 60, a. 2.

4. This is explained. It is said, 1. **A sacrament is a sign, and indeed a sensible sign.** For in all the sacraments, even those of the Old Law, something sensible is contained, for example, circumcision, washing, anointing, etc., which signifies a spiritual effect. Hence the ancient Scholastics were accustomed to say: a sacrament is in the genus of sign and not in the genus of cause, because, namely, a sacrament taken formally does not cause but only signifies a supernatural effect. For this reason the sacraments of the Old Law indeed signified sanctifying grace, but, as "weak elements," they were unable of themselves to cause it; for grace proceeded not precisely from those sacraments but from faith in the Messiah to come. But the sacraments of the New Law not only signify but also cause sanctifying grace.[16]

It is said, secondly: **of a sacred thing.** This sacred thing is manifold. First, there is sanctifying grace. All the sacraments, both of the Old and of the New Law, signify sanctifying grace to be conferred. Hence Eugene IV taught in the Decree for the Armenians: "They [namely, the sacraments of the Old Law] did not cause grace, but they prefigured that it was to be given through the Passion of Christ."[17] Then there is sacramental grace proper to each sacrament, as will be said below.

It is said, thirdly: **insofar as it sanctifies men.** All Catholic theologians teach: a) that the sacraments of the New Law either confer or increase sanctifying grace;[18] b) that the sacraments of the Old Law did not confer sanctifying grace *ex opere operato*.[19]

St. Thomas[20] wrote to the point: "The sacraments of the Old Law did not have in themselves any power by which they operated to confer justifying grace, but they only signified the faith through which men were justified.... And therefore it seems better to say that circumcision, like the other sacraments of the Old Law, was only a sign of justifying faith.... In circumcision grace was conferred insofar as it was a sign of the future

Passion of Christ." From these words of St. Thomas it is manifest that in circumcision and the other sacraments of the Old Law God conferred the sanctification of man, not indeed on account of those sacraments themselves, but insofar as they were professions of faith in the Christ to come. In another place the same Angelic Doctor expresses still more explicitly the same doctrine concerning circumcision, which is one of the sacraments of the Old Law: "In circumcision grace was conferred as to all the effects of grace, yet in another manner than in baptism. For in baptism grace is conferred by the power of baptism itself, which it has insofar as it is an instrument of the Passion of Christ already accomplished; but in circumcision grace was conferred not by the power of circumcision, but by the power of faith in the Passion of Christ, of which circumcision was a sign; so, namely, that the man who received circumcision professed that he received such faith, either an adult for himself or another for infants."[21]

Therefore, all the sacraments are practical signs of sanctifying grace. Since, however, in sanctifying grace there can also be considered its meritorious cause, namely, the Passion of Christ, and its end, namely, eternal glory, St. Thomas hence teaches that the sacraments signify three things, namely: **the Passion of Christ,** which is the meritorious cause of sanctification; **sanctifying grace,** which is the form of sanctification; **eternal life,** which is the ultimate end of sanctification.[22]

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[16] Cf. below, n. 38.

[17] Denz., n. 695.

[18] Cf. below, n. 35.

[19] Only a few Scotists, such as Mastrius (*De sacr.* disp. 1, q. 2, a. 2, n. 86) and Bosco (*Theol. sacram.* disp. 1, sect. 2, concl. 6, n. 65), taught the contrary concerning circumcision and the so-called sacrament of nature.

[20] *S. theol.* 3, q. 62, a. 6, corpus and ad 3.

[21] *Ibid.*, q. 70, a. 4.

[22] Cf. *ibid.*, q. 60, a. 3: "A sacrament is both a commemorative sign of that which preceded, namely, the Passion of Christ; and a demonstrative sign of that which is effected in us through the Passion of Christ, namely, grace; and a prognostic sign, that is, a sign foretelling future glory." The Angelic Doctor set forth these three things most beautifully in the antiphon *O sacrum convivium*: "The memory of His Passion is recalled, the mind is filled with grace, and a pledge of future glory is given to us."

5. Corollaries. 1. The sacraments cannot be practical signs of sanctifying grace except **by divine institution.** For it entirely exceeds the capacity of any natural thing practically to signify something supernatural, such as sanctifying grace.

2. Not all sacred signs have the character of a sacrament. For example, the cross, sacred images, the passage through the Red Sea, manna, the bronze serpent, very many ceremonies, etc. The reason is that all these things are indeed sacred signs, but they lack a divine institution elevating them to practical signs of sanctifying grace.

3. **Sacrifices also are not sacraments.** The reason is that sacrifice is primarily ordered to worship to be offered to God Himself, whereas the sacraments are primarily ordered to the sanctification of men. Nothing prevents the same thing, accepted under a diverse aspect, from being both a sacrifice and a sacrament. Thus, in fact, the Eucharist in the New Law and the immolation of the paschal lamb in the Old Law are at once a sacrifice and a sacrament, but accepted under a diverse aspect.

4. **The opinion of heretics concerning the sacraments is false,** who teach that they are only testimonies of justice received (the Lutherans); or signs by which a man is distinguished from gentiles

and Jews (the Anabaptists and Socinians); or certain pledges by which men bind themselves to Christ and openly profess that they wish to follow His religion (the Zwinglians); or external symbols of divine benevolence toward us and attestations of our fidelity toward God (the Calvinists); or commemorative signs of benefits received from God, which signs were introduced not by Christ Himself but by the Apostles and their successors (the Modernists).[23] Hence, according to all these heretics, no true causality of our interior sanctification belongs to the sacraments. Their opinions are false because they rest upon a false foundation, namely, that the justification of man is not effected through the infusion of sanctifying grace, but either through faith alone or through the mere imputation of the merits of Christ.[24]

5. **The definitions adduced by the Council of Trent and the Roman Catechism agree with the definition given.** The Council of Trent defines a sacrament as "a symbol of a sacred thing and a visible form of invisible grace."[25] The Roman Catechism adduces two definitions: a) "A sacrament is a visible sign of invisible grace instituted for our justification";[26] b) "A sacrament is a thing subject to the senses which, by God's institution, has the power both of signifying and of effecting sanctity and justice."[27] The former definition of the Catechism applies to all the sacraments; but the latter definition, which has always been regarded as the most perfect, applies to the sacraments of the New Law, which alone can properly cause sanctifying grace.[28] Therefore, this definition is specific to these sacraments.

6. For the essence of any sacrament there are required: an external and sensible sign, interior grace, institution made by God, and a due minister. The institution and minister of the sacraments will be treated below in chapters 4 and 5, and interior grace below in chapter 3. But now the external and sensible sign must be explained more fully.

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[23] Cf. Loisy, *L'Évangile et l'Église*, 3rd ed., c. 6. The errors of the Modernists concerning the sacraments are described in this manner in the encyclical *Pascendi* of 8 September 1907: "For the Modernists, the sacraments are bare symbols or signs, although not devoid of force. To indicate this force, they themselves use the example of certain words which are commonly said to have met with fortune, because they have acquired a power for propagating certain robust ideas which strike souls most forcefully." In the decree of the Holy Office *Lamentabili* of 3 July 1907, proposition 41 of the Modernists was proscribed: "The sacraments are directed only to this: that they recall to the mind of man the ever-beneficent presence of the Creator" (Denz., n. 2041).

[24] Drouven reports and refutes the opinions of the heretics exceedingly well, *De re sacr.* l. 1, c. 2; cf. also Schanz, *Die Lehre von den Sakr.* 1, § 4.

[25] Session 13, c. 3 (Denz., n. 876).

[26] Part 2, c. 1, q. 3.

[27] *Ibid.*, q. 8.

[28] For other definitions given by St. Augustine, Hugh of St. Victor, etc., see Peter Ledesma, *Summa, de sacr.* 1.

Article III. On The Sensible Sign, Or On The Matter And Form Of The Sacraments

Preliminary note. In this article the discussion concerns only the sacraments of the New Law, because the sacraments of the Old Law no longer exist, nor were they constituted by matter and form.[29] For nowhere is it read, for example, that determinate words necessarily had to be pronounced in circumcision or in the eating of the paschal lamb. Since this article is rather long, for the sake of clarity it is divided into seven paragraphs: 1. on the notion and necessity of matter and form; 2. on their immutability; 3. on their union; 4. on their certitude; 5. on the application of form to matter; 6. on the repetition of matter or form; 7. on a conditional form.

[29] Cf. *S. theol.* 3, q. 60, a. 6 ad 3.

§ 1. On The Notion And Necessity Of Matter And Form

6. Notion. The external and sensible sign of the sacraments is composed of two elements, namely, matter and form, which must be applied by a legitimate minister. Hence Eugene IV says in the Instruction to the Armenians: "The sacraments are constituted by three things, namely, by things as matter, by words as form, and by the person of the minister conferring the sacrament with the intention of doing what the Church does; if any of these is lacking, the sacrament is not constituted."[30] According to the Council of Trent,[31] moreover, "the essence of a sacrament is constituted by matter and form." The Roman Catechism[32] teaches similarly: "For there are two things from which every sacrament is constituted, of which one has the character of matter and is called the element, while the other has the force of form and is commonly called the word.... In this matter that testimony of St. Augustine,[33] well known and widely repeated among all, is familiar: 'The word comes to the element, and it becomes a sacrament.'"

[30] Denz., n. 695.

[31] Session 14, c. 2, on the sacrament of penance (Denz., n. 895).

[32] Part 2, c. 1, q. 8.

[33] *In Joann.* tr. 80, n. 3 (Migne, *Patr. lat.* 35, 1840).

7. Twofold acceptation. Matter and form are taken in two senses in sacramental matters:

a) Matter is **the whole sensible sign,** for example, in baptism the washing with water together with the pronouncement of the words; form is the signification of all these things, namely, sanctifying grace. This acceptation is little used, and consequently we shall not employ it hereafter.[34]

b) Matter is **the thing or act of the sensible sign;** form is **the words or signs by which those things or acts receive their determinate signification and efficacy;** for example, the water and the washing made with water are the matter in the sacrament of baptism, whose form is the words: "I baptize you, etc." We take matter and form in this sense.

[34] Form is still taken for sanctifying grace in the expression "an unformed sacrament," which is a sacrament not producing sanctifying grace, although it is valid. Cf. below, n. 33.

8. Origin of this terminology. "It must be observed that these words 'matter and form' with respect to the sacraments were not in use until around the year 1215 and were first employed by William of Auxerre, since they are found nowhere before him, not even in the Master of the Sentences [Peter Lombard]." Thus Billuart,[35] together with Christian Pesch, Hurter, Fei, and the common opinion. Certainly the holy Fathers knew that which we call the matter and form of a sacrament, but they designated them by other words; for example, they called matter the sign or element, but form the word. Since the Scholastics, according to Peripatetic philosophy, taught that every created sensible being is composed of matter and form, by analogy they said the same thing concerning the sacraments. Matter is the determinable part, but form determines matter to an individual thing. Thus, in like manner, in the sacraments the sensible thing is indeterminate, that is, not yet determined to signify something special. But the words applied to this matter give it a special signification. This manner of speaking about the matter and form of the sacraments has been universally received in both the Latin and the Eastern Church since the thirteenth century. Only a few theologians, among whom is Durandus of Saint-Pourçain, *In 4 Sent.*, dist. 1, q. 3, rejected this manner of speaking as though hylomorphic.

Against them, it is plainly established that this manner of explanation is most apt, especially for discerning whether some sacrament is valid or not. For whenever there is a substantial change of matter or form, the sacrament is not constituted; but, on the contrary, when only an accidental change exists, the validity of the sacrament is not affected. This change will be discussed again in the following paragraph.[36]

Distinction. Since the time of St. Thomas,[37] remote and proximate matter are customarily distinguished in the sacraments.

Remote matter is the sensible thing itself employed in the sacraments, for example, water in baptism and chrism in confirmation.

Proximate matter is a human act, namely, the actual application of the sensible thing or remote matter; for example, the proximate matter in baptism is the washing made with water; in confirmation, the proximate matter is the anointing made with chrism.

The form of a sacrament must be expressed orally in words; nevertheless, in the sacrament of matrimony, whose form is the mutual manifestation and acceptance of matrimonial consent, it can also be expressed in writing or by a nod, at least validly.

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[35] *De sacr.* diss. 1, a. 4, § 2.

[36] Concerning the progress of theological science in this matter since the thirteenth century, cf. Pourrat, *La théol. sacr.*, chap. 2, § 5. The manner of speaking indeed became different, but the thing itself was already known to the holy Fathers.

[37] Cf. *S. theol.* 3, q. 80, a. 2.

9. Necessity of matter and form. The most common opinion of theologians, which is strongly confirmed by the words of Eugene IV, the Council of Trent, and the Roman Catechism cited above, teaches that matter and form are of the very essence of every sacrament of the New Law, and consequently are altogether necessary. Hence St. Thomas[38] says: "Every sacrament is distinguished into matter and form as into parts of its essence." I pass over the opinions of Durandus, who denies this, and of certain Scotists, who even after the Councils of Florence and Trent boldly teach that the sacraments are indeed perfected, but are not intrinsically constituted, by matter and form.[39]

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[38] *Ibid.*, q. 90, a. 2.

[39] Cf. Christian Pesch, *Prael. dogm.* VI, n. 34.

§ 2. On The Immutability Of Matter And Form

10. If matter and form pertain to the essence of a sacrament, as is evident from the preceding paragraph, it follows that they are not only altogether necessary for the validity of the sacrament, but also immutable or invariable, so that whenever either one is substantially changed, the sacrament is not validly constituted. For the essences of things are immutable.

The Church has always taught that the matter and form of the sacraments are invariable as to substance. Thus the Council of Trent[40] declares "that this power has perpetually existed in the Church, that in the dispensation of the sacraments, their substance being preserved, she might establish or change those things which she judged more expedient for the benefit of the recipients or for the veneration of the sacraments themselves, according to the diversity of things, times, and places." From these words it can be deduced that a twofold change of matter and form is found: one substantial, the other accidental.

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[40] Session 21, c. 2 (Denz., n. 931).

11. 1. A substantial change of matter is present if, according to the common estimation of men, the matter is considered another thing in name and signification, even if perhaps it does not differ in physical species.

Hence, although, for example, a raw mass of flour does not differ in physical species from bread, or ice from water, nevertheless theologically a substantial change is considered present with respect to the sacraments of the Eucharist and baptism. For if a prudent man is asked concerning flour or ice, "Is this bread or water?" he immediately answers negatively. Therefore, certain theologians rightly distinguish a substantial change into physical and theological. A physical substantial change is present whenever from one matter there comes to be another essentially diverse matter, as, for example, ashes come to be from burned wood. But a theological substantial change is that which, according to the common estimation of men, renders the matter unfit to signify in a sacrament that for which it was instituted. Not only a physical but also a theological substantial change of matter invalidates a sacrament. Thus, for example, certain liquid colors are nothing other than water to which colored matter, say green, black, etc., has been added. Nevertheless, such liquid colors[41] are matter unfit for baptism because they cannot signify the washing to be performed in baptism. For no one washes his face with green color.

[41] Commonly *Wasserfarben, détrempe* [watercolors, distemper].

12. 2. An accidental change of matter is present if, according to the common estimation of men, the matter remains the same in species, although it is changed in quality or in other accidents.

For example, hot and cold water, muddy water and water mixed with fragrances, pure wine and wine with which a small quantity of another liquid has been mixed: all these are only accidental changes.

13. 3. A substantial change of form is present when the due and per se intended sense of the words by which the effect of the sacrament is signified is no longer preserved.

For the substance of the form consists in the right sense, since the form must signify the effects of the different sacraments willed by Christ. Thus, for example, the sense of the form of baptism is washing from original sin. Therefore, there is no substantial change if, in place of "I baptize you, etc.," someone says, "I wash you in the name of the Father, etc." On the contrary, there would be a substantial change if someone, thinking the intervention of the Blessed Virgin Mary necessary, were to baptize under the form: "I baptize you in the name of the Father and of the Son and of the Holy Spirit and of the Blessed Virgin Mary."[42] For judging whether in some case a substantial change of form was present or not, not only the objective sense of the words but also the subjective intention of the minister is of great service.[43] If he intends to pronounce a false form, a substantial change is present more readily than if he has a right intention. We have a celebrated example of this in the response of Pope Zachary to St. Boniface in the eighth century: someone, through ignorance of the Latin language but with the best intention, baptized under this form: "*Ego te baptizo in nomine Patria et Filia et Spiritus sancta.*" The Pope declared this baptism valid, provided the minister had not pronounced such a form from a heretical intention.[44]

[42] Thus St. Thomas (*S. theol.* 3, q. 60, a. 8), who nevertheless adds: "But if it is understood thus ... not as though something is effected in baptism in the name of the Blessed Virgin, but so that her intercession may profit the baptized person for preserving baptismal grace, the perfection of baptism is not removed."

[43] Cf. Leo XIII, Constitution on Anglican Ordinations, 15 September 1896.

[44] c. 86, dist. 4, *De consecr.*

14. 4. An accidental change of form is present if words other than those prescribed in the Ritual are indeed employed, but the same sense of the form remains. Cf. the example just adduced concerning the form of baptism.

Eight modes are customarily adduced by which it can happen that the form of the sacraments is changed:

1. **On the part of the language,** for example, if someone pronounces the words of consecration in the vernacular language. Such a change is accidental because the sense of the form is not changed.
2. **If the prescribed words are changed into synonyms,** for example, if "I wash" is said in place of "I baptize." Such a change also is accidental for the same reason.
3. **By corrupting or mutilating the words of the form;** for example, if someone stammers, or if someone says *Patrias* in place of *Patris*, *copus* in place of *corpus*, *calis* in place of *calix*, *es* in place of *est*, etc. If, notwithstanding the corruption and with the circumstances considered, the sense of the form is easily understood and a right intention is present, such a change is accidental; otherwise it is substantial. Hence those nations which cannot easily pronounce the letters *h* or *x*, and consequently in the consecration say, "*oc est corpus meum*," or "*ic est calis*, etc.," validly constitute the sacrament.
4. **By adding something to the words of the form,** for example: "I baptize you in the name of the almighty Father and of the only-begotten Son and of the Paraclete Spirit and in honor of the Blessed Virgin Mary." These or similar additions are considered substantial changes if they notably change the sense of the form; otherwise they are accidental.
5. **By subtracting something from the prescribed words of the form;** for example, if someone omits in baptism the word "I," or in the consecration the word "for." If the sense of the form is not notably changed by such a subtraction, as happens in the examples adduced, it is an accidental change; otherwise it is a substantial change.
6. **By transposition of the words,** for example: "In the name of the Father and of the Son and of the Holy Spirit, I baptize you." For the most part only an accidental change arises from this, because the sense of the form is not notably changed.
7. **By partial repetition of the form,** for example, a scrupulous person says while consecrating: "For this, this, this is, is, is My Body, Body." Such a change is accidental, since the sense of the form is understood sufficiently easily.
8. **By disjunction of matter and form, or by injuring the union,** which will be treated especially in the following paragraph.

Certain authors express, in the following little verses, although not so completely, the modes by which a change of form is prohibited:

Take nothing from the form, add nothing, vary nothing;

Beware of transposing, corrupting the words, or delaying.

15. Principle. a) He who makes a substantial change of matter or form renders the sacrament invalid and, if he acts knowingly, sins most gravely; b) but he who makes an accidental change of

matter or form does not render the sacrament invalid, but sins more or less if he acts knowingly and without a sufficient cause.

a) That a substantial change of matter or form, even if made inadvertently, renders a sacrament invalid is evident from what has been said, since thereby the essential elements of the sacrament are destroyed. Hence, for example, not even in extreme necessity can baptism be validly administered with milk.

He who knowingly, deliberately, and freely perpetrates such a substantial change commits a mortal sin containing a fourfold malice; namely, he sins: a) **against religion,** because he commits a grave sacrilege by abusing a sacred thing and, in a certain manner, mocking Christ, since contrary to His institution he employs signs unfit for conferring grace; b) **against a grave precept of the Church** prohibiting every substantial change in the sacraments; c) **against charity,** because he deprives his neighbor of the precious gift of grace annexed to valid sacraments; d) **against justice,** and this is certain if the minister is bound by justice to administer the sacraments, as, for example, a parish priest. Probably the same must be said even if the minister is not bound by justice to administer the sacraments, because by the very fact that he voluntarily undertakes the administration of a sacrament, he enters into a tacit contract to administer it validly and rightly. I said, however, that one changing it knowingly and freely sins gravely; for if such a substantial change occurs from ignorance, it can be without any sin, for example, if a layman through ignorance invalidly administers private baptism. But a priest who by office is bound both to know and diligently to observe the prescribed rite of the sacraments can with difficulty be excused from sin if, on account of ignorance or insufficient advertence, he makes a substantial change of matter or form.

b) An **accidental change** of matter or form indeed does not render a sacrament invalid, since its essence remains preserved; but he who knowingly, deliberately, and freely makes such a change sins more or less, since he violates a precept of the Church and treats a sacred thing irreverently. Whether such a change is a grave or light sin cannot be determined by a general rule, but must be left to the judgment of a prudent man. Thus rightly Billuart.[45] Hence several theologians teach that it is only a venial sin if someone knowingly and negligently omits in baptism the word "I," or in the consecration the word "for." But a change, although accidental, made in the matter or form of a sacrament becomes a grave fault: a) if it is made from contempt; b) with proximate danger of erring in substantial matters; c) with scandal of the faithful; d) from a depraved intention of the minister.

[45] *De sacr.* diss. 1, a. 6, § 2.

§ 3. On The Union Of Matter And Form

16. Necessity and quality of the union. Just as matter and form must be united together for the constitution of a physical body, so it is also in the sacraments. Since, however, a sacrament is a moral being, a perfectly physical union is not required for its validity, but a moral union between matter and form suffices. I say, however, for its validity, for a greater union is often required for the liceity of administration, as will be said below concerning the individual sacraments.

Rule. This moral union is considered present when, with the nature of each sacrament considered, according to the common estimation of men the words truly affect the matter and together with it constitute one sign.[46]

[46] Cf. St. Thomas, *S. theol.* 3, q. 60, a. 8 ad 3.

17. Resolutions. 1. The greatest union and coexistence, which therefore is called a **physical union** by many authors, is required in the consecration of the Eucharist, in which the pronouns *hoc* and *hic* ("this") demonstrate that the matter is physically present from the beginning when the form of consecration is pronounced. Moreover, since this sacrament consists in a permanent thing and not in a transient action, it is scarcely possible that matter and form not be simultaneous.

2. A lesser union and coexistence of form and matter is required for the validity of baptism, confirmation, extreme unction, and order. Hence these sacraments are certainly valid if at least a partial, although minimal, physical coexistence between the form and the proximate matter was present. Thus, for example, baptism is valid if the one baptizing poured water over the person to be baptized and, when the last drop of water is flowing, suddenly begins to say: "I baptize you, etc." Likewise, extreme unction is valid if the priest, while pronouncing the final word of the form, at length begins to anoint. Thus the common opinion. According to an opinion at least theoretically probable, these sacraments were validly conferred even if there is a very brief interval between the application of the matter and the form. The reason is that, although the forms of the aforesaid sacraments signify present time, "I baptize," "I sign," etc., nevertheless morally speaking the present time admits some latitude, and that which immediately preceded or immediately follows is considered still present. Thus, for example, one who says, "I drink to your health," is also considered truthful even if he is not drinking now but is about to drink immediately. Authors do not agree how great an interval destroys the validity of these sacraments. Billuart[47] thinks that an interposed delay of one *Hail Mary* does not destroy validity; but St. Alphonsus[48] opines that a delay of one *Our Father* invalidates these sacraments. But the Holy Office, in an Instruction given on 2 May 1858 to the Apostolic Vicar of Abyssinia, declares that baptism, and all other sacraments following upon a baptism thus conferred, are to be repeated conditionally if the form is pronounced when the washing has already been entirely completed, or conversely if one proceeds to the washing when the pronouncement of the form has been completed.[49] This Instruction of the Holy Office indeed seems to be observed in practice everywhere. But the contrary opinion of Lugo,[50] asserting that in this case the sacrament need not necessarily be repeated, no longer seems safe in practice. Thus also St. Alphonsus, who, although in the place cited he seems to approve the opinion of Lugo and others, nevertheless in *Exam. ordinandorum*, n. 6, calls it not probable in practice.

3. A still lesser union of form and matter is required for the validity of penance and matrimony. For in penance the proximate matter, namely, contrition and confession, must altogether precede absolution, and it suffices that contrition virtually coexist with absolution, which can even be deferred for a short while, namely, according to some, for three or four hours.[51] In the sacrament of matrimony, in which the contract cannot be separated from the sacrament, the form of the sacrament is the acceptance of the consent of the other party. As long as this consent morally perseveres, for so long can the acceptance of the other party supervene, even after several months, and then at length the sacrament is constituted. Therefore, a still lesser simultaneity between form and matter is required. Such a mode of receiving the sacrament can occur when matrimony is contracted through a proxy.[52]

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[47] *De sacr.* diss. 1, a. 6, § 3.

[48] *Theol. mor.* l. 6, n. 9.

[49] *Collect. de Prop. Fide*, n. 1159.

[50] *De poenit.* disp. 7, n. 275. Certain authors, such as Gaudé in the notes to the new edition of the Theology of St. Alphonsus, l. 6, n. 9, cite in favor of Lugo's opinion several decisions of the Holy Office, namely, those of 12 September 1877, 17 March 1897, 30

November and 14 December 1898, by which certain priestly ordinations were declared valid; but these decisions are not to the point: 1. because it is not yet established among authors what the essential form and matter of the sacrament of order are, whether the imposition of the hand, the presentation of the instruments, or both together; 2. because in the cases proposed the doubt did not properly concern the required simultaneity of matter and form, at least if the decision of 17 March 1897 of the following tenor is excepted: "When the petitioner received the sacred order of the priesthood, four or five were to be ordained together, all of whom eagerly strove to touch the instruments at the same time. He remembers that he first touched them, but when the formula was pronounced, although he tried to touch them again, he was prevented by the hands of the others." The response of the Holy Office, confirmed by Leo XIII, read: "Let the petitioner rest content" (*Analect. eccl.* V [1897], 203). In that case the form was pronounced after the touching of the chalice; but because it is not established what the form of this sacrament is, neither does this decision destroy the decision of the same Holy Office of 2 May 1858 cited above.

[51] Cf. Billuart, *l.c.*, a. 4, § 2.

[52] Cf. below in the treatise on matrimony, n. 660.

§ 4. On The Certitude Of Matter And Form

18. Principle: Outside a case of urgent spiritual necessity, it is a grave sin to employ matter that is not morally certain.[53]

Explanation. Since the validity of the sacraments depends upon matter and form, there is a grave obligation to employ certain and prescribed matter and form in conferring the sacraments. Therefore, whenever there is question of matter and form, and consequently of the validity of the sacraments, it is not lawful to follow even the more probable opinion, or to employ doubtful form or matter. The reason is that otherwise the sacrament would be frivolously exposed to the danger of nullity, which indeed would inflict grave irreverence upon God. Hence the following proposition was condemned by Innocent XI: "It is not illicit in conferring the sacraments to follow a probable opinion concerning the validity of the sacrament, the safer opinion being abandoned, unless law, agreement, or danger of incurring grave harm forbids it. Hence a merely probable opinion is not to be employed in the conferral of baptism, priestly or episcopal order."[54]

I said, however: **outside a case of urgent spiritual necessity.** For the sacraments are for men, not men for the sacraments. Therefore, it must be presumed that Christ the Lord, on account of His infinite charity toward us, wills that provision be made for the salvation of men even with danger of the nullity of the sacrament, when this cannot be done otherwise. Hence, for example, when clean water is lacking, baptism can, and indeed must, be administered with coffee to a child about to die; sacramental absolution can be imparted to a dying man deprived of his senses, even if the priest doubts his disposition and even whether he received baptism. The same holds for extreme unction, which can licitly be administered with chrism (when the oil of the sick is lacking), when the dying man, perhaps existing in mortal sin, cannot receive the sacrament of penance. In a word: whenever even the least probability is present that a sacrament can be administered validly, it can and must be administered (conditionally), if otherwise the man is in urgent danger of eternal salvation. Outside urgent necessity, however, it is not lawful to administer the sacraments in this manner. Hence a priest cannot consecrate doubtful matter in order to give Communion to a dying man, since he can be saved even without Communion.

How a confessor ought to act if he doubts the sufficient contrition of the penitent, see below in the treatise on penance.

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[53] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 29.

[54] Denz., n. 1151. Cf. the explanation of this condemned proposition in Concina, *De sacr. in gen.* l. 1, diss. unic., c. 1, where it is also asserted that this condemned proposition was defended by more than seventy probabilists.

§ 5. On The Application Of Form To Matter

19. 1. Ordinarily, the application of form to matter must be made by one and the same minister. For the administration of the sacraments is one action to be performed in the name of Christ, which is composed of two elements, namely, the application of form to matter. But if one person were to apply the matter and another the form, two actions rather than one would be completed. Moreover, the signification of the form would often not be verified if one person were to apply the remote matter and another pronounce the form; for example, the form of baptism would be false if one person poured water over the one to be baptized and another said: "I baptize you, etc."[55]

I said, however, **ordinarily**. For in the sacrament of penance the penitent applies the matter, namely, by placing the acts of contrition, confession, and satisfaction; but the confessor applies the form by pronouncing absolution. Moreover, it can happen that several persons consecrate the Eucharist together, as occurs in the ordination of a priest, and more often in the Greek Church. In extreme unction also the individual anointings can be made by different persons, as will be said below in the treatise on extreme unction.

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[55] Cf. *S. theol.* 3, q. 67, a. 6.

20. 2. The form must be applied vocally and without interruption.

a) Since the form is part of the sensible sign in the sacraments and consists in words, it must necessarily be expressed vocally. Hence it is required that the minister hear himself, or at least be able to hear himself, while pronouncing the form. It is not sufficient merely to express the words of the form mentally. In practice, the essential words of the form are to be pronounced more clearly and slowly than, for example, in the private recitation of the Breviary. For the validity of the sacrament of matrimony, however, it is indeed sufficient that consent be manifested by each party through any external sign whatsoever. Nevertheless, ordinarily it must be insisted that those entering marriage express consent orally and clearly. (More fully on this matter in the treatise on matrimony.)

b) The words of the form must be pronounced in one continuous course and without interruption.

The reason is that otherwise they easily lose their signification. Therefore, if the interruption is so great that the words no longer effect one complete sense, the sacrament is invalid.[56] Yet in practice the nullity of a sacrament on account of an interruption of the form can with difficulty be determined with certainty. Casuists rightly note, however, that the sense of the form is lost much more easily if not only words but also syllables are separated. Thus, for example, they say: If one baptizing, after saying "I baptize you," were to exclaim toward the sacristan, "Hold the basin thus," or if he were to sneeze, cough moderately, or spit, and then continue, "in the name of the Father and of the Son and of the Holy Spirit," the baptism would have been validly conferred. Or if the confessor, after saying "I absolve you," noticed that the penitent had departed from the confessional, recalled him by exclaiming, "What is this? Why did you not wait? Return and kneel," and only then added, "from your sins," he validly absolves. On the contrary, they say that the consecration would be invalid if the priest, after saying "For this is My Bo-" were to cough notably and then continue, "-dy."[57] All these or similar casuistic resolutions are of little usefulness for practice, in which the following are to be observed:

1. **Every interruption of the form is diligently and, so far as possible, to be avoided.** Hence priests who utter interjections during the pronouncement of the form act truly scandalously.

2. **When some involuntary interruption occurs during the pronouncement of the form, for example, by sneezing or coughing, then the form is to be pronounced anew, unless it is certain that the essential part of the form has already been pronounced.** Thus, for example, if a priest coughs or sneezes while pronouncing the words "For this is My Body," he does much better if, after the coughing or sneezing has ended, he begins again: "For this is, etc." On the contrary, if he coughs or sneezes after he has said "For this is the chalice of My Blood, of the new and eternal testament," he ought not, after the coughing or sneezing has ended, to begin the form again, but to continue it.

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[56] *L.c.*, q. 68, a. 8 ad 3.

[57] Cf. Noldin, *De sacr.*, n. 16.

§ 6. On The Repetition Of Matter Or Form

21. A repeated form can be applied to matter either absolutely or conditionally. The condition is: if the first application of the form was not valid, then the form is applied anew; otherwise it is not. Concerning this repetition the following are to be noted:

a) The form must be repeated **absolutely** if it was applied to matter certainly unfit, or if the sacrament was otherwise certainly invalid. Therefore, for example, if a priest pronounced the words of consecration over water contained in the chalice, he must (after the water has been poured out and wine poured in) consecrate again absolutely. Thus all authors.

b) **If a slight and unfounded doubt arises concerning the validity of a sacrament, it is in no way lawful to repeat the sacrament conferred.** But he who nevertheless rashly repeats the sacrament, or repeats the form over the same matter (even conditionally), sins gravely. The reason is that in this way grave irreverence is inflicted upon religion. For if, for example, someone rashly repeats baptism because of a slight doubt, the second baptism would most probably be null, and the one baptizing, by pronouncing for a second time, "I baptize you," says something false. This indeed is gravely irreverent toward religion. Nor is a conditional repetition lawful in that case, because such an added condition, if the doubt is purely negative, is held as not having been added. One who rashly repeated the sacrament of baptism formerly incurred, in addition to the guilt of mortal sin, an irregularity by reason of the offense; but this irregularity no longer exists, since it is omitted in the Code of Canon Law.

I said, however: **one who rashly repeated**; for if someone, agitated by a scruple although one not so well founded, repeats the form of a sacrament for greater security, he generally does not sin gravely, for every intention of dishonoring God is absent; on the contrary, the form is repeated on account of the honor of God and the salvation of the one who receives the sacrament. This case can easily occur if a confessor, greatly fatigued from a prolonged hearing of confessions, sometimes does not remember that he pronounced the form of absolution. Then it is lawful secretly to pronounce absolution again under condition; for neither does scandal arise, nor is irreverence inflicted upon religion, because in other cases also it is lawful to pronounce absolution over sins already remitted on another occasion. Nevertheless, all persons (and especially the scrupulous) ought diligently to labor that empty repetitions of the sacramental form be avoided. For if someone, knowing himself to have such a habit of repeating, does not diligently strive to put it away, he is not excused from sin. This sin indeed is objectively grave, because these superfluous repetitions are irreverent toward religion. Nevertheless, I would not dare to say that in such a case each repetition made without sufficient foundation is a mortal sin, unless grave scandal and a depraved intention are present. For experience

establishes that these useless repetitions are made without sufficient freedom and deliberation on account of scruples and other reasons.

Note. When there is question of sacraments very necessary for salvation, for example, of baptism, of the absolution of a dying man existing in mortal sin, or of extreme unction for a dying sinner deprived of his senses, then even with a slight but real doubt it is lawful to repeat the sacraments under condition.[58] The reason is that which has already been adduced more often: the sacraments are for men. Likewise, it is lawful to repeat the sacrament of order when a slight but real doubt concerning its validity exists; for the greatest harms would arise if someone not rightly initiated into the priesthood were to celebrate Mass, hear confessions, and discharge the other priestly offices.

c) **If a prudent doubt exists whether the sacraments were in fact conferred or were conferred validly, they are to be conferred again under condition.** Thus the Code of Canon Law, c. 732, § 2. The reason is always the same, because the sacraments are for men. For Christ, moved by the greatest mercy, instituted the sacraments for our salvation. Therefore, He will in no way be offended if someone, when a serious doubt exists concerning the validity of a sacrament conferred, repeats it for greater security. Indeed, Christ Himself requires that the sacraments then be repeated under condition, lest men be deprived of such great goods or exposed to such great dangers. Whenever a sacrament doubtfully conferred is repeated, the conditional form, of which there will immediately be discussion, must be employed.

[58] Cf. below, on the repetition of baptism for converts from heresy, n. 139.

§ 7. On The Conditional Form

22. Notion. A conditional form is said to be one which is uttered under a condition expressed either in words or at least in the mind, namely, that the minister does not intend to confer the sacrament unless all things required for its validity are present. The conditional form is employed: a) in the repetition of a sacrament, for example, "If you are not baptized, I baptize you, etc."; b) in the first conferral of a sacrament if, namely, there is an insoluble doubt concerning some essentially required condition, for example, a confessor absolves a man deprived of his senses, concerning whose death there is doubt, saying: "If you are alive, I absolve you, etc."

23. Reason and manner of the conditional form. The reason why the conditional form is employed is the reverence due to the sacrament. For in this manner the minister protests that he in no way wills to administer the sacrament in the name of Christ if an essentially required condition is lacking. It readily appears to anyone considering the matter that in every administration of the sacraments the form is in some manner conditional, because the minister always has the implicit intention: I confect the sacrament, provided all necessary things are present. Sometimes the condition added must, according to the prescription of the Ritual,[59] be manifested **in express words**, namely, in baptism and extreme unction. In baptism it is to be said: "If you are not baptized, I baptize you, etc."; in extreme unction the priest is to say: "If you are capable, through this holy anointing, etc." In the other sacraments it suffices to express the condition in the mind alone.

[59] Tit. 2, c. 1, n. 9; tit. 5, c. 1, n. 12.

24. Liceity. As a general rule for the licit practice of a conditional form it is customary to adduce: **It is lawful to confer a sacrament under condition whenever, if conferred absolutely, it would be exposed to the danger of nullity, but if absolutely denied, it would deprive a man of a great good or thrust him into a great danger of eternal salvation.**

The condition added is either concerning the present, the past, or the future.

1. It is almost never lawful to add a condition **concerning the future**; indeed, all sacraments (except matrimony) thus conferred are null.[60] The reason is that the duty of conferring the sacrament here and now by the application of form to matter is incumbent upon the minister; but he arrogantly assumes to himself a power which he does not have if he wills to suspend the effect of the sacrament until after a future condition has been fulfilled. Hence a sacrament conditionally conferred in this manner is null now and in the future. For now the minister does not have the intention of fully administering it; but in the future there is no longer the moral coexistence of form and matter which is essentially required for the validity of the sacrament, as is evident from what was said above. **Matrimony**, however, contracted under a condition concerning the future becomes valid after the condition has been fulfilled. This occurs on account of the special nature of matrimony, which is a contract. For since the sacrament of matrimony is completed by the very fact that the legitimate consent of the contracting parties is manifested, this sacrament begins to exist if, after the future condition has been fulfilled, the same consent perseveres. For the most part, however, conditional marriages of this kind are illicit.[61]

From what has been said it follows how wrongly those confessors act, or at least how incautiously they speak, who say to a penitent: "I give you absolution under the condition that you will leave this occasion of sinning; otherwise your absolution is invalid." A confessor can indeed say: "Unless you seriously promise me that you will leave the occasion of sinning, I cannot grant you absolution." But if the penitent has seriously promised this here and now, the confessor must give absolution absolutely, without any condition.[62]

2. **A sacrament conferred under a condition concerning the present or the past is valid if the condition is verified; otherwise it is null.** For example, if a confessor says to a dying man deprived of his senses, "If you are alive, I absolve you," the absolution is valid if that man (otherwise disposed) is still alive; otherwise it is null. The reason is that the intention of the minister, the union of form and matter, and the other required dispositions of the penitent are present.

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[60] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 26.

[61] Cf. below in the treatise on matrimony, n. 661 sqq.

[62] Cf. below in the treatise on penance, n. 332.

25. Scholion. On the origin of the conditional form. The conditional form (expressed in words) does not seem to have been in use during the first seven centuries;[63] but the conditional form conceived in the mind alone was always in use, because there were always doubtfully valid sacraments and therefore sacraments to be repeated. The first mention of an expressed conditional form is found in the eighth century in Benedictus Levita.[64] The compiler, however, took this capitular from the statutes of St. Boniface in the Council of Liptina, statute 28,[65] where it is prescribed: "Those concerning whom there is doubt whether they are baptized or not are by all means to be baptized without any scruple with these words only: I do not rebaptize you, but if you are not baptized, I baptize you in the name of the Father, etc." Similar things were prescribed in the twelfth and thirteenth centuries by Alexander III and Gregory IX. From the thirteenth century the conditional form prevailed in all the churches of the Latins. At first it was employed only in the sacraments which imprint a character, especially in baptism and order; later it was employed also in the other sacraments, for example, in penance. Therefore, from the constant usage of the Church it is now established that the conditional form is lawful.

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[63] Cf. Billuart, *De sacr.* diss. 1, a. 6, appendix 2; Concina, *De sacr.* diss. unic., c. 6; Benedict XIV, *De syn. dioec.* l. 7, c. 6, n. 1.

[64] *Capitularium collect.* l. 2, n. 184 (Migne, *Patr. lat.* 97, 770).

[65] Migne, *l.c.* 89, 823.

Article IV. On The Existence Of The Sacraments

After the essence of the sacraments has been sufficiently explained, their existence must be proved in a few words, and indeed not only in the New but also in the Old Testament. Theologians customarily distinguish three states of the human race in this matter: a) the state of original justice; b) the state of fallen nature until Christ; c) the state after the redemption of Christ.

26. a) The state of original justice is the state of our first parents in paradise before sin. It is the common opinion of theologians that no sacrament in fact existed in paradise, both because nowhere is even the least trace of the institution of sacraments at that time found, and because that state is thought to have endured for a very short time, and consequently sacraments would have been useless. Hence the matrimony of Adam and Eve, although called a sacrament by St. Paul,[66] was not a sacrament properly so called, conferring grace, but only a legitimate contract, as generally were all marriages before Christ (and now the marriages of unbelievers).

Theologians further ask whether sacraments could at least fittingly have been instituted in paradise. St. Thomas, and with him the Thomists, more probably answer in the negative.[67] Suarez, however, with certain others, holds the contrary. This question is of almost no practical utility and also of little importance. Hence, for the sake of brevity, we omit it.[68]

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[66] Eph. 5:32.

[67] Cf. *S. theol.* 3, q. 61, a. 2.

[68] See Billuart, *l.c.*, diss. 2, a. 1; Chr. Pesch, *Prael. dogm.* VI, n. 398 sqq.

27. b) The state of fallen nature until Christ is customarily divided into two epochs, namely, the state before the written law and the state after the written law. The first epoch is customarily called the state of the law of nature, not because it excludes supernatural law, for in it the supernatural precepts of faith, hope, and charity had to be observed, but because at that time there was no written law from the positive will of God. That epoch endured from the expulsion from paradise until the Sinaitic law. The second epoch endured from the Sinaitic law until the advent of Christ.

In the first epoch there existed a remedy both for original sin and for actual sins, which remedy more probably was a sacrament.

A strict proof of this opinion indeed is found neither in Sacred Scripture nor in the definitions of the Church, but St. Augustine already taught: "Nor therefore is it to be believed that, even before circumcision was given, the servants of God, since faith in the Mediator who was to come in the flesh was within them, assisted their little ones by no sacrament of Him, although, for some necessary cause, Scripture willed what it was to remain hidden. For we also read of their sacrifices, by which assuredly that Blood was prefigured which alone takes away the sins of the world."[69] St. Thomas also taught the same.[70]

Reasons of congruity can also be adduced: For sacraments are sensible signs of invisible sanctifying grace. But after the sin of Adam it was very fitting that signs of this kind be instituted by God. Therefore.... Proof of the minor: After the sin of Adam no one can be saved except through faith in Christ the Redeemer.[71] But it is very

fitting that this faith be manifested by sensible signs: 1. by reason of the corporeal nature in man, which was corrupted through sensible sin, so that from whence death arose, thence life might rise again; 2. by reason of the Redeemer, sensible in His humanity; 3. by reason of the sensible unity of the faithful. For wherever there is a visible society, there also ought to be some sensible distinctive sign. Therefore, it is very fitting that after Adam's sin sensible signs of invisible sanctifying grace, or sacraments, were instituted by God.

That at every time God with a true and sincere will willed to grant sanctifying grace to all follows from His universal salvific will. "(God) wills all men to be saved."[72] But if God had not given some remedy against original sin, it is difficult to understand how a true possibility of eternal salvation would have been present for infants dying before the institution of circumcision. Since these things are so, all theologians unanimously teach that at least for the infants of that state there was some remedy of salvation, which is rightly called a sacrament. Whether some sacrament also existed for the adults of that epoch is denied by Suarez, Vasquez, Lugo, and others, but is rightly affirmed by St. Thomas[73] and the Thomists, because it scarcely seems possible that all men, even the uncultivated, without an external sign, would have been cleansed from actual sins committed by internal faith alone in Christ to come.[74]

In the second epoch, that is, from the Sinaitic law until Christ, it is a morally certain and most common opinion that true sacraments were instituted by God, the denial of which would hardly escape the note of temerity. For it is established that in the Mosaic law God instituted many sacred ceremonies which regarded legal sanctification, and consequently at least indirectly also internal sanctification.[75] Circumcision especially procured internal sanctification.[76] The same is established from the Councils of Florence and Trent, which teach that the sacraments of the New Law differ greatly from the sacraments of the Old Law.[77] But if a difference is present, then the sacraments of the Old Law exist; for it would be absurd to say that the sacraments of the New Law differ from the sacraments of the Old Law if the latter did not even exist.

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[69] *Contra Iulian.* l. 5, c. 11 (Migne, *Patr. lat.* 44, 809).

[70] *S. theol.* 3, q. 61, a. 3, and q. 65, a. 1 ad 7.

[71] Cf. Rom. 3:22 sqq.

[72] 1 Tim. 2:4.

[73] *S. theol.* 3, q. 65, a. 1 ad 7; IV Sent., dist. 1, q. 1, a. 2, sol. 3.

[74] Cf. Billuart, *De sacr.* diss. 2, a. 1, and Drouven, *De re sacr.* l. 1, c. 2.

[75] Cf. the Book of Leviticus.

[76] Cf. above, n. 4.

[77] Denz., nn. 695 and 845.

28. The number of the sacraments of the Old Law is not assigned in the same manner by theologians. All indeed admit that circumcision was a sacrament. Hence St. Augustine already said: "Circumcision was the sacrament of that time, which prefigured the baptism of our time."[78] But since only boys at least eight days old could receive circumcision, it was fitting that a similar remedy against original sin and a similar sign professing faith in the Messiah to come should exist for females and also for boys who died before the eighth day. This sign is customarily called by theologians the **sacrament of the law of nature**.[79]

But just as through circumcision or the sacrament of the law of nature the whole people was consecrated to the worship of God, so in a special manner Aaron and his sons were consecrated to the priesthood or to the office of Levites.[80] A **consecration of the Levites** of this kind, which prefigured the sacrament of order, is

commonly held by theologians to be a sacrament.[81] A few, however, deny this. The **eating of the paschal lamb** prefigured our pasch, that is, Christ.[82] Therefore it is commonly held to be a sacrament prefiguring the sacrament of the Eucharist. St. Thomas teaches the same concerning the eating of the loaves of proposition, which was permitted to priests alone and indeed in a sacred place.[83] Finally, in the Old Law there were various **purifications** from certain external uncleannesses and also expiations from sins.[84] All these things prefigured the sacrament of penance. Hence it can generally be said that there were four categories of sacraments in the Old Law, namely:

1. circumcision or the sacrament of nature, prefiguring baptism;
2. the eating of the paschal lamb or of the loaves of proposition, prefiguring the Eucharist;
3. diverse purifications and expiations, prefiguring penance;
4. the consecration of Levites and priests, prefiguring order.

But to three sacraments of the New Law, namely, confirmation, extreme unction, and matrimony, nothing corresponded in the Old Law. For "to the sacrament of confirmation, which is the sacrament of the fullness of grace, no sacrament can correspond in the Old Law, because the time of fullness had not yet arrived, since 'the law brought nothing to perfection.'[85] Likewise also to the sacrament of extreme unction, which is a certain preparation for entrance into glory, the approach to which was not yet open in the Old Law, the price [of redemption] not yet having been paid. Matrimony indeed existed in the Old Law insofar as it was an office of nature, but not insofar as it is the sacrament of the union of Christ and the Church, which had not yet been effected. Hence also in the Old Law a bill of repudiation was given, which is contrary to the nature of a sacrament."[86]

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[78] *De anima* l. 2, c. 11, n. 15 (Migne, *Patr. lat.* 44, 504).

[79] Cf. *S. theol.* 3, q. 70, a. 4 ad 3.

[80] Cf. Ex. c. 29 and Lev. c. 8.

[81] Cf. *S. theol.* I-II, q. 102, a. 5.

[82] 1 Cor. 5:7.

[83] Lev. 24:9. Cf. St. Thomas, *l.c.*

[84] Lev. c. 12 sqq.; Num. c. 19 sqq.

[85] Heb. 7:19.

[86] *S. theol.* I-II, q. 102, a. 5 ad 3.

29. c) That in the New Law sacraments exist, and indeed sacraments distinct from those of the Old Law, is defined as of faith in the Councils of Florence and Trent.[87]

Reasons of congruity. The existence of the sacraments indeed cannot be strictly proved from natural reason, since they are altogether supernatural gifts; nevertheless, several reasons of fittingness can be adduced, for example: 1. it is very congruous that grace be conferred upon man, who is composed of body and soul, through sensible signs, such as the sacraments instituted by Christ; 2. the sacraments are greatly serviceable for strengthening the visible society of the Church, promoting the worship of religion, retaining vividly the memory of the Passion of Christ, exercising our humility, and professing the faith.[88]

The Roman Catechism[89] enumerates seven reasons of congruity why it was fitting for the sacraments to be instituted:

1. That they may assist the weakness of human understanding. From sensible signs man more easily perceives the existence and efficacy of interior grace.
2. That they may raise up slowness in believing. For our faith is aroused by external signs.
3. That a ready and certain medicine may exist for driving away the diseases of the soul and preserving salvation. For the fruit of the Passion of Christ is communicated more certainly through the sacraments than through perfect contrition and other means.
4. That they may be symbols of Christianity and the true religion, and bonds of the holy society. For by the sacraments received, Christian men are distinguished and joined together in the visible Church.
5. That they may be a profession of our faith.
6. That they may be incitements to faith and charity.
7. That they may be things arousing humility. For through the sacraments pride is subdued, since man is compelled to subject himself to sensible elements in order to obey God.

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[87] Cf. above, n. 27, and also the following chapter, where there will be discussion of the number of the sacraments.

[88] Cf. *S. theol.* 3, q. 61, aa. 1 and 4.

[89] Part 2, c. 1, q. 7.

Chapter II. On The Number And Division Of The Sacraments Of The New Law

In the preceding article enough has already been said concerning the number of the sacraments of the Old Law; hence here we treat only of the number and division of the sacraments of the New Law.

30. Proposition. There are seven sacraments of the New Law, namely, baptism, confirmation, Eucharist, penance, extreme unction, order, and matrimony. This is of faith.

Thus the Councils of Florence and Trent defined: "If anyone says that the sacraments of the New Law were not all instituted by Jesus Christ our Lord; or that there are more or fewer than seven, namely, baptism, confirmation, Eucharist, penance, extreme unction, order, and matrimony; or even that any one of these seven is not truly and properly a sacrament, let him be anathema."[90]

From this definition, however, it is not lawful to deduce that the number seven is the lowest division of the sacraments; for, as will be evident below in the treatise on order, according to all theologians at least the presbyterate and diaconate are true and proper sacraments. Thus the sacrament of order is indeed subdivided into several parts which are true sacraments, as sensible signs instituted by Christ for conferring sanctifying grace; nevertheless, together they constitute only one sacrament of order, as being ordered to one principal thing, namely, to the priesthood.

Almost all Protestants deny the sevenfold number of the sacraments, with the exception only of certain Ritualists. At the beginning of the so-called Reformation, Protestants admitted at one time two, at another three, and at another four sacraments; indeed, Luther at the beginning of his apostasy still acknowledged seven sacraments, but later only two.[91] Today Protestants commonly admit only two sacraments. The Anglicans have the following in the *Book of Common Prayer*: "How many sacraments has Christ instituted in His Church? Two only which are generally necessary for salvation, namely, baptism and the supper." The reason for this fundamental error is twofold: a) because according to Protestants the sacraments do not at all produce justification, but only arouse faith; or they are nothing but pledges by which a man is rendered more certain concerning the remission of sins. But such pledges of the remission of sins are found only in baptism

and the Eucharist; b) because the other sacraments (apart from baptism and the Eucharist) are not so clearly described in Sacred Scripture.

[90] Council of Trent, sess. 7, can. 1 on the sacraments in general (Denz., n. 844); cf. Council of Florence, *Decree for the Armenians* (Denz., n. 695).

[91] Cf. *Sermo de Novo Testamento*, a. 1520.

31. I. Argument from tradition. That Christ truly instituted seven sacraments can be proved from tradition in both the Latin and the Eastern Church. It must indeed be admitted that neither in Sacred Scripture nor in any author up to the twelfth century is there discussion of the sevenfold number of the sacraments. But Protestants cannot thence derive an argument against Catholic doctrine. For Sacred Scripture does not enumerate the sacraments at all; and just as it does not enumerate seven, so neither does it enumerate the two sacraments which Protestants admit. The Holy Fathers and ancient authors speak of all seven sacraments received in the Catholic Church, as will be evident below when the existence of the individual sacraments is treated. Thus almost all the Holy Fathers speak of baptism and the Eucharist; Tertullian, St. Cyprian, and many others also of confirmation; St. Augustine in various places treats in addition of penance, extreme unction, order, and matrimony.

That the Holy Fathers never speak expressly and explicitly of the sevenfold number of the sacraments arises from various causes:

a) In ancient times up to the thirteenth century the word *sacrament* had dissimilar significations and notably included also sacramentals and sacred ceremonies. Thus, for example, even in the eleventh century St. Peter Damian (d. 1072) enumerated twelve sacraments, among which were blessings of things, canons, monks, nuns, and even holy water; Hildebert of Tours (d. 1134) enumerated nine sacraments. St. Bernard (d. 1153) recognizes ten sacraments, among which is also the washing of feet at the supper of the Lord.[92]

Since, therefore, the ancient authors did not determine the signification of sacrament so clearly, it is easily understood why they did not indicate the number of the sacraments in the same manner.[93] The first who seems expressly to have enumerated seven sacraments was St. Otto, Bishop of Bamberg (c. 1139).[94] Master Roland Bandinelli (later Alexander III) did the same in the *Sentences* which he composed about the year 1150.[95] Peter Lombard (d. 1164) defines a sacrament sufficiently clearly and then enumerates seven sacraments. After Peter Lombard, all theologians gradually acknowledged the sevenfold number of the sacraments.[96]

b) Among the ancient authors there is not so systematic a treatment of all the sacraments as there is from the thirteenth century onward; consequently, those authors indeed explained the doctrine concerning individual sacraments if an occasion occurred, but they did not enumerate them all together.

Some theologians[97] think that the so-called **discipline of the secret** was the reason why the ancient authors did not enumerate seven sacraments. Pourrat[98] rightly rejects this explanation; for: a) if the Holy Fathers could explain the individual sacraments, as in fact they did in their writings, why could they not indicate all of them together by the number seven? Then: b) did the discipline of the secret prevent authors from the sixth century to the twelfth century from clearly indicating the number seven? Or did the same discipline of the secret impel those authors to enumerate at one time twelve, at another ten, and at another nine sacraments? Surely no one will say this. Therefore, the silence or disagreement of the ancient authors concerning the sevenfold number of the sacraments is rather to be explained from the manifold and inconstant acceptation of the word *sacrament*.

A valid argument for the sevenfold number of the sacraments is drawn from the agreement of the Eastern Churches in this matter.

For all the Eastern Churches, even those which separated themselves from the Roman Church as early as the fifth century, assert the sevenfold number of the sacraments.[99] Hence, whenever there was discussion of the reconciliation of an Eastern Church with the Catholic Church, never did even the least disagreement arise concerning the number of the sacraments, while, on the contrary, almost endless disputes were held concerning other matters of no such great importance, for example, concerning the manner of administering baptism, unleavened bread, the chant "Alleluia," etc. But this clearly demonstrates that the sevenfold number of the sacraments had already been admitted for centuries in the Eastern Churches; otherwise the Easterners would most certainly have tried to contradict Catholic doctrine. In the Catholic Church, moreover, seven sacraments were always in use, as will be evident when the argument from tradition concerning the individual sacraments is adduced.

Furthermore, Protestants cannot prove from history that any sacrament was introduced by some bishop or Pope. Hence Drouven[100] argues forcefully, saying: "Let the adversaries explain to us who at length was the fabricator of that insane dogma, as they call it? By what name was he called? From what country did he arise? Of what institute was he a professor? Finally, with what authority was he endowed, that he could have persuaded not only the West, but also the whole East, contrary to ancient doctrine, that there are not two or three, but seven sacraments of the Gospel, efficacious of grace? But if in so necessary a matter they are silent, as in fact hitherto, although repeatedly challenged, they have remained silent, we shall by our right accuse them of falsehood and meanwhile enjoy our inheritance, which ... by this very fact we rightly glory is ancient and coeval with the Church, according to that axiom of Tertullian so often repeated: What is found as one among all is not an error, but a tradition."

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[92] Canonists of the twelfth century, such as Rufinus, Stephen of Tournai, John of Faenza, Sicard of Cremona, and Huguccio, customarily distinguished sacraments of a fourfold kind. Thus, for example, Rufinus speaks: "The species of sacraments is propagated in a fourfold manner. For some are salutary, others ministerial, others venerative, and others preparatory. Salutary are those by which salvation is acquired, such as baptism, Eucharist, and confirmation. Ministerial: those which are exercised in the ministries of offices, such as the praises of Masses and the other day or night offices diligently assigned to the vigils of clerics. Venerative: those which at certain times of the year are exercised venerably in memory of some sacred thing, such as the feasts of the Lord.... Preparatory: those which are prepared for celebrating all the aforesaid sacraments, such as the consecration of clerics, churches ..." (*Die "Summa Decretorum"*, ed. Singer, Paderborn, 1902, 537; cf. J. de Ghellinck, in *Revue des Sciences phil. et théol.* 1912, 528).

[93] A splendid example of the diverse acceptations in which ancient theologians employed the word *sacrament* is found in Hugh of St. Victor, who is eminent among the ancient authors writing on this matter; see above, n. 2.

[94] In the life of St. Otto, 2 July, in the Bollandists.

[95] Cf. Gietl, *Die Sentenzen Rolands*, 154 sqq. and 194 sqq.

[96] Cf. Schanz, *Die Lehre v. d. Sakr.* I, § 13; Pourrat, *La théol. sacr.*, c. 5, § 4.

[97] Cf. Chr. Pesch, *Prael. dogm.* VI, n. 91; Tanquerey, *Theol. dogm.* III, *De sacr.*, c. 1, n. 22, and others; Gihr, *Die heiligen Sakramente*, § 24.

[98] *L.c.*

[99] Cf. Drouven, *De re sacr.* l. 1, q. 3, c. 2, § 1.

[100] *L.c.*

32. 2. Argument of fittingness. The sacraments of the Catholic Church are fixed at the number seven. Why neither more nor fewer are enumerated is explained very well by the Roman Catechism,[101] following in the footsteps of St. Thomas.[102] For spiritual life is in a certain manner similar to bodily life. But in bodily life seven things are principally necessary, namely, five for the perfection of the individual and two for the perfection of society. For the perfection of the **individual** it is required: 1. that man be born, which is effected spiritually through baptism; 2. that he grow and be strengthened, which is effected spiritually through confirmation; 3. that he be nourished, which is effected in the spiritual life through the heavenly bread of the Eucharist; 4. that he be healed from a disease perhaps contracted, which is effected in the spiritual life through penance; 5. that after disease he recover his former health in a perfect manner, which is effected spiritually through extreme unction, which removes the remnants of sins. For the perfection of **society**, however, it is required: 1. that there be a power of governing, which is conferred in the Church with the sacrament of order; 2. that there be propagation of the human race, which in the spiritual life is sanctified through the sacrament of matrimony.

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[101] Part 2, c. 1, q. 12.

[102] *S. theol.* 3, q. 65, a. 1.

33. Divisions of the sacraments. Above we already distinguished the sacraments of the Old and New Testaments. The sacraments of the New Testament are customarily divided:

1. **By reason of necessity,** into sacraments necessary for all unto salvation, namely, the first five sacraments, and into sacraments necessary not indeed for individual men but **for Christian society**, which are order and matrimony.

The sacraments necessary for all and each do not have the same necessity; for some are necessary by a **necessity of means**, namely, baptism for all; penance for those who have fallen into mortal sin; and, according to several authors, also the Eucharist for those who have the unimpeded use of reason.[103] Eternal salvation therefore cannot be had unless these sacraments have been received at least in desire. It is not absolutely required, however, that these sacraments also be received in fact. For the Church the sacrament of order is necessary by a necessity of means, because without that sacrament the visible Church cannot subsist.[104] The other sacraments are necessary only by a **necessity of precept**, namely, confirmation, extreme unction, and, according to several authors, also the Eucharist. The necessity of the individual sacraments will be treated more fully below in the treatise on the sacraments in particular. The Council of Trent defined the necessity of the sacraments in a general manner: "If anyone says that the sacraments of the New Law are not necessary for salvation, but superfluous; and that without them or the desire of them men obtain from God the grace of justification through faith alone, although all are not necessary for each individual, let him be anathema."[105]

2. **By reason of the subject,** into sacraments of the dead and of the living.

The **sacraments of the dead** were instituted *per se* to confer spiritual life upon those spiritually dead, that is, those lacking sanctifying grace. They are baptism and penance, which of themselves confer first grace; but *per accidens*, namely, when the man receiving them is already in the state of sanctifying grace, they confer second grace, or increase grace already existing. The **sacraments of the living**, namely, confirmation, Eucharist, extreme unction, order, and matrimony, are those which can licitly be administered only to those spiritually living, that is, those existing in the state of sanctifying grace; therefore, *per se* they cause second grace, or

increase sanctifying grace. But *per accidens*, namely, when the man receiving is in the state of mortal sin with inculpable ignorance, they cause first grace.[106]

3. **By reason of the effect,** into sacraments which imprint a character and those which do not imprint one.

The sacraments which imprint an indelible character and consequently cannot be repeated are baptism, confirmation, and order. The other four sacraments do not imprint a character and can be repeated. The former are also called non-repeatable sacraments; the latter, repeatable sacraments.

4. **By reason of their relation to the subject,** into formed and unformed sacraments.

Formed sacraments are those which produce or increase the form of the sacrament, insofar as form is taken in the first sense explained above in n. 7, or insofar as it is sanctifying grace. But if, on account of an existing obstacle, the sacrament cannot produce grace and nevertheless was validly conferred, it is an **unformed sacrament**. Therefore, an unformed sacrament is not to be confused with an invalid sacrament (on account of a substantial defect of matter, form, or minister). Ancient theologians called unformed sacraments **sacraments received with fiction**, because then the recipient is disposed not truly but fictitiously.[107] They distinguished a twofold fiction: one **material**, when he who receives the sacrament invincibly does not know or does not advert to the defect of a necessary disposition, for example, when an adult receives baptism without adverting that he does not have sufficient attrition for the personal sins committed; the other **formal**, when a man knowingly receives a sacrament unworthily. Material fiction therefore renders a sacrament simply unformed, but formal fiction renders it sacrilegious in addition.

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[103] Cf. below, n. 205 sqq.

[104] Cf. *S. theol.* 3, q. 65, a. 4.

[105] Sess. 7, can. 4 on the sacraments in general (Denz., n. 847).

[106] See more fully on this matter below, n. 40.

[107] Cf. St. Thomas, IV Sent., d. 4, q. 3, a. 2, quaestiunc. 2, ad 2.

34. Scholion. On the order of the different sacraments. The Council of Trent[108] defined that the sacraments of the New Law are not all equal among themselves. Hence it is asked how the sacraments are to be ordered among themselves. A threefold order is customarily distinguished, namely, of nature, dignity, and necessity. The **order of nature** fittingly arranges the sacraments as they are commonly enumerated: baptism, confirmation, etc., because the sacraments necessary for the individual man (namely, the first five sacraments) are to be placed before those which are necessary for society (namely, the last two sacraments).[109] The **order of dignity** places the Eucharist in the first place, because in the Eucharist Christ Himself is contained, but in the other sacraments only the grace of Christ. Moreover, all the other sacraments are ordered to the Eucharist as to an end.[110] The **order of necessity** places baptism in the first place, because no sacrament is so necessary for all as baptism, concerning which it is said: "Unless a man be born again of water and the Holy Spirit, he cannot enter into the kingdom of God."[111]

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[108] Sess. 7, can. 3 on the sacraments in general (Denz., n. 846).

[109] For a fuller explanation, see *S. theol.* 3, q. 65, a. 2.

[110] *S. theol.* 3, q. 65, a. 3.

[111] John 3:5.

Chapter III. On The Efficacy And Effects Of The Sacraments

We divide this chapter into two articles: 1. on the primary effect of the sacraments, namely, grace; 2. on the secondary effect, namely, the character, which is produced by certain sacraments.

Article I. On The Primary Effect Of The Sacraments, Namely, Grace

Since this article is sufficiently long, for the sake of clarity it is subdivided into three paragraphs: 1. on the production of grace *ex opere operato*; 2. on the quantity and quality of the grace produced; 3. on the reviviscence of grace when the obstacle has been removed.

§ 1. On The Production Of Grace Ex Opere Operato

35. Principle. It is of Catholic faith that the sacraments of the New Law confer grace *ex opere operato* upon all who place no obstacle.

1. For the Council of Trent[112] defined: "If anyone says that the sacraments of the New Law do not contain the grace which they signify, or do not confer that grace itself upon those who place no obstacle, as though they were only external signs of grace or justice received through faith, and certain marks of Christian profession by which among men the faithful are distinguished from unbelievers, let him be anathema." "If anyone says that grace is not conferred through the sacraments themselves of the New Law *ex opere operato*, but that faith alone in the divine promise suffices for obtaining grace, let him be anathema." As appears to one considering them, these definitions are opposed to the false acceptations of the sacraments handed down by the heretical Reformers.[113]

The Catholic doctrine, therefore, is this: The sacraments of the New Law confer grace *ex opere operato*. Certainly, since the sacraments are sensible signs, they cannot confer supernatural grace as principal causes, but only as instrumental causes. For Christ is the principal cause, both efficient and meritorious, of all grace.

Therefore, Christ uses the sacraments to produce grace in men almost as a writer uses a pen to write. It is said: the sacraments confer grace *ex opere operato*, that is, not *ex opere operantis*; in other words, not from the holiness of the minister or the merit of the recipient, but through the very application of matter and form rightly made, provided, however, that there is no obstacle on the part of the recipient.[114]

Since the supernatural virtues and the gifts of the Holy Spirit always accompany sanctifying grace,[115] these also are produced or increased through the sacraments.

The Catholic doctrine concerning the efficacy of the sacraments is proved from Sacred Scripture, from the Holy Fathers, and from theological reason.

a) **From Sacred Scripture**, in which men, although already believing and penitent, nevertheless are commanded to receive a sacrament in order to obtain the remission of sins. "Let every one of you be baptized in the name of Jesus Christ for the remission of sins."[116] Therefore, baptism truly causes the remission of sins, which cannot occur without the conferral of grace. St. Paul explicitly asserts this, saying: "According to His mercy He saved us, by the laver of regeneration and renovation of the Holy Spirit."[117]

b) **From the Holy Fathers**, many texts can be adduced for the Catholic doctrine.[118] It suffices to adduce only three texts. St. Chrysostom[119] says concisely: "What the womb is to the embryo, water is to the believer; for in

water he is fashioned and formed." St. Augustine, however, who had first said: "Baptism is established not by the merits of those by whom it is administered, nor of those to whom it is administered, but by its own holiness and truth on account of Him by whom it was instituted,"[120] exclaims in another place:[121] "Whence is there so great a power of water, that it touches the body and washes the heart!" Tertullian[122] says: "The flesh is washed, that the soul may be cleansed; the flesh is anointed, that the soul may be consecrated; the flesh is signed, that the soul also may be fortified; the flesh is overshadowed by the imposition of the hand, that the soul also may be illuminated by the Spirit; the flesh feeds upon the Body and Blood of Christ, that the soul also may be fattened upon God."

c) **From theological reason.** For baptism validly conferred upon an infant by an unbeliever confers grace. But that grace cannot be given from the faith or merit of the minister, as is evident, especially if that minister is an unbelieving and sinful man; nor from the faith or merit of the infant, since he is incapable of eliciting any deliberate act. Therefore, it is given by the power of the sacrament alone, or *ex opere operato*.

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[112] Sess. 7, cann. 6 and 8 on the sacraments in general (Denz., nn. 849 and 851).

[113] Cf. above, n. 5.

[114] Cf. below, n. 36.

[115] Cf. above, I, nn. 445 and 472.

[116] Acts 2:38. Cf. also Acts 22:16; 1 Cor. 6:11; Eph. 5:26; 2 Tim. 1:6; 1 Pet. 3:21.

[117] Titus 3:5.

[118] See Drouven, *De re sacr.* l. 1, q. 5.

[119] Hom. 25 or 26 on John, n. 1 (Migne, *Patr. graec.* 59, 153).

[120] *Contra Crescon.* l. 4, c. 16, n. 19 (Migne, *Patr. lat.* 43, 559).

[121] On John, tract. 80 (Migne, *l.c.* 35, 1840).

[122] *De resur. carn.*, c. 8 (Migne, *l.c.* 2, 852).

36. 2. On the manner in which the sacraments cause grace. All Catholics indeed agree in this, that they hold that the sacraments cause grace *ex opere operato*, and not *ex opere operantis*, as Protestants teach; but they do not at all agree whether the causality of the sacraments is physical or moral.

The expression *ex opere operato* is explained in two ways, namely:

a) **From the very valid administration of the sacrament,[123] provided no obstacle is present.** An obstacle is found only in adults, and is the defect of some essentially required disposition, for example, faith, contrition, etc.

b) **From the very work of redemption effected by Christ.** This second explanation, proposed by a few theologians,[124] is less correct. For Christ the Redeemer through His Passion is indeed the meritorious cause of sacramental grace, and even of all other graces, but in the sacraments of the New Law grace is caused effectively (although instrumentally) through the sensible sign itself, that is, through the due application of form to matter.

The expression *opus operantis* signifies the merits and dispositions either of the minister or of the recipient of the sacrament.

Protestants not rarely ridicule the expression *ex opere operato*, since it was recently introduced and even sins against the rules of grammar.[125] It must indeed be admitted that Peter of Poitiers (d. 1205) was the first in whom this expression is found.[126] St. Thomas indeed knew this expression, but he himself did not employ it in the *Summa theologica*.[127] But does the phrase "matter and form" occur before the same time? Is it not lawful to employ new and more suitable words to express an ancient thing? The things said concerning violated rules of grammar are sufficiently paltry. For each discipline has terms called technical which do not always correspond to the obvious sense of the words.

Moreover, nothing prevents the word *operari* from being taken in a passive sense. Thus, for example, in Tertullian[128] there is: "charisms wrongly wrought." Lactantius, whose elegant Latinity is much praised, speaks "of virtues received and wrought."[129] St. Augustine has this phrase: "corruption wrought by a noble woman, Lucilla."[130] Even Cicero himself sometimes employs deponent verbs in a passive sense, for example, he writes to Nepos: "He who is poor is scorned." Therefore, the ridicules of Protestants concerning the expression *opus operatum* are themselves to be ridiculed.

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[123] By the validly performed administration of the sacrament alone.

[124] Möhler, *Symbolik*, § 28; Hilgers, *Symbolische Theologie*, 157.

[125] Cf. Harnack, *Dogmengeschichte* III, 463, 482 sqq.

[126] *Sent.* l. 5, c. 6 (Migne, *Patr. lat.* 211, 1235).

[127] IV Sent., dist. 1, q. 1, a. 5, quaestiunc. 1: "The sacrament itself is called by some the work worked, but the use of the sacrament is the operation itself, which is called by some the work working. When it is said that a sacrament, speaking *per se*, confers or does not confer grace, it must be referred to the work worked." Cf. IV Sent., dist. 2, q. 1 at the end.

[128] *De praescript.*, c. 27 (Migne, *l.c.* 2, 48).

[129] *Instit.* 7, 27 (Migne, *l.c.* 6, 819).

[130] *De unit. Eccl.*, c. 28, 73 (Migne, *l.c.* 43, 443).

37. Opinions of Catholics concerning the causality of the sacraments. It is of Catholic faith that the sacraments of the New Law cause grace *ex opere operato*, that is, through a power divinely communicated to them. But how is this power exercised? Since this question pertains rather to Dogmatic Theology than to Moral Theology, here the diverse opinions of authors are adduced only very briefly.

1. **The sacraments of the New Law cause grace as a physical instrumental cause.** Certainly, God is the principal cause; but almost as an artisan employs a brush for painting, so God employs the sacraments for infusing grace into the soul. St. Thomas (at least in his mature work)[131] and almost all Thomists[132] teach this physical causality of the sacraments; in addition, Suarez, Bellarmine, Tanner, Schäzler, Scheeben,[133] Gihr, and others.
2. **The sacraments of the New Law cause grace as a moral instrumental cause.** The defenders of this opinion do not agree among themselves what that moral causality is. Some think it is a certain moral dignity inhering in the sacraments, to which grace is owed. Others opine that the sacraments are, as it were, petitions or prayers instituted by Christ, so that through them God is infallibly moved to confer grace on account of the merits of Jesus Christ. Melchior Cano (sixteenth century) is said to have been the first who introduced the term "moral cause" into this question.[134] Lugo, Lessius, almost all Scotists, and almost all modern Jesuits, such as Franzelin, Chr. Pesch, Hurter, Lehmkuhl, etc., defend the moral causality of the sacraments.

3. **The sacraments of the New Law instrumentally and efficiently cause not grace itself, but a certain disposition for it;** this disposition is the character in three sacraments, but a certain adornment in the other four sacraments. Thus St. Thomas in his earlier work[135] and many others, especially the ancients, and, among the moderns, to some degree Billot.[136]

4. **The sacraments of the New Law are mere conditions and occasions for grace to be conferred.** To explain this opinion the following example is adduced:[137] "It is similar to one who receives a lead denarius under such an ordinance that he who possesses one of those denarii shall have one hundred pounds from the king; that denarius indeed does not give those one hundred pounds, but only the king gives them to the one receiving it." This opinion is attributed to Alexander of Hales and Scotus, and is also taught by Durandus.[138]

Of these four explanations, physical causality seems to be preferred: a) on account of the authority of St. Thomas; b) on account of the authority of the Roman Catechism, which manifestly favors this opinion;[139] c) on account of the greater dignity thereby attributed to the sacraments. For just as through the humanity of Christ God performed miracles, so through sacramental signs God infuses grace into the souls of men. But it is more dignified physically to cause the most excellent quality of grace than merely to cause it morally. The almost sole serious difficulty against the physical causality of the sacraments is taken from the reviviscence of certain sacraments; this difficulty, however, is well solved by Billuart,[140] who also treats this entire question very well.

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[131] *S. theol.* I-II, q. 112, a. 1 ad 2; III, q. 62, aa. 1, 3, 4, 6.

[132] Cf. E. Hugon, O.P., *La causalité instrumentale en théologie*, Paris, 1907.

[133] *Die Mysterien des Christentums*, § 82.

[134] After rejecting several other explanations, M. Cano says: "But we ... with the Council of Florence pronounce that our sacraments both contain grace and confer it upon those worthily receiving. They contain it, I say, not as a natural cause contains its effect, but as a moral cause. For a purse is said to contain the redemption of a captive because it contains the money; and the sacraments, which contain the Blood of Christ, are said to contain grace and the remission of sins. And just as a purse, by furnishing the money, confers redemption, so a sacrament confers grace by applying the price of the Blood" (*Relect. de sacr.*, P. 4, concl. 6).

[135] IV Sent., dist. 1, q. 1, a. 4.

[136] *De sacr.*, q. 62, thesis VII. Cf. Dalmatius Löcher, *Die Theorie vom sakramentalen Seelenschmuck*, Bonn, 1913.

[137] St. Thomas, IV Sent., dist. 1, q. 1, a. 4.

[138] In IV Sent., dist. 1, q. 4; cf. Billot, *De Eccles. sacr.*, q. 62, § 3.

[139] Part 2, c. 1, q. 14, and especially q. 18: "By the light of faith we know that the power of almighty God is present in the sacraments, by which they effect that which natural things themselves cannot accomplish by their own power."

[140] *De sacr.*, diss. 3, a. 2. Cf. the new solution given by Marín-Sola (*Divus Thomas* 1925, pp. 49–63).

38. Corollary. From what has been said, we can briefly embrace in this manner the entire production of grace through the sacraments: Christ is the **meritorious cause** of the grace produced by the sacraments; the minister is the **ministerial cause** by joining matter and form; the sacrament composed of matter and form is the **instrumental cause**; faith, penance, offices of piety, etc., of the man receiving the sacrament are **required conditions** either for the validity or for the liceity of the sacrament.

§ 2. On The Quantity And Quality Of The Grace Produced

39. 1. The quantity of the grace produced depends upon two things: a) upon the disposition of the recipient; b) upon the sacrament itself which is received.

a) That the quantity of grace to be received depends **upon the disposition of the recipient** is evident from the Council of Trent,[141] which teaches that each person in justification receives sanctifying grace according to his own disposition and cooperation. Hence, for example, he who receives the Eucharist with greater fervor and a better disposition also receives greater grace than another less disposed. On the contrary, two infants (since they are of the same disposition) receive the same grace in baptism. Thus St. Thomas also clearly teaches.[142]

b) That the quantity of grace depends **also upon the sacrament itself** is elicited from the diverse dignity of the different sacraments. For if the sacraments are not of equal dignity,[143] as the Council of Trent defined, it is probable that neither do they produce equal grace. Therefore, since the Eucharist is the most worthy of all the sacraments, it seems also to produce the greatest graces. Nevertheless, it can happen that someone less disposed who receives the Eucharist receives less grace than another better disposed who receives the sacrament of matrimony. The reason is that the quantity of grace is measured principally from the disposition of the recipient of the sacrament.

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[141] Sess. 6, c. 7 (Denz., n. 799).

[142] *S. theol.* 3, q. 69, a. 8.

[143] Sess. 7, can. 3 on the sacraments in general (Denz., n. 846).

40. 2. The quality of the grace produced by the sacraments is diverse:

a) **The sacraments of the dead *per se* cause first grace, but *per accidens* second grace; the sacraments of the living, however, *per se* cause second grace and *per accidens* sometimes first grace.**

What first and second grace are is evident from what was said above. The truth of the stated proposition is clear from this, that the sacraments *per se* cause that for which they were primarily instituted by Christ. But the sacraments of the dead were primarily instituted by Christ that spiritual life might be conferred upon those spiritually dead, that is, those lacking sanctifying grace; namely, that baptism might wash away original sin and penance actual sins. But if these two sacraments are received by a man already contrite and consequently justified, *per accidens* they cause second grace, that is, they increase sanctifying grace already existing. Thus the most common and certain opinion. The reason is that otherwise these sacraments would be frustrated, although no obstacle was present, which is contrary to the nature of the sacraments.

The sacraments of the living, however, were instituted *per se* for the living, that is, they presuppose the state of grace in the recipient. But *per accidens*, when, for example, an attrite man thinks that he has been rightly absolved, but on account of a defect of the confessor in fact has not been absolved, he receives first grace through these sacraments. Thus the more pious, more probable opinion, received by almost all.[144] Hence St. Thomas, speaking of the Eucharist, which is a sacrament of the living, says:[145] "Nevertheless, this sacrament can effect the remission of sin ... even when received by one who is in mortal sin, of which he has neither consciousness nor affection; for perhaps at first he was not sufficiently contrite, but by approaching devoutly and reverently he will obtain through this sacrament the grace of charity, which will perfect contrition and the remission of sin." The Angelic Doctor teaches the same concerning confirmation[146] and extreme unction.[147]

The reason is that, according to the Council of Trent,[148] the sacraments confer grace upon all who place no obstacle. But he who, in good faith thinking himself to be in the state of grace, receives a sacrament of the living does not seem to place an obstacle, because his sins are retracted through true and sincere attrition. Hence theologians customarily say generally: an attrite man receiving any sacrament becomes contrite.[149]

Since, therefore, the Eucharist causes sanctifying grace in an attrite man existing in good faith, several authors[150] teach that in extreme necessity even a **layman** can administer the Eucharist to a dying man who, when a priest is lacking, cannot confess although he is attrite. For perhaps that man was unable to elicit perfect contrition; therefore, lest he die with attrition alone and thus be damned, it is better and safer that he receive the Eucharist even from the hand of a layman, and thus from attrite become contrite. St. Alphonsus[151] and the Sacred Congregation for the Propagation of the Faith on 21 July 1841[152] favor this opinion.

b) **All the sacraments cause, besides sanctifying grace (or its increase), also sacramental grace.**

Theologians indeed commonly teach that each sacrament confers a special sacramental grace, but they do not agree what this sacramental grace is. For some it is a certain actual grace which will be given at its proper time so that each person may more easily fulfill the obligations arising from the sacrament. For others it is a right to obtain actual graces whenever there is need. For others it is a special infused habit (Aureolus, Paludanus). Finally, for others with Billuart it is sanctifying grace itself with an ordination and right to special helps to be had at the due time.

The first opinion is displeasing because the sacraments, as effecting *ex opere operato*, immediately produce their whole effect and not in the future. The third opinion is still more displeasing, since this infused habit is invented altogether gratuitously and has no foundation in Scripture or Tradition. The second and fourth opinions almost coincide and seem to be preferred. Thus, for example, the sacramental grace of baptism is a right to the helps necessary for leading the spiritual life purely and innocently; that of confirmation is a right to strength in temptations and difficulties and for guarding against future sins; that of the Eucharist, for nourishing and fostering the spiritual life; that of extreme unction, for having assistance in the final agony; that of order, for rightly discharging clerical offices; that of matrimony, for leading the conjugal life holily. St. Thomas writes concerning this matter: "Therefore, just as the virtues and gifts add to grace commonly so called a certain perfection determinately ordered to the proper acts of the powers, so sacramental grace adds to grace commonly so called, and to the virtues and gifts, a certain divine assistance for attaining the end of the sacrament."[153]

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[144] St. Alphonsus, *Theol. mor.* l. 6, n. 6.

[145] *S. theol.* 3, q. 79, a. 3.

[146] *S. theol.* 3, q. 72, a. 7 ad 3.

[147] IV Sent., dist. 23, q. 1, a. 2, quaestiunc. 1 ad 1.

[148] Sess. 7, can. 7 on the sacraments in general (Denz., n. 850).

[149] See the objections against this latter part of the proposition in Billuart, *De sacr.*, diss. 3, a. 3.

[150] Suarez (*De sacr.*, disp. 72, sect. 1); Laymann (*Theol. mor.* l. 5, tr. 4, c. 7, n. 6), etc.

[151] *Theol. mor.* l. 6, n. 237.

[152] "Whether it can be permitted in this time of persecution that confessors of the faith condemned to death for the faith, and to whom the sacrament of the Most Holy Eucharist is brought secretly in prison, may take it with their own hands and secretly

communicate themselves, lest the priest ... be recognized and apprehended by the persecutors? Affirmatively, provided so great a sacrament is exposed to no danger of irreverence...." *Collect. de Prop. Fide*, n. 928.

[153] *S. theol.* 3, q. 62, a. 2.

§ 3. On The Reviviscence Of The Sacraments

41. Notion. The **reviviscence**[154] of the sacraments consists in this, that a sacrament indeed validly but fruitlessly received on account of an existing obstacle afterward, when the obstacle has been removed, produces all its effects. More briefly: **Reviviscence is the passage of an unformed sacrament to a formed sacrament.** The obstacle opposing the fruits of the sacrament is indeed commonly gravely culpable (namely, the voluntary reception of a sacrament of the living in the state of mortal sin), but not always, as was said above in n. 33 (4).

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[154] This word *reviviscence*, which in sacramental matters is not found in St. Thomas and the other ancient theologians, properly speaking is not accurate. For that is said to revive which was alive, then dead, and afterward alive again. But a sacrament received with an obstacle is not truly alive and consequently cannot properly revive. It is difficult, however, to find a better word. Perhaps it could be called the resurrection of the sacraments.

42. Which sacraments revive has neither been defined by the Church nor agreed upon by theologians. There are three opinions. The first asserts that no unformed sacrament at all revives. This opinion is customarily attributed to Vasquez.[155] The second opinion teaches that absolutely all the sacraments revive when the obstacle has been removed, because each sacrament is and remains a work of Christ which will always produce its effect if the obstacle is removed. Thus Haine.[156] Hence according to this opinion, for example, one who had received Communion sacrilegiously one hundred times would, if at length he received the sacrament of penance with attrition or even elicited contrition alone, receive the whole accumulation of graces from the hundred sacrilegious Communions. St. Alphonsus[157] calls this opinion absurd.

The third opinion asserts that certain unformed sacraments indeed revive when the obstacle has been removed, but not all. This is the most common opinion. In assigning the sacraments which revive, however, theologians again do not agree; but they agree that at least the three sacraments which imprint a character, and in addition the sacrament of matrimony, revive.

a) Concerning **baptism**, St. Thomas teaches:[158] "But it is sometimes impeded through fiction [which is the same as an obstacle]; hence it is necessary that, when it has been removed through penance, baptism immediately attain its effect." St. Augustine had already taught the same:[159] "In him who had approached with fiction [for baptism], it happens ... that what was given before then begins to avail when that fiction has departed through truthful confession." The reason is that, if the reviviscence of baptism is not admitted, it is scarcely understood how a man baptized in this manner with an obstacle can afterward obtain the remission of original sin. For such remission cannot be obtained through the sacrament of penance, which can remit actual sins alone.

b) Just as baptism, so also **confirmation and order**, when the obstacle ceases, revive, "because, since these sacraments cannot be repeated, it seems consonant with the divine goodness that such recipients not be left destitute of sacramental grace, so profitable in those confirmed for resisting temptations, and in those ordained for discharging clerical duties."[160]

c) The same seems more probably to be said concerning **extreme unction and matrimony**, because these sacraments also cannot be repeated in a certain respect, namely, during the same illness or the same marriage. Therefore, if anyone after the valid but unworthy reception of extreme unction (during the same illness) or of

matrimony (during this marriage) elicited perfect contrition or worthily received the sacrament of penance, the grace of those sacraments revives.

d) The reviviscence of **penance** is very doubtful;[161] St. Thomas is indeed cited by St. Alphonsus[162] in favor of the affirmative opinion, but the words of the Angelic Doctor easily admit another explanation. Lugo,[163] however, teaches that penance can revive. But it is rightly doubted whether the sacrament of penance can truly be valid and nevertheless unformed. For if someone even in good faith approaches penance thinking himself to have at least sufficient attrition, but in fact does not have it, the sacrament is null because attrition belongs to the essence of penance. Therefore, in this case the sacrament is not unformed but altogether invalid.

The sole case concerning which there can be a question is this: if the penitent in good faith does not elicit universal sorrow, for example, if, guilty of two mortal sins (for example, fornication and the violation of a fast), wholly forgetful of one, he sorrows for fornication alone from a particular motive, namely, because it is expressly said in Sacred Scripture that fornicators will not enter the kingdom of heaven. But, as anyone sees, this case is almost theoretical and never occurs in practice; furthermore, it is not certain whether particular sorrow suffices in this case for the validity of the sacrament. Certainly all are to be exhorted to elicit sorrow from a universal and not a particular motive.

But if in the aforesaid case there had been a universal motive of sorrow, even the sin omitted through forgetfulness would have been remitted through the sacrament. Hence, in practice, when someone inculpably forgets some sin and consequently does not even repent of it, since nevertheless general contrition or attrition for all sins must be presumed, it suffices that the sin previously omitted and again occurring to the mind be declared in the following confession. But if it never comes to mind, it nevertheless was indirectly remitted in the confession made.[164]

It has already been said above that the sacrament of the Eucharist does not revive.

The proposed doctrine concerning the reviviscence of the sacraments can be briefly summarized in this manner: **Five sacraments, if they are unformed, revive, namely, baptism, confirmation, extreme unction, order, and matrimony; but two sacraments do not revive, namely, the Eucharist and penance.**

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[155] Cf. Chr. Pesch, *Prael. dogm.* VI, n. 315, who contends that this opinion is undeservedly attributed to Vasquez.

[156] *De sacr. in gen.*, q. 7. John of St. Thomas (*De Sacram.*, disp. XXIV, n. 277) teaches the same.

[157] *Theol. mor.* l. 6, n. 87. Cajetan also taught the reviviscence of the Eucharist (*Opusc.* 1, tr. 5, q. 5), but retracted this in his Commentary on *S. theol.* 3, q. 79, a. 1.

[158] *S. theol.* 3, q. 69, a. 10.

[159] *De bapt. contra Donat.* l. 1, c. 12, n. 18 (Migne, *Patr. lat.* 43, 119).

[160] St. Alphonsus, *Theol. mor.* l. 6, n. 87.

[161] Cf. below, n. 353.

[162] IV Sent., dist. 17, q. 3, a. 4, sol. 1.

[163] *De sacr. in gen.*, nn. 103 and 104.

[164] Cf. concerning this matter St. Alphonsus, *l.c.*, n. 444, and Lehmkuhl, *Theol. mor.* II, n. 401 sq.

43. Conditions required for reviviscence. With the reviviscence of certain sacraments admitted, it is asked what must be done so that these sacraments in fact revive.

The general rule is: **For unformed sacraments to revive, the same disposition is required and suffices which was required and sufficient in the reception itself for obtaining grace.**

Resolutions: 1. When the unformed sacrament was at the same time **sacrilegious**, it does not revive until the state of grace has been acquired either through sacramental absolution or through perfect contrition with the desire of confessing. Thus all authors.

2. When, after an unformed sacrament was received (even inculpably), someone committed a mortal sin, that sacrament does not revive until the state of grace has been acquired either through sacramental absolution or at least through contrition with the desire of confessing. Thus all authors.
3. When a sacrament **of the living** remained unformed **inculpably**, for example, when someone thought himself to have sufficient attrition but in fact did not have it, and therefore, invalidly absolved, received confirmation in good faith, this sacrament does not revive unless the state of grace has been acquired through contrition, or through true attrition with sacramental absolution. Thus the more probable opinion.
4. When a sacrament **of the dead**, that is, baptism (and the same holds for extreme unction), inculpably remained unformed, attrition alone seems to suffice for that sacrament to revive. For example, someone received extreme unction when he was already deprived of his senses and did not even have sufficient attrition; then this unformed sacrament seems to revive when the man afterward elicits an act of true attrition.[165] Moreover, as we have already noted above, the Church has hitherto defined nothing concerning the reviviscence of the sacraments and its required conditions.

[165] Cf. J. Kern, *De sacr. extr. unct.* (1907), 372 sqq.

Article II. On The Secondary Effect Of Certain Sacraments, Or On The Character

44. Principle. It is Catholic doctrine that in the sacraments of baptism, confirmation, and order not only is grace conferred, but a character is also imprinted upon the soul, that is, a certain spiritual and indelible sign, whence also these three sacraments cannot be repeated.[166]

Three things, therefore, are to be believed with Catholic faith: 1. the character is a certain spiritual and indelible sign imprinted upon the soul; 2. this sign is imprinted by three sacraments: baptism, confirmation, and order; 3. these sacraments cannot be repeated. All other things which theologians subtly dispute concerning this matter are indeed useful, but do not at all pertain to the faith.

[166] Cf. Council of Trent, sess. 7, can. 9 on the sacraments in general (Denz., n. 852); Eugene IV, *Instruction to the Armenians* (Denz., n. 695), and Innocent III in c. 3, X 3, 42.

45. 1. The existence of the character is denied by Wycliffe and the Reformers.[167] Martin Chemnitz, moreover, calls the character an invention of Innocent III (thirteenth century) and a fiction of the Scholastics. On the contrary, certain Catholic theologians[168] admit a character not only in the three enumerated sacraments, but in addition posit a quasi-character in matrimony and extreme unction (since they are sacraments in a certain respect unrepeatable). Nevertheless, this quasi-character has no foundation either in Sacred Scripture or in the doctrine of the Church and the Holy Fathers; and therefore it is not to be admitted.

The existence of the character in the three enumerated sacraments was in no way invented by Innocent III, since he already speaks of the character as of a matter known to all. Although the character is not clearly described in Sacred Scripture, it is nevertheless manifestly admitted by the Holy Fathers.

In Sacred Scripture three passages occur which can (although they need not) be understood concerning the sacramental character: "But He who confirms us with you in Christ, and who has anointed us, is God; who also has sealed (*σφραγισάμενος*) us and given the pledge of the Spirit in our hearts."[169] "Believing, you were sealed with the Holy Spirit of promise."[170] "Grieve not the Holy Spirit of God, whereby you were sealed (*ἐσφραγίσθητε*) unto the day of redemption."[171]

The Holy Fathers spoke more clearly concerning the character; their testimonies can be seen, for example, in Billuart.[172] It suffices to adduce the words of St. Augustine, who acknowledges that a character is imprinted even in baptism received unworthily: "Behold, a baptized man receives the sacrament of birth; he has the sacrament; ... nevertheless let him attend to the heart; ... let him see whether he has charity; ... but if he does not have it, he indeed has the character imposed, but wanders as a deserter."[173] In the thirteenth century, as the Angelic Doctor testifies, all theologians acknowledged that a character is imprinted in certain sacraments.[174]

For the existence of the character St. Thomas gives this **reason of congruity**: Whoever is deputed to some great office is customarily marked for it by some distinctive sign, just as in ancient times enlisted soldiers were customarily distinguished by certain characters. But in the three enumerated sacraments the faithful are deputed to great offices of divine worship, as will be explained below. Therefore, it is very fitting that a character be imprinted in these sacraments.[175]

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[167] Cf. Harnack, *Dogmengesch.* III, 140.

[168] Oswald, Schwetz, Farine. This last author, in the booklet *Der sakram. Charakter*, Freiburg im Breisgau, 1904, thinks that the sacramental character is the Holy Spirit Himself; and he proposes other sufficiently singular opinions as well.

[169] 2 Cor. 1:21 sq.

[170] Eph. 1:13.

[171] Eph. 4:30. Cf. *S. theol.* 3, q. 73, a. 1; Roman Catechism, P. 2, c. 1, q. 18.

[172] *De sacr.*, diss. 4, a. 1.

[173] On 1 John, tract. 5, n. 6 (Migne, *Patr. lat.* 35, 2015).

[174] IV Sent., dist. 4, q. 1, a. 1.

[175] *S. theol.* 3, q. 63, a. 1.

46. 2. Nature and qualities of the character. The character can be defined: **a spiritual sign indelibly imprinted upon the soul, by which men are deputed in a special manner to divine worship and are distinguished from others.**

It is said, first: **a spiritual sign**, in opposition to a sensible sign, such as the sacrament itself. For the character can be perceived by the mind alone.

It is said, second: **indelibly imprinted upon the soul.** The character is imprinted not in the essence of the soul (as Vasquez, Suarez, Lugo, and others hold), but in one of its powers, and indeed not in the will, as the Scotists hold, but in the practical intellect. For the character is a spiritual supernatural power ordered to divine worship, as will be said below. But worship consists in a certain external profession of faith. Therefore, the character is fittingly placed in the same power of the soul in which faith is.[176]

The character is altogether indelible, not indeed as though it could not be erased by divine omnipotence (for thus even the immortal soul itself can be erased), but because in fact it will never be erased either in this life or in the other. That the character is not erased in this life was defined by the Council of Trent;[177] but that it is not erased in the other life is the common doctrine of theologians. Hence St. Thomas[178] teaches: "After this life the character remains, both in the good for their glory and in the evil for their ignominy; just as also the military character remains in soldiers after victory has been obtained, both in those who have conquered for glory and in those who have been conquered for punishment."

From this complete indelibility it follows that, for example, a priest who was raised after death would not again have to be baptized, confirmed, or ordained; for he remains a priest forever. On the contrary, spouses who had died and were raised, if they wished to continue matrimony, would have to be joined again, since the conjugal bond is dissolved by death.[179] The reason why the sacramental character is indelible is, besides the will of God so determining, the very nature of the character, which does not depend upon the free will of man, as sanctifying grace does, but upon God alone, whose instrument it is. In addition, sanctifying grace has something contrary to itself, namely, mortal sin, by which it can consequently be expelled; but the character has neither sin nor anything else contrary to it, and therefore it always remains.

It is said, third: **by which men are deputed in a special manner to divine worship.** There is principally a twofold effect and office of the character: 1. to distinguish men marked by it from others, whence this is expressed at the end of the definition given above; 2. to render men fit either to receive or to exercise divine worship. Thus in baptism man is rendered fit and capable of receiving the sacraments and all the benefits of religion; in confirmation, however, he receives the character of a soldier of Christ, who is able courageously to profess the faith by mouth and work; finally, in order a man is rendered fit for confecting the sacraments and performing the other works of divine worship.

Since the whole rite of the Christian religion is derived from the priesthood of Christ, St. Thomas teaches that the sacramental character is nothing other than a participation in the priesthood of Christ derived from Christ Himself.[180] For in two ways man can and ought to be configured to Christ: a) according to **nature**, and this is produced by sanctifying grace, which renders men partakers of the divine nature[181] and coheirs of Christ; b) according to **office**, and this is effected through the sacramental character, insofar as man, imitating the example of Christ, ought to glorify the Father, that is, worship God.

Through baptism and confirmation all, even laypeople, receive this participation in the priesthood of Christ. In this sense St. Peter says: "But you are a chosen generation, a royal priesthood, a holy nation, a purchased people, that you may declare His virtues, who has called you out of darkness into His marvelous light."[182] The character is a certain **power**, as was said above. "But just as the baptized person receives the spiritual power to profess the faith through the reception of the other sacraments, so the confirmed person receives the power publicly to profess the faith of Christ in words, as though by office."[183]

Besides the general priesthood which is conferred upon all in baptism and confirmation, there is a special priesthood, which is a still more perfect configuration with the priesthood of Christ and which bestows upon a man the power of administering all the sacraments and performing the special offices of divine worship. This special priesthood, flowing from a special character, is conferred in the sacrament of order.

From what has been said concerning the nature of the character it follows that three qualities, or rather three offices, belong to the character, which ancient theologians customarily expressed thus:

1. the character signifies and distinguishes;

2. the character disposes (namely, for special worship to be rendered to God);
3. the character assimilates (namely, to the priesthood of Christ).

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[176] *L.c.*, a. 4 ad 3.

[177] *Ibid.*

[178] *L.c.*, a. 5 ad 3.

[179] Cf. 1 Cor. 7:39.

[180] *S. theol.* 3, q. 63, a. 1.

[181] 2 Pet. 1:4.

[182] 1 Pet. 2:9.

[183] *S. theol.* 3, q. 72, a. 5 ad 2.

47. Scholion. Concerning the nature of the sacramental character there formerly existed many controversies among theologians. Thus Durandus thought that the character is a purely extrinsic denomination or relation of reason, as when someone is deputed by a king to some ministry.[184] This opinion is rash, since the Council of Trent defines the character as a spiritual and indelible sign imprinted upon the soul.[185] Therefore, it is not something extrinsic. Several other theologians before the Council of Trent thought the character to be a real relation. But this opinion also cannot be sustained, since a relation (even a real one) does not give power to receive or act, as the character in fact does. Hence the sacramental character is better called **a certain supernatural physical power imprinted upon the practical intellect**.[186]

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[184] IV Sent., dist. 4, q. 1, n. 11.

[185] Sess. 7, can. 9 on the sacraments in general (Denz., n. 852).

[186] See more concerning this matter in Billuart, *De sacr.*, diss. 4, a. 1, who faithfully drew his doctrine from *S. theol.* 3, q. 63.

Chapter IV. On The Institutor Of The Sacraments

Preliminary note. We entitle the present chapter *On the Institutor* rather than *On the Cause of the Sacraments*, because, as St. Thomas notes beforehand at question 64 of the third part of the *Summa theologica*, the cause of the sacraments is twofold: namely, by authority and by ministry. The first is the principal cause and can be called the institutor; the other is the instrumental cause and can be named the minister of the sacraments. We now treat of the principal cause, or the institutor of the sacraments, and afterward of their instrumental cause, or minister.

48. That God alone is the principal author of all the sacraments, both of the Old and of the New Testament, is almost self-evident. For no one except God can determine sensible signs with which grace is joined (as in the Old Testament), or which instrumentally cause sanctifying grace (as in the New Testament). Hence St. Thomas teaches: "God alone works the interior effect of the sacrament [therefore, *a fortiori*, the sacraments themselves], both because God alone enters into the soul, in which the effect of the sacrament exists, ... and because grace, which is the interior effect of the sacrament, is from God alone."[187] "The sacraments of the New Law are more worthy than the sacraments of the Old Law. But all the sacraments of the Old Law were instituted by God. Therefore, much more strongly, all the sacraments of the New Law have their institution from Christ Himself."[188]

God is so the **principal author of all the sacraments** that He cannot communicate to any creature the authoritative power of instituting sacraments. For "the power of authority communicated to someone would draw him beyond the bounds of a creature; because it cannot be that a creature is the principal agent with respect to the most noble effect by which we are joined to the ultimate end, such as grace, through which the remission of sins is effected. And therefore all say that the power of authority could be communicated to no creature."[189]

Besides the authoritative power of instituting sacraments, theologians, with St. Thomas[190] leading the way, speak of an **authority of excellence** in instituting sacraments, which belongs to Christ as man, or to His humanity, and indeed for four reasons: 1. because the power of the Passion of Christ as man operates in the sacraments; 2. because the sacraments are administered in the name of Christ; 3. because, as the excellent instrument of the divinity, He could institute sacraments; 4. because He could grant the effect of the sacrament, namely, sanctifying grace, even without a sacrament, namely, by His command alone. Briefly, therefore, it can be said: **Christ as God is the principal author; but as man, the excellent ministerial author of all the sacraments.**

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[187] *S. theol.* 3, q. 64, a. 1.

[188] Supplement, q. 29, a. 3, from IV Sent., dist. 23, q. 1, a. 1.

[189] IV Sent., dist. 5, q. 1, a. 3, sol. 1.

[190] *S. theol.* 3, q. 64, a. 3.

49. Thesis 1. All the sacraments of the New Law were immediately instituted by Christ before His Ascension.

This thesis, which is held by some theologians (for example, Bl. Bellarmine, Becanus, Gonet) as pertaining to the faith, is at least theologically certain. Before the Council of Trent certain theologians thought that some sacraments were not immediately instituted by Christ. Thus Hugh of St. Victor, Roland, and the Master of the Sentences judged that extreme unction was instituted by the apostles after the Ascension of Christ; Alexander of Hales,[191] deceived by a remarkable error, thought that confirmation was instituted in the Council of Meaux in the year 845, although in the canons of that Council there is nothing concerning the institution of confirmation. St. Bonaventure[192] thinks that the sacraments of confirmation and extreme unction were instituted by the apostles. The Quaracchi Editors assert, however, that this opinion was later corrected by him.

Since the Holy Fathers, as we saw above, did not give so clear a definition of a sacrament, nor indicate their sevenfold number, but enumerated among the sacraments things which certainly are sacramentals instituted by the Church (for example, the consecration of a church, the anointing of a king, etc.), neither could they clearly teach that all the sacraments were immediately instituted by Christ. All taught that baptism and the Eucharist were instituted by Christ; indeed, the most ancient author of the pseudo-Ambrosian book *On the Sacraments* teaches in express words: "Who is the author of the sacraments except the Lord Jesus? These sacraments came from heaven."[193]

Since certain Modernists, such as Loisy,[194] spread errors concerning the origin of the sacraments, Pius X in the Decree *Lamentabili* condemned proposition 40: "The sacraments had their origin from this, that the apostles and their successors, under the persuasion and impulse of circumstances and events, interpreted some idea and intention of Christ."[195]

The **immediate institution** of all the sacraments by Christ is proved:

1. **From the Council of Trent:** "If anyone says that the sacraments of the New Law were not all instituted by Jesus Christ our Lord ... let him be anathema."[196] Although in this canon it is not expressly said that Christ immediately instituted all the sacraments, for the Council did not wish to condemn the opinion of several Catholics admitting only a mediate divine institution, nevertheless that this is the mind of the Council follows from three things:

a) After the Council almost no Catholic theologian dared openly to deny immediate institution.

b) The same Council[197] defined that extreme unction was instituted by Christ and promulgated by St. James. Therefore, even extreme unction, concerning which there exists the greatest difficulty of all, was only promulgated and not instituted by an apostle, but was instituted by Christ Himself. *A fortiori*, therefore, the other sacraments were immediately instituted by Christ.

c) The same Council[198] declares that the Church cannot change the substance of the sacraments. Therefore, *a fortiori*, it cannot institute the sacraments, and this not even by the authority of Christ, because the existence of such conferred authority is not established.

2. **From theological reasons.** a) Nowhere do either the apostles or the Church attribute to themselves a delegated power of instituting sacraments, but rather they deny this. Therefore, Christ alone is the author of the sacraments. The apostles called themselves ministers of Christ and dispensers of the mysteries of God, but never institutors of the sacraments. On the contrary, St. Paul forcefully rebuked the Corinthians who disputed by whom each had been baptized, arguing that all were baptized in the name of Christ.

b) Just as God, the author of the Old Law, instituted all its sacraments, so Christ, the author of the New Law, Himself instituted all the sacraments.

c) The sacraments, as instruments necessary for salvation, pertain to the very foundation of religious worship and of the Church. But it is very fitting that the author of the Christian religion and Church Himself determine these foundations.

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[191] *S. theol.* 4, q. 9, member 1; cf. Pourrat, *La théol. sacr.*, c. 6, § 4, p. 308.

[192] IV Sent., dist. 7, a. 1, q. 1, and dist. 23, a. 1, q. 2.

[193] In Migne, *Patr. lat.* 16, 439.

[194] *L'Évangile et l'Église*, c. 6, n. 2.

[195] Denz., n. 2040.

[196] Sess. 7, can. 1 on the sacraments in general (Denz., n. 844).

[197] Sess. 14, can. 1 on extreme unction (Denz., n. 926).

[198] Sess. 21, c. 2 on Communion (Denz., n. 931).

50. Thesis 2. Christ not only immediately instituted all the sacraments of the New Law, but also so specifically determined their matter and form that it is not lawful to change them substantially.

This doctrine follows from the first proposition as a corollary. For since the essence of each sacrament consists in matter and form,[199] He who immediately instituted the sacraments also had to determine their form and matter. Consequently, all theologians living after Trent teach that the determination of matter and form was made by Christ; but they dispute among themselves how far this determination extends. A threefold

determination is customarily distinguished, namely, individual, specific, and generic. Individual determination reaches all and each of even the accidents; specific determination reaches only substantial things; finally, generic determination establishes only the effects of the sacraments.

a) It is indeed established among all that Christ did not determine the individual accidents to be employed in the administration of the sacraments, because in the course of time these accidents have been sufficiently changed, and even now they differ greatly in the Latin and Eastern Church. Hence, without any doubt, matter and form, or rather the sacraments, were not directly determined by Christ **in the individual**, that is, as to all qualities, even accidental ones. Thus, for example, whether baptism is performed by immersion or infusion; whether consecration is performed in unleavened bread or not, etc., was not directly determined by Christ.

b) Theologians dispute whether Christ determined the matter and form of the sacraments **generically** or **specifically**. Christ would have made this determination generically if, for example, He had said to the apostles: I establish seven sacraments, namely, baptism, confirmation, etc., and I will that you employ matter and form suitably signifying the effect of each sacrament, so that in baptism washing from original sin is signified, in confirmation strength for firmly resisting the devil, in the Eucharist nourishment of the soul, etc. If Christ had chosen this manner, He would still always remain the true and immediate author of the seven sacraments, since He would have willed that there be seven determinate modes of conferring grace through sacraments.

Christ is said to have determined the matter and form of the sacraments **specifically** if, besides the generic institution explained in this manner, He also prescribed the substantial elements of each sacrament, for example, baptism is to be administered with water and the form: "I baptize you, etc."; confirmation with an anointing of chrism, the imposition of the bishop's hand, and the form: "I sign you with the sign of the cross, etc." Accidental changes of matter and form, however, were entrusted by Christ to the Church, whence certain accidental differences even in matter and form exist between the Latin and Eastern Church.

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[199] Cf. above, n. 9.

51. The opinion teaching that the specific determination was made by Christ seems preferable. For if Christ had determined the sacraments only generically, the Church would necessarily have the authority to change the matter and form of the sacraments substantially; but this is denied by the Council of Trent.[200] Thus, for example, if Christ had instituted the sacrament of confirmation only generically, the Church could decree that any oil whatever be employed in place of chrism, and, in place of the customary form, any other form whatever signifying the conferral of strength. Moreover, there is the authority of St. Thomas,[201] St. Alphonsus,[202] and many theologians of great authority. Behold the words of the Angelic Doctor: "Because the sanctification of man is in the power of God who sanctifies, it does not belong to man to assume by his own judgment the things by which he is sanctified, but this must be determined by divine institution. And therefore in the sacraments of the New Law ... it is necessary to use things determined by divine institution." Finally, the dignity of the sacraments is increased by this specific determination. For since Christ, from His infinite goodness, instituted the sacraments as the principal means of our salvation, it is very fitting to the dignity of these means that they be ordained by their Founder Himself, not in a generic and vague manner, but in a specific manner.

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[200] Sess. 21, c. 2 on Communion (Denz., n. 931).

[201] *S. theol.* 3, q. 60, a. 5.

[202] *Theol. mor.*, l. 6, n. 12.

52. There are several theologians[203] who indeed concede that in certain sacraments, for example in baptism and the Eucharist, the substance of the matter and form was determined by Christ, but not in all, and notably not in the sacrament of order, since in the Eastern Church it is administered without the tradition of the instruments, with the imposition of hands alone.[204] Although this doctrine has some slight probability, nevertheless it is not so apparent why Christ, in the sacrament of order, which is so excellent and necessary, permitted that liberty which He denied in the other sacraments. Therefore, it must be said either that the imposition of hands alone is of the essence of the sacrament of order, or that even in the Eastern Church there is a tradition of the instruments, namely, an indirect one, since the ordinand must touch the altar upon which the instruments have been placed. (Which opinion is to be preferred may be seen below in the tract on order, n. 594.)

No serious difficulty can arise against the doctrine explained from clandestine marriages, which were valid before the Council of Trent but not afterward. For the legitimate contract and consent of the spouses always was and is the essence of the sacrament of matrimony. By the impediment of clandestinity introduced by the Council of Trent, the Church changed absolutely nothing concerning this essence, but merely decreed that spouses ordinarily cannot validly express matrimonial consent except before their proper pastor and two witnesses.

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[203] Cf. Haine, *Theol. mor. elementa* IV, *De sacr. in gen.*, q. 11.

[204] Among moderns Pourrat somewhat modifies this opinion (*La theol. sacr.*, chap. 6, § 1, p. 274), following the footsteps of Cardinal Newman: "Christ immediately instituted all the sacraments; but all the sacraments were not given by the Savior to the Church fully constituted. Concerning several, particularly those essential to Christianity, baptism and the Eucharist, for example, Christ explained Himself completely.... As for the others, the Savior laid down their essential principles; development was to show the apostles and the Church what the Master had willed to do. Jesus, in fact, could not say everything to His apostles: 'You cannot bear it now.'... One then understands why the Church, according to the testimony of history, did not possess, altogether from the beginning, a full and entire consciousness of certain sacraments.... Jesus immediately and explicitly instituted baptism and the Eucharist; He immediately but implicitly instituted the five other sacraments." This opinion indeed seems very dangerous and not greatly dissimilar to proposition 40 condemned in the Decree *Lamentabili* (cf. above, n. 49).

Chapter V. On The Minister Of The Sacraments

For the sake of clarity we divide this chapter into seven articles: 1. on the person of the minister; 2. on his faith and probity; 3. on his attention; 4. on his intention; 5. on the manner and rite of conferring the sacraments; 6. on sacraments to be given or denied; 7. on the simulation and dissimulation of the sacraments.

Article I. On The Person Of The Minister

Since it has been demonstrated that Christ as God is the principal cause and the minister by authority of the sacraments, we must now discuss the ministerial cause, or the human minister. For although God is the author of the sacraments, He nevertheless wills to administer them in the Church neither by Himself nor by angels, but through man.

53. Proposition. Only a wayfaring man who is consecrated or at least legitimately deputed is a minister of the sacraments.

We speak of ordinary cases, for in a miraculous manner God can administer sacraments through angels or through the souls of the departed. In ecclesiastical history sacraments administered by angels are recounted,

for example, according to the testimony of Nicephorus,[205] St. Amphilochius was consecrated a bishop by angels, and the other bishops ratified this consecration; according to the testimony of the bull of canonization of St. Agnes of Montepulciano, an angel often gave her Communion. Likewise, if a dead priest returned to life, he could duly celebrate Mass, since the priestly character remains forever; yet God would certainly prevent a damned priest from consecrating the body of Christ. But we do not speak here of these extraordinary cases. It is also evident in itself that the greatest prudence must be employed before a narrative of miraculous deeds of this kind is believed.

The reason why wayfaring men alone are ministers of the sacraments is first of all the will of God. Hence St. Paul says: "For every high priest taken from among men is ordained for men in the things that pertain to God."[206] Then it is very fitting that, just as Christ as man was the primary minister of the sacraments, so also other men deputed by Christ should be secondary ministers.[207] But that not every man is a minister of every sacrament was defined against Luther and the Reformers by the Council of Trent: "If anyone says that all Christians have power in the word and in administering all the sacraments, let him be anathema."[208] The same is evident from Sacred Scripture, in which Christ is said to have constituted in the Church some apostles, some pastors, and some teachers for the work of the ministry, unto the edification of the body of Christ.[209] Especially concerning the sacrament of order St. Paul warns: "Neither does any man take the honor to himself, but he who is called by God, as Aaron was."[210] Therefore, if not everyone can receive the sacrament of order, *a fortiori* it cannot be administered by just anyone.

Finally, **reasons of congruity** can be adduced: a) In the Old Law God gravely commanded that no one involve himself in sacred ministries except those consecrated from the stock of Aaron; hence King Uzziah was gravely punished because he usurped the priestly office. Therefore, *a fortiori*, in the New Law, where the ministries and sacraments are much more sacred, not all can administer the sacraments. b) In every ordered kingdom not all can fulfill every office by the authority of the king. Therefore, it is fitting that this diversity of offices also be found in the Church.

Corollary. Since Christ is the principal minister of all the sacraments, the human minister is only a mandatory of Christ, and therefore he must conform himself to the intention of Christ as regards the matter, form, and necessary power. Accordingly, the things required on the part of the minister for the **valid** administration of the sacraments are the following:

1. due **power**, for not all can administer every sacrament, as was said above;
2. due **intention**, namely, of doing what the Church does, as will be said below;
3. the right **application of the form to the matter**, as was explained above, n. 19.

All other things required on the part of the minister pertain indeed to the liceity, but not to the validity, of the administration.

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[205] Callistus, l. 11, c. 20 (Migne, *Patr. graec.* 146, 630).

[206] Heb. 5:1.

[207] Cf. *S. theol.* 3, q. 64, a. 7.

[208] Sess. 7, can. 10 on the sacraments in general (Denz., n. 853).

[209] Cf. Eph. 4:11 sq.

[210] Heb. 5:4.

54. Distinctions. The minister of the sacraments is customarily distinguished in diverse ways:

1. **A consecrated and a nonconsecrated minister.**

A consecrated minister, as the word itself already indicates, received a special consecration for ministering the sacraments. Such a minister is required in five sacraments, namely, in confirmation, the Eucharist, penance, extreme unction, and order. A nonconsecrated minister lacks such a consecration. A nonconsecrated minister, however, suffices in the sacraments of baptism and matrimony. For the sacrament of baptism, which is so necessary for eternal salvation, God deputed all men as ministers, at least in a case of necessity. But for matrimony, on account of the peculiar nature of this sacrament, which cannot be separated from the matrimonial contract, the spouses themselves were deputed as ministers.

2. **An ordinary and an extraordinary minister.**

He is called ordinary upon whom it devolves by office to administer such sacraments. Thus, for example, a bishop is the ordinary minister of confirmation and order. He is extraordinary who can administer a sacrament only in a case of necessity and by special delegation; for example, a priest is an extraordinary minister of confirmation, and a deacon can administer Communion extraordinarily.

3. Certain authors further distinguish a **public and a private minister**. The former is he who, employing all the ceremonies prescribed in the Ritual, solemnly administers a sacrament. The latter is he who, in a case of necessity, with all other things omitted, applies only the form to the matter of the sacrament; for example, if someone, even if he is a priest, baptizes under the compulsion of necessity with all things omitted except the matter and essential form, he is a private minister of baptism.

Article II. On The Faith And Probity Of The Minister

55. Proposition 1. For the valid administration of the sacraments neither faith nor probity (that is, the state of sanctifying grace) is required in the minister.

The truth of this proposition is already evident from what has been said. For since a man bears not his own person but that of Christ in administering the sacraments, which produce their proper effects *ex opere operato* (and not *ex opere operantis*), the minister always administers them **validly**, provided that without a substantial change he applies the form to the due matter, having the intention of doing what the Church does. Moreover, the greatest incongruity would follow if the validity of the sacraments depended upon the faith and probity of the minister. For then a man receiving the sacraments could not have certain confidence concerning his own salvation; for it would always be in doubt whether the minister administering, for example, the sacrament of penance, was in the state of sanctifying grace. A very great many infants also would lose eternal salvation, namely, all those who were baptized by a bad minister. But these things are absurd and repugnant to divine mercy, which wills all men to be saved. Hence St. Thomas rightly says: "In the form of the sacraments a word uttered by a just man does no more than one uttered by a sinner, because the merit of man does not operate there, but the Passion of Christ and the power of God."[211] The **tradition and definitions of the Church** teach the same.

Tradition. Therefore, from the most ancient times the Church taught that the false faith of the minister cannot destroy the validity of a sacrament. It is exceedingly well known how St. Stephen I, already in the third century, defended the validity of baptism conferred by heretics against St. Cyprian, Firmilian, and other bishops who held the contrary opinion. Pope St. Stephen wrote to St. Cyprian: "If, therefore, any come to you

from any heresy, let nothing be innovated [that is, let no sacrament be repeated], except what has been handed down, namely, that the hand be imposed upon them unto penance.... One ought not ask who it is that baptized, because he who has been baptized could obtain grace.... The name of Christ contributes greatly to faith and the sanctification of baptism, so that whoever and wherever he has been baptized in the name of Christ may immediately obtain the grace of Christ."[212] Above all others St. Augustine defends the Catholic doctrine in many places, for example: "Those whom a drunkard baptized, those whom a murderer baptized, those whom an adulterer baptized: if it was the baptism of Christ, Christ baptized."[213] The same St. Augustine, against St. Cyprian, asserts that the custom of not rebaptizing those who, having been baptized by heretics, return to the true Church "was derived from apostolic tradition."[214] In the twelfth and thirteenth centuries the Waldensians and Albigensians falsely taught that sacraments administered by any bad minister were null. Finally, in the fourteenth century the Wycliffites thought that only those sacraments were valid which were conferred by predestined ministers. But all these errors were proscribed by the Church.

Definitions of the Church. The First Council of Nicaea (a. 325) decreed that the Paulianists returning to the Church should be entirely rebaptized, because they had not at all been baptized in the name of the Father and of the Son and of the Holy Spirit; on the contrary, the same synod prohibited the Novatians and Cathari from being rebaptized, because their baptism was valid.[215] The Council of Constance condemns proposition 4 of Wyclif: "If a bishop or priest is in mortal sin, he does not ordain, does not consecrate, does not confect, does not baptize."[216] The Council of Trent defined: "If anyone says that baptism, which is even given by heretics in the name of the Father ... with the intention of doing what the Church does, is not true baptism, let him be anathema"; and: "If anyone says that a minister existing in mortal sin, provided that he has observed all the essentials which pertain to confecting or conferring a sacrament, does not confect or confer a sacrament, let him be anathema."[217]

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[211] Opusc. 18, *De forma absolut.*, c. 3. The Angelic Doctor discusses this matter more broadly in *S. theol.* 3, q. 64, a. 5, and *Contra gent.* 4, 77.

[212] Denz., nn. 46 and 47 (Migne, *Patr. lat.* 3, 1174 sq.).

[213] On John, tract. 5, n. 18 (Migne, *l.c.* 35, 1424).

[214] *De bapt.*, l. 2, c. 7 (Migne, *l.c.* 33, 133).

[215] Denz., nn. 55 and 56; cf. n. 97.

[216] Denz., n. 584.

[217] Sess. 7, can. 4 on baptism and can. 12 on the sacraments in general (Denz., nn. 860 and 855).

56. Proposition 2. For the licit confecting of the sacraments, the state of sanctifying grace is required under grave sin (at least if a consecrated minister solemnly administers sacraments outside a case of necessity).

Hence it is a grave sin to confect sacraments in the state of grave sin, except in the cases just indicated and to be explained below. Thus teach nearly all theologians. The reason, however, is manifold:

It is proved: 1. Not less, but much greater purity is required in the ministers of the New Testament than in the Levites of the Old Law. But the latter were gravely bound to legal purity: "Every man of your stock [namely, Aaron] who shall approach those things which are consecrated ... in whom there is uncleanness, shall perish before the Lord."[218] Therefore, spiritual purity from grave sin is most fittingly required of the ministers of the New Testament.

2. The Roman Ritual says: "Although the sacraments cannot be defiled by the impure, nor can their effects be impeded by wicked ministers, nevertheless those who minister them impurely and unworthily incur the guilt of eternal death."[219]

3. St. Thomas[220] teaches: "There is no doubt that evil men who present themselves as ministers of God and of the Church in the dispensing of the sacraments sin. And because this sin pertains to irreverence toward God and the contamination of the sacraments, insofar as this lies on the part of the sinner himself, although the sacraments in themselves are incapable of contamination, it follows that such a sin is mortal from its genus."

4. It is in truth most gravely unbecoming that a minister who was solemnly consecrated for worthily confecting the sacraments, but who is now stained with the filth of sin and therefore placed under the power of the devil, nevertheless wishes solemnly to bear the person of the most holy and most pure Christ in confecting the sacraments, and to produce or increase in the soul of the one receiving the sacrament the most excellent gift of sanctifying grace. Yet the minister himself has subordinated that grace to a filthy sin. For such arrogance is worse than if a servant were to present a vessel outwardly dirty for offering precious wine to the friends of the king.

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[218] Lev. 22:3.

[219] Tit. I, on the sacraments in general, n. 4.

[220] *S. theol.* 3, q. 64, a. 6.

57. Exceptions. There are nevertheless **excepted cases** in which a minister existing in the state of mortal sin does not sin gravely by confecting and administering the sacraments.

a) **If he is not a consecrated minister.**

Hence a layman existing in the state of mortal sin who administers baptism in a case of necessity does not sin gravely. Thus holds the solidly probable opinion of many doctors; St. Alphonsus, however, calls the opposite opinion more probable,[221] because even such a man commits a grave irreverence toward God and the sacrament. Certainly, some irreverence is present, but it is not established whether it is so great as to constitute mortal sin. For the rest, **in practice**, with all agreeing, a layman administering baptism in a case of necessity does not sin mortally: a) because objectively the gravity of the irreverence committed is not established; β) because there is customarily so great a lack of time that both an act of contrition and sacramental confession are impossible; γ) because ignorance of the obligation to elicit contrition is customarily present. Since the contracting parties are the ministers of the sacrament of matrimony, they do not indeed sin gravely by **administering**, but by **receiving**, this sacrament of the living in the state of mortal sin. In practice, according to all theologians, it suffices if such a sinner says in confession: I received the sacrament of matrimony in the state of mortal sin.

b) **Even a consecrated minister does not seem to sin gravely if a) in a case of necessity he confects a sacrament in a nonsollemn manner, or β) if time is lacking for obtaining for himself the state of grace (at least through contrition).**

The Angelic Doctor, nearly all Thomists,[222] and many others[223] plainly teach this concerning baptism. Behold the words of St. Thomas:[224] "In the moment of necessity, however, [a priest] would not sin by baptizing in a case in which even a layman could baptize; for thus it is evident that he would not present himself as a minister of the Church, but would relieve the necessity of the one suffering it. But it is otherwise in the other

sacraments, which are not of so great a necessity as baptism." Hence, for example, a priest existing in the state of mortal sin does not sin if he ministers baptism or the sacrament of penance to a dying person who would die without baptism or absolution if the priest himself first wished to confess or to be contrite. This doctrine can indeed be confirmed, not incongruously, by an example: It would assuredly be the greatest irreverence if a minister of a king, solemnly deputed to his office, were to appear in filthy clothing before the king. But if the same minister, in a case of great necessity, should suddenly have to serve the king outside the time of his proper service, there would not be grave irreverence, nor would the king be greatly offended, if he appeared in filthy clothing. For then the minister would act not from contempt of the king, but from necessity. Therefore, a consecrated minister who, while existing in the state of mortal sin, administers sacraments in grave necessity does not seem to sin gravely. Nevertheless, since a priest ought to know the sanctity of the sacraments much better than a layman and can much more easily elicit an act of contrition, let him take care, if he is conscious of mortal sin, at least to elicit an act of perfect contrition with the resolve of confessing or, what is much better and safer, to receive sacramental absolution after making confession.[225] But if it is a question of confecting the Eucharist (or receiving it, but not administering it), contrition alone does not suffice, but sacramental confession and absolution are required **if a confessor is available**.[226] What constitutes the availability of a confessor may be seen below in the tract on the Eucharist (n. 192).

According to St. Alphonsus,[227] a priest celebrating in mortal sin commits four sacrileges: 1. because he unworthily confects the sacrament; 2. he unworthily receives it; 3. he unworthily ministers it; 4. he ministers it to his own unworthy self. Others, however (Lugo, Ballerini, etc.), teach that there are only two mortal sins, namely, because such a priest unworthily consecrates and unworthily receives the sacrament; finally, Billuart[228] teaches that there is one sin, because all those things are joined in one violated mystery. For practice this controversy is of little importance, since in confession it suffices simply to declare an unworthy celebration.

Corollary. From what has been said it follows that a minister existing in mortal sin sins gravely if, outside a case of urgent necessity, he solemnly baptizes, confirms, celebrates, absolves, confers extreme unction, or confers sacred orders; but not if he assists at matrimony, since the priest is not the minister of the sacrament of matrimony.

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[221] *Theol. mor.*, l. 6, n. 32.

[222] Cf. Billuart, *De sacr. in gen.*, diss. 5, a. 4; Concina, *De sacr. in gen.*, c. 11, § 5, n. 15; Gonet, *Clypeus theol. thom.*, *De sacr. in gen.*, disp. 6, n. 95.

[223] Cf. Lehmkuhl, *Theol. mor.* II, n. 43; Haine, *Theol. mor. elem.*, *De sacr. in gen.*, q. 25; Gopfert, *Moraltheol.* III, 14.

[224] *S. theol.* 3, q. 64, a. 6 ad 3.

[225] Cf. Roman Catechism, P. 2, c. 1, q. 17; Roman Ritual, tit. I, on the sacraments in general, n. 4.

[226] Council of Trent, sess. 13, c. 7 (Denz., n. 880).

[227] *L.c.*, n. 35.

[228] *De sacr. in gen.*, diss. 5, a. 4, Corollaries; and *De pecc.*, diss. 2, a. 4.

58. It is asked: 1. How many sins does a minister commit who, while existing in the state of sin, solemnly administers several sacraments?

The theologians do not agree. Noldin[229] teaches: "He commits one sin numerically who in one administration successively confers the same sacrament upon several; thus he who absolves several, baptizes several together,

confirms several, or ordains several while in the state of sin." This opinion, however, is commonly rejected. Therefore Lehmkuhl[230] rightly says: "It is commonly established that a numerically distinct mortal sin is said to be committed as often as a sacrament is ministered." The reason is that each sacrament is a thing complete in itself, and consequently as many gravely sinful irreverences are committed as there are sacraments ministered in the state of mortal sin. Hence, although the opinion defended by Noldin and others is not altogether improbable, nevertheless it is much more advisable to confess the number of sacraments administered in the state of mortal sin. And ordinary practice also proceeds thus; this nevertheless admits an exception with regard to the distribution of Communion, concerning which immediately below.

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[229] *De sacr. in gen.*, n. 32.

[230] *Theol. mor.* II, n. 47.

59. 2. Is it a grave sin for a priest or deacon to administer Holy Communion in the state of mortal sin?

The theologians do not agree. St. Alphonsus,[231] Billuart,[232] and several others think this to be a mortal sin. The Roman Catechism favors this opinion, saying: "But if it is less lawful for a man contaminated by sins to treat of divine things, how great a crime must we judge to be conceived by him who is conscious in himself of many crimes, and nevertheless does not fear to confect the sacred mysteries with a polluted mouth, or to take them into foul hands, handle them, and offer and minister them to others?"[233] But Lugo,[234] Sporer,[235] and several others cited by St. Alphonsus,[236] and, among moderns, Lehmkuhl,[237] Noldin,[238] Haine,[239] Genicot,[240] and Gopfert,[241] probably think that there is no mortal sin, because a) in that act the minister does not instrumentally cause sanctifying grace, since it is produced not through the offering of the consecrated host but through its consumption; b) one who distributes the Eucharist is not necessarily a sacred person, for in ancient times laypeople carried it home with them and gave it to themselves and to others in a case of necessity. Since these things are so, this second and benign opinion is truly probable both extrinsically and intrinsically. Nevertheless, since a) it is certainly very unbecoming that a priest who, through his mortal sin, is a member of the devil should touch the most holy body of Christ in the Eucharist, and b) we do not possess trustworthy balances by which the degrees of malice may be weighed, let such an unhappy sinner not dare to distribute the Eucharist before he has recovered the state of sanctifying grace through sacramental absolution or at least through perfect contrition with the resolve of confessing. Nearly all authors, even the defenders of the first opinion, affirm that if a minister existing in the state of mortal sin distributes Holy Communion successively to several persons, he commits only **one** sin, because there is then only one banquet.

Those who admit the second opinion logically deduce from it that a deacon who carries or touches the most Holy Eucharist, likewise a deacon or subdeacon, and *a fortiori* the minor ministers serving in a solemn Mass and other sacred functions, do not sin mortally if they are in the state of mortal sin, unless, however, grave contempt is added, which is quite easily present if they exercise those functions frequently or habitually while in mortal sin. St. Thomas might appear contrary to this doctrine, since he teaches: "But whoever handles any sacred office with mortal sin, there is no doubt that he does it unworthily; whence it is evident that he sins mortally."[242] But the Holy Doctor in the *Summa theologica*, where he retracted several opinions which he had maintained in the commentaries, has nothing concerning this matter. Moreover, "sacred office" cannot be taken in a broad sense; otherwise even a porter opening the door or an acolyte carrying a candle would sin mortally if he were not in the state of grace, which seems altogether improbable. Therefore, the Angelic Doctor either took *office* for *sacrament*, or understood "mortal sin" as a notorious mortal sin, so that scandal arises from it.

That a **preacher** who delivers a sacred sermon while in mortal sin does not sin mortally is the more common opinion, nor does St. Thomas contradict it.[243] The same must be said of other sacred functions which ought to be performed by clerics, such as the consecration of a church or vessels, blessings even with the sacrament, etc.[244]

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[231] *L.c.*, n. 35.

[232] *De sacr. in gen.*, diss. 5, a. 4, Corollaries.

[233] P. 2, c. 1, q. 17.

[234] *De sacr. in gen.*, disp. 8, n. 155.

[235] *Theol. mor.*, P. 1, c. 3, n. 172.

[236] *L.c.*

[237] *Theol. mor.* II, n. 43.

[238] *De sacr. in gen.*, n. 33.

[239] *De sacr. in gen.*, q. 25.

[240] *Theol. mor.* II, n. 115.

[241] *Moraltheol.* III, 14.

[242] IV Sent., dist. 24, a. 3, sol. 5.

[243] IV Sent., dist. 19, q. 2, a. 2 ad 2.

[244] Cf. St. Alphonsus, *Theol. mor.*, l. 6, nn. 38-41.

60. Scholion. On immunity from censures and irregularity. For the licit administration of the sacraments there are further required: a) due jurisdiction or license; b) immunity from censures and irregularity. Sacraments administered without these conditions are nevertheless valid (except penance in certain cases and matrimony). A fuller doctrine concerning all these things will be given below in the tract on the individual sacraments, censures, and irregularities.

Article III. On The Attention Of The Minister

61. Attention is customarily distinguished as twofold: one internal, the other external. **Internal attention** is the application of the mind to those things which are being done. **External attention** is partly something negative, namely, the absence of any external action which is incompatible with internal attention, and partly something positive, insofar as it causes the external work truly to be done. Attention was treated more broadly above, II, n. 354.

1. **For the valid administration of the sacraments no internal attention is required, but external attention is required and suffices.**

Thus all teach, except Lacroix, whose opinion St. Alphonsus[245] calls scarcely probable. The reason is that, when external attention exists, even though all internal attention is lacking, the action of administering the sacraments, by force of the prior intention, remains truly human. Moreover, for the valid administration of the sacraments it suffices that the act be truly human and be performed in the person of Christ, as was established above. Therefore, a sacrament is validly conferred whenever the minister truly pronounced the necessary form over valid matter, although he was voluntarily distracted.

2. **For the licit administration of the sacraments, internal attention excluding every voluntary wandering of the mind is required in addition.**

For the reverence due to the sacraments so requires, as is evident in itself. Hence a minister voluntarily distracted during the administration of the sacraments commits a sin, which nevertheless does not exceed venial guilt unless a true danger of erring in those things which pertain to the essence of the sacrament arises from it. But if a priest during the consecration itself in Mass were altogether voluntarily distracted, then, on account of the great irreverence committed against Christ at the very moment when He miraculously descends into the hands of the one consecrating, according to several authors there would be mortal sin; this, however, is denied by others[246] and is not certainly established.

[245] *L.c.*, n. 14.

[246] Cf. St. Alphonsus, *l.c.*

Article IV. On The Intention Of The Minister

62. Notion. "Intention is the same as reasoned will insofar as it is directed toward an end." Thus St. Bonaventure[247] says very well: "For to intend is an act of the will in relation to reason," as St. Thomas[248] teaches. There is therefore a difference between willing and intending: "to will tends toward the end absolutely";[249] but intention seeks the end through means suitably ordained. In the sacraments the minister must, by means of a sensible sign, intend at least that which the Church does, as will be said below, n. 65.

Divisions. Intention is customarily distinguished in many ways, both by reason of the subject and by reason of the object.

[247] IV Sent., dist. 6, P. 2, a. 2, q. 2.

[248] *De verit.*, q. 22, a. 13.

[249] *Ibid.*

63. By reason of the subject, intention is distinguished as actual, virtual, habitual, and interpretative.

1. **Actual** is said of that intention which is elicited here and now. It can be subdivided into reflex and simply direct. A reflex actual intention is present when a man not only actually wills something, but also knows that he here and now wills it. But if this reflex knowledge is lacking, there is a simply direct actual intention. For example, he who baptizes and attends to the baptism has a simply direct actual intention; but he who in addition reflects that he now wills to baptize has a reflex actual intention.

2. **Virtual** is said of that intention which was formerly possessed as actual, then was never retracted, and now, although not elicited anew and indeed not even perceived, nevertheless still influences the work to be performed. For example, a priest who goes to hear confessions with the intention of absolving all penitents rightly disposed has a virtual intention of absolving if afterward he no longer attends to that intention and pronounces the words of absolution amid distractions. To avoid ambiguities, it can never be kept too firmly before one's eyes that the older authors not infrequently take habitual and virtual intention interchangeably. Thus, for example, St. Thomas[250] says: "Although he who thinks of something else does not have an actual intention, nevertheless he has a habitual intention, which suffices for the perfection of the sacrament; for example, when a priest approaching to baptize intends

to do concerning the one to be baptized what the Church does; whence, if afterward in the very exercise of the act his thought is carried away to other things, the sacrament is perfected by virtue of the first intention." In the example adduced by the Angelic Doctor there is manifestly a virtual and not a habitual intention[251] in the sense of modern authors.

3. **Habitual**, properly speaking, is that intention which indeed was once possessed and was never retracted, but now in no way **positively** influences the work. For example, a just person possessing the habit of praying prays in sleep from a habitual intention; or a just person sinning venially habitually orders this act to God, because the habit of charity existing in the just person refers all things to God. Nevertheless, it is absurd to say that the habit of charity actually or virtually influences the venial sin and thus refers it to God.

4. **Interpretative** is the name given to that intention which neither now exists nor formerly existed, but which, as is presumed from clear indications, would be present if the man here and now attended or were able to attend.[252] For example, a dying Protestant deprived of his senses, who lived uprightly and was in good faith, is judged to have the interpretative intention of receiving sacramental absolution, and therefore with a safe conscience a confessor can absolve him, at least conditionally. As will be explained more broadly afterward: for **receiving** sacraments, at least in a case of necessity, any of these four intentions suffices; but for **administering** sacraments neither an interpretative nor a habitual intention suffices, but an actual or at least virtual intention is required. The reason is that for receiving or undergoing something, so great an act of the will is not customarily required as for doing and positively producing something. But in the reception of the sacraments man is rather one who receives and undergoes; in their administration, however, he is rather one who causes and instrumentally produces grace.

The difference among the four enumerated intentions can be stated briefly in this manner:

Actual intention is present and influences the work **with advertence on the part of the agent**.

Virtual intention is present and influences the work **without advertence on the part of the agent**.

Habitual intention was present, but now exercises no influence upon the work **insofar as it is a human act**.

Interpretative intention neither was present, nor is present, nor influences the work.

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[250] *S. theol.* 3, q. 64, a. 8 ad 3.

[251] Cf. Billuart, *De sacr. in gen.*, diss. 5, a. 7, § 3, and Cajetan, *Comm. in h.l.*

[252] Certain theologians, such as Suarez (*In III*, disp. 13, s. 3, n. 2), Sylvius (*In III*, q. 64, a. 8, concl. 5), and Lugo (*De sacr. in genere*, disp. 8, n. 73), equate interpretative intention with the indirect voluntary.

64. By reason of the object willed, intention can be divided:

a) **into clear and confused**, according as the intended object is presented to the mind clearly or confusedly.

For example, he who intends to baptize while clearly knowing the essence and effects of baptism has a clear intention; but a Jew who baptizes and intends only to do what the Church does, without precisely knowing the effect of baptism, has a confused intention.

b) **into determinate and indeterminate**, according as the object is intended as limited in every respect, or the will is borne toward an object designated only in a vague manner.

For example, a priest consecrating a host placed before him on the altar has a determinate intention; but if from a heap of hosts he wills to consecrate only three not specially designated, he has an indeterminate intention, and would consecrate invalidly, as will be proved below.

c) **into explicit and implicit**, according as a thing clearly known is intended either in itself or in another thing with which it is joined.

Thus, for example, one who freely receives the subdiaconate explicitly intends to receive the order, but implicitly intends to receive celibacy, which is joined with the subdiaconate.

d) **into absolute and conditional**, according as the object is intended without any added restriction, or only under a certain restriction or condition.

For example, a priest who consecrates a host placed before him on the altar has an absolute intention; but he who absolves a man deprived of his senses under the condition, "if you are alive," has a conditional intention. Above, n. 22, when there was discussion of a conditional form, enough was said concerning the absolute and conditional intention of the minister of the sacraments.

With these things noted beforehand, it must be seen whether intention is required in the administration of the sacraments and what this intention is.

65. Necessity and object of intention. For validly confecting the sacraments, it is required that the minister have at least the intention of doing what the Church does.

What this expression, "the intention of doing what the Church does," means will be explained below. But the doctrine stated in the proposition is of Catholic faith, defined against Luther and Calvin[253] in the Council of Trent:[254] "If anyone says that in ministers, while they confect and confer the sacraments, there is not required at least the intention of doing what the Church does, let him be anathema." The Council of Florence had already declared in the Decree of Eugene IV: "All the sacraments are perfected by three things, namely, by things as matter, by words as form, and by the person of the minister conferring the sacrament with the intention of doing what the Church does."[255] Since Protestants commonly do not acknowledge the efficacy of the sacraments *ex opere operato*, and think that the sacraments are efficacious solely because of the faith of the recipient, they logically deduce from this that no intention at all is required on the part of the minister, and consequently that sacraments are valid even if the minister is devoid of reason or acts in mere mimicry and mockery. How absurd this error is plainly evident from the following. For a) baptism would then be valid if some madman from a window poured a bucket of water over a Jewish catechumen passing by and at the same time pronounced the words: "I baptize you, etc."; b) then a priest reading aloud in the refectory the words of consecration in chapter 26 of St. Matthew would consecrate all the loaves placed upon the table and the flasks of wine.

The Catholic doctrine can furthermore be proved directly from theological reasons:

1. Matter and form considered only objectively are still of **indeterminate** signification, for they can also be employed in a natural or mocking sense. But they are determined to the supernatural signification of the sacrament, which they must have, through the intention of the minister acting. Therefore, this intention is necessary.
2. It was already said above that the minister must act **in the person of Christ and in a human manner**. Therefore, it does not suffice that he act merely as an inanimate instrument, for example, as a phonograph machine. But a man acts properly in a human manner only when he acts with intention, or

for a determinate end.[256] As regards the difficulties raised against Catholic doctrine from certain ancient little narratives, see Billuart.[257]

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[253] In a truly shameless style Calvin writes the following in his *Antidote* to canon 11 of session 7 of the Council of Trent: "They show that they make little of their anathemas, in pouring forth which they are so prodigal. What they prattle about the intention of consecrating was brought forth by the sophists for no probable reason.... For if the intention of the minister is necessary, there is none of us who would dare assure himself with certainty of his own baptism.... What sort of faith will it be which depends upon the secret will of another? And still these swine do not fear to threaten us with their anathemas, that is, their blasts, unless we immediately subscribe to such blasphemies. But I defer so much to the most sacred institution of Christ that, if some Epicurean, inwardly mocking the whole action, were to administer the Supper to me by the command of Christ and according to the rule given by Him and in the legitimate rite, I would not doubt that the bread and chalice offered by his hand are truly for me pledges of the body and blood of Christ. It is irksome to examine those stinking trifles when they say: at least of doing what the Church does."

[254] Sess. 7, can. 11 on the sacraments in general (Denz., n. 854).

[255] Denz., n. 695.

[256] Cf. *S. theol.* 3, q. 64, a. 8.

[257] *De sacr. in gen.*, diss. 5, a. 7, § 1.

66. Quality of the intention required in the minister.

1. **An interpretative or habitual intention does not suffice.** The reason is that these intentions in no way influence the act of administering and therefore do not render that act human, which is nevertheless required for the validity of the administration.[258]

2. **A virtual intention suffices.** An actual intention is indeed best and is to be sought as far as possible; but it is not altogether required, nor is it commanded either by the very nature of the sacrament or by any positive law. Thus teach all Catholic authors.[259] The reason is that an actual intention is in truth sometimes morally impossible. How, for example, can a confessor hearing hundreds of confessions renew in each confession the actual intention of administering the sacrament? Moreover, Christ does not command impossibilities in the administration of the sacraments. In addition, for a sacramental action it suffices that it proceed from the deliberate will of the minister. But when a virtual intention exists, the sacramental action is in truth sufficiently deliberate. Therefore, for the administration of the sacraments an actual intention is not required, but a virtual intention suffices.[260]

3. **A determinate intention toward definite matter or a definite person is required.** For just as in physical things a thing can never exist except under determinate matter and form, so it is also with the moral reality of a sacrament. But an accidental error which the minister has concerning the quantity or quality of the matter does not annul the sacrament. Thus, for example, if a priest thinks that he is consecrating one host placed before him, but in reality there are two hosts adhering to each other, the consecration is valid; or if a confessor absolves Peter, thinking him to be Paul, he absolves validly, unless, however, he expressly intended to absolve Paul and to leave Peter unabsolved. In practice, to avoid many ambiguities, it is safer that the minister of the sacraments form for himself once and for all determinate and clear intentions; for example, let a priest say to himself: During Mass I will always consecrate all the consecrable matter found upon the altar and placed there for the purpose of being consecrated; likewise, I absolve those penitents who duly make their confession before me, and it matters little what their name, quality, or sex may be, etc.

If anyone in the administration or reception of the sacraments has two incompatible and contrary intentions, then the **predominant** one prevails, namely, that which would be chosen if the incompatibility were known. For example, if a Protestant were to contract matrimony, altogether intending it to be dissoluble, and with such a mind that if he knew it to be indissoluble he would not contract it, then the matrimony would be null, at least in the internal forum; for in the external forum such an intention would first have to be clearly proved.[261] But if, even with the indissolubility known, he nevertheless would have contracted, the matrimony is valid.[262] If among contrary intentions one succeeds another, the later one customarily prevails, unless, however, the first intention from the beginning annulled every other subsequent intention; for then not the later but the first intention prevails.

A succession of incompatible intentions concerning the same matter of a sacrament does not occur so easily except among scrupulous persons; it can occur much more easily in another matter which is in some way connected with the sacraments, namely, in the **application of the Mass**. For example, a priest who a week beforehand proposed to say Mass today according to a determinate intention, forgetful of that intention, applies the Mass for another end. To avoid many difficulties in practice, let every priest propose to himself a general rule according to which he intends to order his applications of Masses, for example: I always will to fulfill the prior intention unless it has been expressly revoked (cf. below, n. 245).

4. **An internal intention is required, and an external intention does not suffice.** Since, according to the definition of the Council of Trent adduced above, the minister of a sacrament is altogether bound to have at least the intention of doing what the Church does, theologians have disputed most sharply for centuries how far this intention extends. For Billuart[263] rightly says that several things can be considered in that which the Church does: a) the external rite itself taken precisely and materially; b) the rite as it is held by the Church as sacred, abstracting from whether the Church errs in such an acceptance or not; c) the rite **as it is absolutely sacred in itself and a true sacrament**; d) the rite as it produces grace or even a character. Modern theologians commonly admit that an intention of the third and fourth manner is not required for the validity of a sacrament. But there is controversy whether an intention of the first manner alone suffices or not. This first intention is called external by metonymy, not because it would in truth be external - this is altogether impossible, since every intention is an interior act of the will - but because it extends only to the external and physical rite of the sacrament, namely, to the external application of the form to the matter. Certain Catholic theologians taught that this external intention is sufficient, provided that the true form is applied to the true matter seriously and not jokingly or playfully. For thus a man is more certain concerning a sacrament validly administered even by bad ministers.

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[258] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 16.

[259] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 18.

[260] Cf. St. Thomas, *S. theol.*, *l.c.*, and St. Alphonsus, *l.c.*

[261] Cf. St. Alphonsus, *l.c.*, n. 24.

[262] Cf. Code of Canon Law, c. 1084.

[263] *De sacr. in gen.*, diss. 5, a. 7, § 2.

67. Controversy concerning internal or external intention. Ambrose Catharinus (1487-1553) is not rarely called the first author who taught that external intention suffices; but this is altogether false. Roland Bandinelli, later Alexander III in the twelfth century, had already taught this opinion, saying: "It will be true

and ratified baptism, whether he who baptizes has an intention or not, provided that it is handed down in the form of the Church."[264] Robert Pullen, who died about 1150, taught the same opinion in book V of the *Sentences*.[265] St. Thomas, although he himself requires internal intention, knows the contrary opinion: "Others say that in baptism and in the other sacraments which have an exercised act in their form, a mental intention is not required, but the expression of intention through the words instituted by the Church suffices; and therefore, if the form is observed and nothing external is said which expresses a contrary intention, the person is baptized."[266] Innocent IV in the thirteenth century expressed this opinion rather harshly in his *Commentaries*,[267] which he published not as Supreme Pontiff but as a private man, in these words: "It is not necessary that the one baptizing know what the Church is, what it is that baptizes, who the person baptized is, and whence he is; nor that he bear in mind to do what the Church does. Indeed, even if he should bear the contrary in mind, namely, not to do what the Church does, but nevertheless he does it because he preserves the form, the person is nonetheless baptized, provided that he intends to baptize."[268] On account of the authority of St. Thomas and other great Scholastics, the opinion concerning external intention was, as it were, buried for several centuries, until at the time of the Council of Trent Ambrose Catharinus, O.P., and Alphonsus Salmeron, S.J., revived it; they were afterward followed by Contenson, Natalis Alexander, Juenin, Serry, Drouven, Milante, Stattler, Dobmayer, Oswald, Glossner, and others.[269]

Certain authors[270] insinuated that this opinion was proscribed both by the Council of Trent and especially by Alexander VIII, who condemned the proposition: "Baptism conferred by a minister who observes the whole external rite and the form of baptizing is valid, although inwardly in his heart he resolves within himself: 'I do not intend what the Church does.'"[271] By this condemnation, says Benedict XIV,[272] "it cannot be denied that a grave wound was inflicted upon the aforesaid opinion." Nevertheless, the same Benedict XIV rightly says in the same place: "Theologians of better judgment vindicate the opinion of Catharinus from the censure of heresy, and demonstrate that a broad distinction intervenes between it and the doctrine of Luther and Calvin.... It does not belong to a bishop to reject the former opinion, that is, that of Catharinus." So far is the opinion concerning external intention from being condemned that, on the contrary, it acquired no small weight through the Constitution of Leo XIII concerning Anglican ordinations.[273] Behold the words of the Supreme Pontiff: "Concerning the mind or intention, since it is of itself something interior, the Church does not judge; but insofar as it is manifested outwardly, she must judge concerning it. But when anyone has seriously and duly employed the due matter and form for confecting and conferring a sacrament, by that very fact he is judged to have intended to do what the Church does. Upon this principle assuredly rests the doctrine which holds that even that is truly a sacrament which is conferred by the ministry of a heretical or unbaptized man, provided it is conferred according to the Catholic rite." The doctrine concerning external intention does not seem in practice to differ greatly from these words of the Supreme Pontiff.

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[264] Cf. Gietl, *Die Sentenzen Rolands*, 206.

[265] In Migne, *Patr. lat.* 186, 841 sq.

[266] IV Sent., dist. 6, q. 1, a. 2 ad 2.

[267] *Super Libr. Decretal.* 3, tit. 42, c. 1.

[268] Cf. Pourrat, *La theol. sacr.*, 345; Fr. Morgott, *Der Spender der heiligen Sakramente*, n. 70.

[269] Cf. Hurter, *Theol. dogm.* III, n. 294; Fr. Morgott, *l.c.*, n. 98 sqq.

[270] Thus, for example, Chr. Pesch (*Prael. dogm.* VI, n. 280) incorrectly says: "Historically it is established that the condemned proposition was indeed not that of Catharinus but of Farvacques, who was a defender of the opinion of Catharinus."

[271] Denz., n. 1318.

[272] *De syn. dioec.*, l. 7, c. 4, n. 8.

[273] September 13, 1896 (*Collect. de Prop. Fide*, n. 1954, p. 345).

68. Nevertheless, besides the external rite and the internal intention of seriously performing this rite, there is further required the intention of performing this rite insofar as it is held sacred by the true Church. For:

1. From the time of William of Auxerre, who seems to have been the first to employ the formula "the intention of doing what the Church does," all the better theologians, the Supreme Pontiffs, and the ecumenical councils alike require for the validity of a sacrament that, besides matter and form, there be present the intention of the minister to do what the Church does. Therefore, a purely external intention, which is nothing other than the voluntary application of the form to the matter, does not suffice, but an internal intention is further required.
2. The minister of the sacraments must act in a human manner and as a **mandatory of Christ**. Therefore, it is required that he deliberately will to act in the person of Christ, or that he will to apply the form to the matter by perfecting a rite which the Church holds as sacred. Therefore, external intention alone does not suffice.

Let these things suffice concerning this controversy over external or internal intention. Let him who desires more consult Billuart,[274] who treats this question clearly, copiously, and profoundly.[275] For the rest, in practice there does not seem to us to be so great a difference between the two opinions when rightly explained. The disputes seem rather to have arisen from the point of the question having been explained somewhat obscurely.

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[274] *De sacr. in gen.*, diss. 5, a. 5.

[275] Cf. also Schanz, *Die Lehre v. d. Sakr.* I, § 11, where this controversy is clearly explained, or Fr. Morgott, *Der Spender d. hl. Sakramente*, 105 sqq.

69. Note for practice:

a) The intention of doing what the Church **does** is one thing, and of doing what the Church **intends** is another. For the Church does the external sacred rite instituted by Christ; but she intends that grace be conferred through this rite. For the validity of a sacrament it is by no means required that the minister intend the conferral of grace. Thus all teach.

b) Seriously to will to perform a rite which the Christian Church holds as sacred is one thing, and for the minister to believe that the rite is truly sacred is another. Thus, for example, a Jew baptizing can have the intention of doing what the Christian Church does, even if inwardly he thinks that this Church errs and that the rite performed is altogether inefficacious. Nevertheless, this baptism is valid, provided that the due matter and form are employed. This is established from the practice of the Church, which has never repeated baptism for the sole reason that it was conferred by heretics or unbelievers.[276] Hence St. Thomas says: "Although he who does not believe baptism to be a sacrament or to have any spiritual power does not intend, while he baptizes, to confer a sacrament, nevertheless he sometimes intends to do what the Church does, even if he judges it to be nothing; and because the Church does something, therefore consequently and implicitly he intends to do something, although not explicitly."[277]

c) Likewise, it is not necessary that the minister have the intention of doing that which the **Catholic** Church does, provided that he intends to do what is done by the Church which he thinks to be Christian. Thus

baptisms conferred by Protestant ministers who think the Catholic Church to be false are not by that very fact invalid on account of this error. But if these ministers, or even any others, are altogether unbelieving, denying the divinity of Christ and even the existence of a personal God, then baptism conferred by them is very doubtfully valid. For how can such ministers baptize seriously and with the true intention of doing what the Church does, since they deny the divinity of Christ and even the Church instituted by Him? Therefore, it is to be feared that on this account innumerable baptisms are invalid, at least if the opinion concerning the sufficiency of external intention is not true. For if external intention suffices, then all those baptisms are valid, because the due form and matter are employed. In practice, all those thus baptized who return to the bosom of the Church are to be rebaptized under condition.

[276] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 22.

[277] IV Sent., dist. 6, q. 1, a. 3, sol. 2 ad 1; cf. *S. theol.* 3, q. 64, a. 9 ad 1.

Article V. On The Manner And Rite Of Conferring The Sacraments

70. Since the sacraments are most holy things, the Church has given several precepts in the Ritual for their worthy administration. Therefore, outside a case of grave necessity it is not lawful to administer the sacraments with the rubrics prescribed by the Ritual omitted. Hence the Council of Trent[278] defined: "If anyone says that the received and approved rites of the Catholic Church customarily employed in the solemn administration of the sacraments can either be contemned, or omitted at will and without sin by ministers, or changed into other new rites by any pastor of the Church whatsoever, let him be anathema." The Roman Ritual is generally to be employed; nevertheless, there are still several Churches which by Apostolic privilege use their own Ritual.

The rubrics of the Ritual do not all oblige in the same manner; and the same must be said of the other liturgical books. For **essential rubrics** are customarily distinguished, which concern the very essence of the sacrament, namely, the application of the form to the matter, and **accidental rubrics**, which regard a becoming rather than a valid administration. **Preceptive rubrics** are also customarily distinguished, which directly oblige in conscience, and **directive rubrics**, which rather contain counsels or directions. Although this latter distinction is most commonly adduced by authors, nevertheless it is often very difficult, and indeed impossible, to discern which rubrics are preceptive and which merely directive. The consensus of authors and the decisions of the Sacred Congregation of Rites can be held as criteria. In general it can be said that all rubrics have the character of positive law and consequently oblige gravely or lightly in conscience according to the gravity of their matter. But just as any positive law does not oblige with great inconvenience, so neither do the accidental rubrics prescribed in the administration of the sacraments oblige if a great inconvenience arises therefrom. Let priests, however, diligently strive to observe the rubrics faithfully and worthily in the administration of the sacraments; for this contributes greatly to the edification of the faithful, just as neglect of these rubrics can also easily cause grave scandal.

[278] Sess. 7, can. 13 on the sacraments in general (Denz., n. 856); cf. also Code of Canon Law, c. 733.

71. Note. Priests who by privilege use a special Ritual, as occurs in some dioceses and religious orders, can nevertheless for a reasonable cause follow the Roman Ritual, unless this is most specially prohibited. The reason is that the Church in some measure desires that the Roman Rite be observed everywhere on earth; hence there is the adage: It is always good to imitate the Roman Church. If a special Ritual has been

legitimately approved for some diocese or region, priests from outside can also use this Ritual in administering the sacraments; for travelers can use a local privilege.

Article VI. On The Obligation Of Giving Or Denying The Sacraments

§ 1. On Giving The Sacraments

The obligation of administering the sacraments arises a) from justice or b) from charity.

72. Principle 1. Those upon whom the care of souls is incumbent by reason of office are bound from justice to administer the sacraments to their subjects who reasonably request them.

The reason is that, by undertaking their office, these pastors entered into a quasi-contract diligently to procure the spiritual salvation of their subjects. Now, the sacraments are most excellent and necessary means for obtaining spiritual salvation. By office, the duty of the care of souls with respect to their own subjects is incumbent upon bishops and other Ordinaries, pastors, vice-pastors, and clerical superiors of religious, but not upon simple priests or even, at least ordinarily, assistant pastors. But it is said: **who reasonably request them**. For whenever a certainly graver inconvenience arises for pastors of souls from administering a sacrament than arises for the faithful from its denial, there is then no obligation, at least no grave obligation, to acquiesce in the petition of the faithful. Otherwise, there is an obligation to administer the sacraments, which is the graver according as the harm arising for the faithful from the sacraments being denied is graver. If these things are kept before the eyes as a general rule, the following are easily understood.

73. Resolutions:

1. A pastor of souls does not sin if he sometimes denies the sacrament of penance to scrupulous persons and to others who request it importunately. The reason is that either no spiritual harm or only a slight one befalls those requesting from this denial; but a great inconvenience would arise for the pastor if he always had to acquiesce in petitions of this kind that have little foundation.
2. A pastor of souls sins who shows himself morose and difficult in administering the sacraments; who does not willingly visit the sick in order to administer the sacraments to them; who is altogether unwilling to hear confessions except on fixed days, for example, on Saturdays and vigils before feasts. The reason is that the faithful can reasonably be displeased with such modes of acting. There is added the fact that zeal in receiving the sacraments then gradually vanishes, with great harm to the faithful.
3. A pastor of souls does not sin if he administers the sacraments not by himself but through suitable vicars, provided, however, that no scandal arises therefrom and that at least the tacit consent of the superior is present. The reason is evident, because then no spiritual harm befalls the faithful.
4. A pastor of souls is bound, even with danger to life or other great temporal inconveniences, to administer the sacraments to the faithful who are situated in extreme spiritual necessity. For example, during a plague or another contagious disease he is bound to administer the sacrament of baptism or penance even with danger to life, according to the saying: "The good shepherd gives his life for his sheep."[279] The same holds concerning the administration of extreme unction, if, however, the sick person certainly cannot receive the sacrament of penance.
5. Authors sharply dispute whether, in the same circumstances, a pastor is bound to administer Viaticum with danger to life. The affirmative opinion is truer, at least in practice, whatever may be said concerning the theoretical probability of the negative opinion. For the faithful would be gravely

scandalized if, during a contagious disease, the pastor were unwilling to administer Viaticum to the dying. On October 26, 1576, Gregory XIII replied by rescript that a pastor is absolutely bound to administer baptism and penance; and thus he modified a decision of the Sacred Congregation of the Council issued fifteen days earlier, in which it was determined that during a plague pastors were bound to minister to their parishioners suffering from the plague only the two sacraments necessary for salvation, namely, baptism and penance.[280]

6. During a plague or another contagious disease a pastor can and must employ suitable precautions lest he himself be infected by the disease, for example, by giving Communion by means of a gilded spoon or by performing the anointings by means of a rod at the end of which there is a little cotton. Benedict XIV permitted this by a decree of the Holy Office on June 11, 1754, but he earnestly exhorted the Apostolic Vicar of Algeria to procure the administration of the Eucharist and extreme unction during the plague.[281] Lehmkuhl[282] rightly writes: "Excessive fear and excessive caution, whether on the part of the pastor or of other priests, is truly reprehensible, since the faithful, seeing so great a fear, will receive scandal rather than edification. Trust in God and remedies employed with sober prudence will sufficiently remove the danger. St. Charles Borromeo gave an altogether heroic example of charity when, himself the Archbishop of Milan, during the plague he took the lead in ministering the sacraments, and indeed approached the sick lying in hospitals so that he might confer not only the necessary sacraments but even confirmation itself."

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[279] John 10:11.

[280] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 233. Benedict XIV treats this controversy at length, *De syn. dioec.*, l. 13, c. 19.

[281] *Collect. de Prop. Fide*, n. 596, note.

[282] *Theol. mor.* II, n. 51.

74. Principle 2. Those who by reason of office are not pastors of souls are bound from charity to administer the sacraments to those reasonably requesting them; and this obligation is grave if grave scandal or great spiritual harm for the faithful arises from the administration being denied.

It is self-evident that priests who are not pastors of souls by office are not bound to administer the sacraments as strictly as pastors are. Nevertheless, the avoidance of scandal or the order of charity can also impose this obligation upon them. And first, scandal must be avoided; for no slight scandal arises if a priest refuses a sacrament to one reasonably requesting it; for example, if a confessor sitting in the confessional were to refuse to hear the confession of a poor man while admitting several rich persons. Then, the order of charity[283] requires that we assist our neighbor who is situated in necessity. If he is situated in extreme spiritual necessity, a priest must administer the sacraments necessary for salvation even with danger to bodily life. It is self-evident that this obligation does not exist if another is present who can and wills to administer the sacrament. Therefore, for example, a simple priest is bound under grave sin to give absolution to a dying sinner rightly disposed if no other confessor willing or able to hear the confession is present.

As regards the baptism of a dying infant of non-Catholic or Jewish parents, even the hatred against the Church which would certainly arise seems to be a sufficient cause for a priest or layman to abstain from conferring baptism if the parents are vehemently unwilling.[284] If the neighbor is situated in grave spiritual necessity, a priest is bound to administer the sacraments even with notable bodily inconvenience. Hence, for example, a confessor is bound to hear confessions even with some fatigue if otherwise the penitents must remain in the state of mortal sin for a notable time. In a light or common necessity of the neighbor, there is

indeed no strict obligation to administer the sacraments to him; nevertheless, the priest is not to show himself difficult in administering the sacraments unless necessity or at least a reasonable cause demands it. On the contrary, let him always be ready to provide the faithful with such efficacious means of eternal salvation.

[283] The order of charity and the diverse degrees of charity were discussed above, I, 579 sqq.

[284] Thus also teach D'Annibale (*Summul.* II, 82 [3]); Vermeersch (*Theol. mor.* III, 199).

§ 2. On Denying The Sacraments

As regards the denial of the sacraments, two general principles are set down, and then certain particular applications for the individual sacraments are appended, all those theoretical hypotheses which are no longer practical today being omitted.

75. Principle 1. It is never lawful to administer any sacrament to an incapable subject, such that the sacrament would be not only illicit but also altogether invalid.

The reason is that such an administration is intrinsically evil, as being a most wicked abuse of a most sacred thing. For it is a grave sacrilege directly procured. Hence, even to avoid death, a minister cannot, for example, confer sacred orders upon a woman, confirmation and the other sacraments upon someone not baptized, or give sacramental absolution to someone who certainly does not have sufficient attrition, etc. Although a priest is not the proper minister of the sacrament of matrimony, nevertheless he can never assist at a matrimony which is certainly null, for example, because of the impediment of a prior bond.

76. Principle 2. It is not lawful to administer any sacrament to an unworthy subject except for a most grave cause.

The reason is that a minister is bound under a threefold title to deny the sacraments to an unworthy subject, mindful of that precept: "Do not give what is holy to dogs, nor cast your pearls before swine":[285] namely, a) from the virtue of religion, which forbids that a sacred thing such as a sacrament be treated irreverently; b) from fidelity, since the office of administering the sacraments was entrusted to the minister only as a faithful steward and mandatory of Christ, and not as an absolute lord who can do whatever he wills; c) from charity, because from an unworthy administration great harm is caused both to the recipient, who commits a grave sacrilege, and to Christian society, which thereby, at least sometimes, suffers great scandal.

He is called **unworthy** who lacks some disposition essentially required for the licit reception of the sacrament, namely, either the necessary knowledge or the state of sanctifying grace required for the licit reception of the sacraments of the living. Because of a lack of at least some knowledge of the mysteries of the Trinity and the Incarnation, it is not lawful to administer the sacrament of baptism to an adult,[286] as was already said above, I, n. 490. It is said: **except for a most grave cause**. The reason is that it is lawful to cooperate materially in the sin of another if a grave cause is present. Now, to administer some sacrament to an unworthy person for a grave cause seems to be nothing other than material cooperation in the sin of the one receiving the sacrament. For it proceeds solely from the malice of the recipient that the action of the minister, which in itself is good, becomes evil. This is confirmed by the example of Christ Himself, who, according to the common interpretation of the older exegetes, conferred upon the most unworthy Judas Iscariot the sacraments of the Eucharist and order.[287] The action of Christ is our instruction; and therefore the Angelic Doctor says:[288] "Christ therefore did not repel Judas from Communion, so that He might give an example that such sinners are not to be expelled by other priests."

[285] Matt. 7:6.

[286] Cf. Holy Office, January 25, 1703.

[287] Several exegetes, especially modern ones, think that Judas did not receive Holy Communion but departed after consuming the Pasch. Cf. Knabenbauer, *Comm. super Matth.*, c. 26.

[288] *S. theol.* 3, q. 81, a. 2 ad 2.

77. The causes for which it is lawful to give the sacraments to the unworthy are:

1. **Lest the sacramental seal be violated.**

Thus all teach in our times. Older writers indeed thought that a confessor could deny a sacrament because of a crime heard in confession under the pretext of other causes,[289] but this opinion is no longer safe in practice, since it renders confession odious and induces a violation of the sacramental seal. Moreover, on November 18, 1682, the Holy Office[290] proscribed a similar opinion. Therefore, for example, a confessor is bound to give Communion to a penitent demanding it whom, immediately beforehand, he dismissed without absolution because of the penitent's indisposition.

2. **Lest the very person who unworthily requests a sacrament incur most grave infamy from the disclosure of an occult crime.**

Hence, for example, a pastor cannot exclude Paul from the celebration of matrimony when he knows privately that Paul has committed fornication and has not yet confessed it. The reason is that by acting thus the pastor would illicitly defame Paul. Nor can it be objected that the lesser of two evils must be chosen and that the defamation of the sinner is a lesser evil than the sacrilegious reception of the sacrament. For, as St. Thomas says: "Although it is worse for an occult sinner to sin mortally by receiving the body of Christ than to be defamed, nevertheless, for the priest ministering the body of Christ, it is worse to sin mortally by unjustly defaming an occult sinner than that the latter sin mortally, because no one ought to commit a mortal sin in order to free another from sin."[291] Or briefly: Evils are not to be done that goods may come.

3. **Lest grave scandal arise among the faithful, who, if they were ignorant of the cause of the denial, would be kept away from the sacraments, since they would fear rejection for themselves also.**[292]

This case can rarely occur in our days, for either it concerns a public sinner, and then true and well-founded scandal cannot arise because of the sacrament being denied; or it concerns an occult sinner, and then it is not lawful to deny a sacrament to one who requests it publicly, as will be said below.

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[289] Cf. St. Alphonsus, *Theol. mor.*, l. 6, nn. 51 and 658. The text which is adduced from St. Thomas (IV Sent., dist. 9, q. unic., a. 5, sol. 1) for this opinion is not so clear. Moreover, the Angelic Doctor manifestly teaches the contrary in *S. theol.* 3, q. 80, a. 6, saying: "But if they are not manifest sinners, but occult, Holy Communion cannot be denied to them when they request it."

[290] Denz., n. 1240.

[291] *S. theol.* 3, q. 80, a. 6 ad 2.

[292] Thus Noldin, *De sacr. in gen.*, n. 36.

78. Scholion. Older and modern authors dispute greatly whether danger of death or a similar evil threatening a priest is a sufficient reason for giving a sacrament to an unworthy person. Whatever may be said concerning

the theoretical probability of the affirmative or negative opinion, this case is scarcely possible today. For in the sacraments of matrimony and penance this case cannot occur: not in matrimony, because the priest is not the minister of this sacrament and is not forbidden sometimes to assist passively at the matrimony of a public sinner, as will be said below; not in penance, because a man unjustly threatening death or another grave harm to a confessor would receive the sacrament not only unworthily but invalidly. Now, it is never lawful to administer a sacrament to an incapable person, as was said above.

Likewise, this case can scarcely, or indeed cannot at all, occur in the other sacraments. For if these threats of death or another evil are public, they are customarily made out of hatred of the faith, contempt of religion, or with great scandal to the people, and then the priest ought rather to undergo death than yield to such hatred or contempt. But if the threats are occult and the sinner is occult, then the public petition must be yielded to. An occult petition, however, will scarcely ever occur. St. Alphonsus,[293] Peter de Ledesma,[294] Concina,[295] and Lehmkuhl[296] deny that the administration of a sacrament is lawful from fear of death; but Lugo,[297] Sporer-Bierbaum,[298] Ballerini-Palmieri,[299] Genicot,[300] D'Annibale,[301] and Noldin[302] affirm it.

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[293] *Theol. mor.*, l. 6, n. 49.

[294] *Summa de euchar.*, c. 12, concl. 2, dub. 3.

[295] *De sacr. in gen.*, c. 12, n. 12.

[296] *Theol. mor.* II, n. 59.

[297] *De sacr. in gen.*, disp. 8, n. 181.

[298] *Theol. mor.* III, P. 1, c. 3, n. 188.

[299] *Opus theol.* IV, n. 689.

[300] *Theol. mor.* II, n. 122.

[301] *Summula Theol. mor.* III, n. 264.

[302] *De sacr. in gen.*, n. 36 (3).

79. Practical rules.

1. The sacraments, matrimony excepted, must be denied: a) to a public sinner, concerning whose amendment there is not sufficient certainty; b) to an occult sinner requesting them occultly.
2. The sacraments must not be denied, but must be given, to an occult sinner requesting them publicly.

A **public sinner** is considered to be one whose crime is truly scandalous and notorious with notoriety either of law or of fact, that is, one who either has been convicted of a great crime in a public judgment or, in the place where he requests the sacraments, is so notoriously criminal that he is known by a great part of the people. Heretics or schismatics, even those erring in good faith, are equated in this matter with sinners public by law; it is not lawful to administer the sacraments to them unless, after first rejecting their errors, they have been reconciled to the Church.[303] Thus at least outside the danger of death. Those also are to be kept from the sacraments as public sinners who actually and publicly are in the state of mortal sin, for example, those who are manifestly drunk here and now, and women so immodestly dressed that this immodesty is truly scandalous and mortally sinful.

An **occult sinner** is held to be one whose unworthiness is known to one or a few discreet persons.

A petition for a sacrament is **public** if it is made in the sight of several persons; but it is **occult** if it is made before the minister alone or before a few others who do not perceive the denial of the sacrament, so that no infamy arises therefrom.

With these things noted beforehand, the first part of the first rule is easily explained. For the Roman Ritual,[304] with which canon 855, § 1 of the Code of Canon Law agrees, determines: "Those publicly unworthy are to be kept from the Eucharist, such as the excommunicated, the interdicted, and the manifestly infamous [such as prostitutes, concubinarians, usurers, magicians, diviners, blasphemers, and other public sinners of that kind], unless their penance and amendment are established and they have first made satisfaction for the public scandal." From these words it appears that a public sinner, although rightly absolved from sins, cannot at once be admitted to the public reception of Communion unless he has first repaired the scandal given. In what determinate manner this scandal is to be repaired must be established after all the circumstances of persons and places have been considered. In practice it is often better first to consult the bishop concerning this reparation of scandal. Holy Communion can be administered occultly to every sinner sincerely amended and rightly absolved. Thus at least according to the present discipline of the Church.

The other part of the first rule is expressed in this manner by the Roman Ritual and the Code of Canon Law:[305] "If occult sinners request [Holy Communion] occultly and the minister knows that they have not amended, let him repel them." The reason for both parts is that from a sacrament being denied to a sinner requesting occultly or to a public sinner, no defamation or other grave inconvenience follows. On the contrary, the sinner receives a salutary admonition, and the sacrament is protected against an attempted irreverence.

The second rule is not only manifestly contained in the Roman Ritual and in the Code of Canon Law,[306] but also follows clearly from the causes enumerated above, on account of which it is lawful, indeed necessary, to administer a sacrament to the unworthy. For from the denial of the sacrament there would then follow great infamy for the petitioner and scandal to the people.

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[303] Code of Canon Law, c. 731, § 2.

[304] Tit. 4, c. 1, n. 8.

[305] Tit. 4, c. 1, n. 9; c. 855, § 2.

[306] *L.c.*

80. Applications to the individual sacraments.

1. Concerning the baptism of infants who are born of Catholic parents, there is neither difficulty nor obstacle. But infants of non-Catholic, and especially Jewish, parents are not to be baptized, except in danger of death, unless the parents promise all things necessary, as will be said more broadly below, n. 128. Baptism cannot be given to an adult, outside the danger of death, unless his good disposition is positively established.
2. Confirmation cannot be conferred except upon one whose worthiness is morally and positively established. The bishop, the minister of confirmation, customarily requires testimony concerning the worthiness of the person to be confirmed, either from the pastor or from another legitimate superior.
3. The rules given above pertain especially to the administration of the Eucharist. That the Eucharist is publicly requested by a public sinner occurs in our days especially in two cases: a) if a Catholic man, in contempt of the laws of the Church, enters a mixed matrimony and permits the non-Catholic education of the offspring; what must be done before such a man is admitted to the sacraments will be said below

in the tract on matrimony, n. 784; b) if someone lives in notorious concubinage and now, being situated in grave illness, requests Viaticum. In this case the sacrament is not to be granted unless the scandal has first been removed. The sick person is therefore bound either to cast the concubine out of the house or to marry her before he receives the sacrament.

4. The sacrament of penance is never to be denied to a man rightly confessed and contrite. But the confessor can, and indeed must, require that the penitent perform all those things which are required for sufficient disposition, and notably the prior removal of scandal, of a proximate voluntary occasion, and of a censure that may have been incurred. Sacramental absolution can and must be given, at least conditionally, to every dying baptized adult, even a heretic, who is deprived of his senses, unless it is manifestly established that he rejects this sacrament. The reason is that such a dying person is customarily situated in extreme spiritual necessity, in which it is lawful to administer even a doubtfully valid sacrament.

5. Extreme unction, since it is administered only to a man existing in danger of life, must not be denied to one sincerely requesting it, explicitly or at least interpretatively. If, however, the sick person is in possession of his mind, he must first promise a serious amendment of life and the other things necessary according to the precepts of the Catholic Church.

6. According to the truer opinion, the sacrament of order can never be administered to an unworthy person, since he, even if occultly unworthy, is altogether to be kept from orders.[307] Therefore St. Thomas[308] teaches that it does not suffice that the prelate be ignorant that the one to be ordained is in sin, "but it is further required that, according to the measure of the order ... more diligent care be applied, so that certainty may be had concerning the quality of those to be promoted." Following the Council of Trent,[309] canon 970 of the Code of Canon Law determines: "The proper bishop or major religious superior can, for any canonical cause, although not at his mere pleasure, even an occult cause and even extrajudicially, forbid his clerics ascent to orders, without prejudice to the right of recourse to the Holy See, or even to the general moderator if it concerns religious whose ascent the provincial superior has forbidden." The reason is that the sacrament of order unworthily received causes the greatest harms both to the cleric himself and to the whole Church.

7. A priest can more easily assist at the matrimony of a public sinner, since he is not the minister of this sacrament but only a qualified witness. Therefore, to avoid greater evils, the Church permits a pastor, with certain precautions observed, to furnish assistance at the valid matrimony of a public sinner.[310] This matter will be discussed more broadly below in the tract on matrimony. Likewise, for a most grave cause the Church permits a Catholic party to contract matrimony with a non-Catholic or sinful party.

Note. If any sacrament must be denied, it is always necessary to proceed with the greatest prudence and humanity, so that all may perceive clearly that the priest was unwilling to offend anyone, but intended only the honor of religion and the salvation of souls.

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[307] St. Alphonsus, *Theol. mor.*, l. 6, n. 52.

[308] *Suppl.*, q. 36, a. 4 ad 3.

[309] Sess. 14, c. 1 *de reform.*

[310] Code of Canon Law, c. 1066.

Article VII. On The Simulation And Dissimulation Of The Sacraments

81. Notion of simulation. Simulation or fiction of the sacraments is an illicit change of the matter, form, or necessary intention, secretly made by the minister, such that the sacrament is null and the recipient is led into error.

Although all theologians agree that the fiction of a sacrament is never lawful, nevertheless they labor greatly in defining it. The definition adduced seems to be good and complete. For just as that act is called fictitious which is outwardly posited as though all things required for validity were present, while in reality it is null on account of an essential internal and hidden defect, so also the administration of a sacrament is fictitious if outwardly all things necessary for the validity of the sacrament are posited in appearance, but secretly the minister introduces an essential defect, such that the sacrament is null and the recipient is led into error. In the definition adduced, however, it is called an **illicit** change because of the sacrament of matrimony, in which it is sometimes lawful to change the matter, form, or intention. For if someone is compelled by grave and unjust fear to contract matrimony, he can lawfully express consent outwardly while withholding it inwardly. For although from such fictitious consent the spouse, who thinks that he is entering a true contract of matrimony, is led into error, nevertheless there is not present a fiction of the sacrament properly so called, but a fiction of the matrimonial contract. This manner of fictitiously consenting is lawful in the case, both because it primarily concerns the contract and not the sacrament, and because it is a legitimate defense against the atrocious injury of fear unjustly inflicted, as will be said more broadly below in the tract on matrimony.

82. Modes. Simulation or fiction can be performed by the minister in three ways: a) if he secretly employs matter unfit for the sacrament, for example, if in place of the wine to be consecrated he were to place in the chalice another liquid altogether similar to it; b) if he secretly changes the form essentially, for example, if a confessor, in pronouncing the form of sacramental absolution, were to say in an intelligible voice, "I absolve you from your sins," but in a very low voice were to insert the little word "not";[311] c) if he inwardly withholds the intention of administering the sacrament.

[311] St. Alphonsus (*Theol. mor.*, l. 6, n. 59) thinks this mode not altogether illicit, but Gury, Bucceroni, and others call this case chimerical.

83. Principle. Simulation or fiction of a sacrament is never lawful.

This is evident:

1. From proposition 29 condemned by Innocent XI: "Urgent grave fear is a just cause for simulating the administration of the sacraments."[312]
2. The fiction or simulation of a sacrament is a very harmful lie and a detestable sacrilege. It is a lie because it leads into error one who justly thinks that he is receiving a sacrament; it is a sacrilege because it is an abuse of a sacred thing, for the minister abuses the sacrament in order to lie, if not by words, nevertheless by deeds.

[312] Denz., n. 1179.

84. Notion of dissimulation. The fiction or simulation of a sacrament differs as heaven from earth from the **dissimulation** of a sacrament, or rather from the **dissimulation of a denied sacrament**. Such dissimulation is the positing of a non-sacramental action from which others, not the recipient, erroneously judge that a sacrament has been conferred; for example, a confessor gives a blessing to a penitent to whom he was obliged

to deny absolution, and recites certain prayers for the purpose that those standing about may not perceive that absolution was denied; or a priest, according to an arrangement made beforehand, might make the sign of the cross before the mouth of a man kneeling at the Communion rail, who for a grave reason can neither receive Communion nor withdraw from the public Communion table, and would then replace the sacred host in the ciborium.[313]

In this latter case, however, a very grave cause is required, because the Most Holy Eucharist itself is employed for an end that is indeed good but also for the deception of others; and this seems to include some irreverence. But it would be plainly illicit in this case to give that man, although knowing and consenting, an unconsecrated host, since such a manner of acting would be at least material idolatry, because then this man would at least outwardly adore something which is a vile creature. "For just as he would sin by outwardly adoring an idol, even from fear of death, so also he would always sin by outwardly adoring an unconsecrated host. And he would sin more gravely than if he were to communicate unworthily; as is evident from chapter *De homine* 7, *de celebr. miss.*, where it is said that the priest who did not consecrate in the Mass would sin more gravely than one who sacrilegiously consecrated and communicated."[314] St. Thomas[315] teaches concerning this matter: "An unconsecrated host must in no way be given in place of a consecrated one, because the priest doing this, insofar as it lies in him, causes those who believe it to be a consecrated host to commit idolatry, whether others present or even the one receiving it; because, as Augustine[316] says: 'Let no one eat the flesh of Christ unless he first adores it.'"

Principle. The dissimulation of a denied sacrament is lawful for a reasonable cause. For it is nothing other than permitting others, who in the case have no right to know the objective truth, to fall into a harmless error.[317]

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[313] St. Alphonsus, *Theol. mor.*, l. 6, n. 59.

[314] St. Alphonsus, *ibid.*, n. 61.

[315] *S. theol.* 3, q. 80, a. 6 ad 2; cf. *Quodlibet* V, a. 12.

[316] *In Ps.* 158, circa med.

[317] Cf. St. Alphonsus, *l.c.*, n. 59.

85. Scholion. On probabilism in administering the sacraments. Outside a case of grave necessity it is not lawful to follow a probable opinion, leaving aside the safer one, when the validity of the sacraments is at issue, as is evident from proposition 1 condemned by Innocent XI: "It is not illicit in conferring the sacraments to follow a probable opinion concerning the validity of the sacrament, leaving aside the safer one...."[318]

But I say, first: **outside a case of grave necessity**. For the sacraments are for men, and therefore whenever the spiritual salvation of a man is gravely endangered, the minister not only can but must administer the sacrament, at least conditionally; for example, he must absolve a man deprived of his senses, although perhaps he is already dead or otherwise indisposed.

I say, second: **when the validity of the sacraments is at issue**, for if the Church is rightly presumed to supply those things which are required for the validity of a sacrament, the matter stands otherwise. Therefore, for example, in the sacrament of penance it is sometimes lawful to give absolution with probable jurisdiction, which, if it did not suffice, the Church would supply. Likewise, if there is question of a diriment impediment to matrimony introduced by ecclesiastical law, which the Church is able to relax for a legitimate cause, it is sometimes lawful to employ a solidly probable opinion, because then the sacraments are not treated

irreverently nor exposed to the danger of nullity. For the whole reason why it is not lawful in conferring the sacraments to employ a probable opinion while leaving aside the safer one is the reverence owed to the sacraments, lest, namely, they be exposed to the danger of nullity without a most grave cause.[319]

[318] Denz., n. 1151.

[319] Cf. St. Alphonsus, *Theol. mor.*, l. 1, nn. 49-50 and l. 6, n. 57.

Chapter VI. On The Subject Of The Sacraments

86. Notion. The subject of the sacraments is said to be the one who receives a sacrament and its effects.

General principle. The subject of the sacraments is man alone in the wayfaring state; nevertheless, not every man can receive all the sacraments.

Thus it is from the will of Christ. The reason for the first part is that man alone in the wayfaring state is capable of receiving sanctifying grace or its increase. For the angels and the souls of the departed are already at their terminus, and have immutably either acquired or lost eternal salvation. When the Eucharist is called the "bread of angels," it is by no means indicated that the angels receive the Eucharist as men do, but that the same Christ who is our food through the sacrament is, as it were, the sweetest and most efficacious food of the angels through the beatific vision.[320] St. Paul[321] speaks of those who are baptized for the dead. These words are somewhat obscure, but no interpreter has judged that, according to St. Paul, those who died without baptism can receive the effect of baptism if someone living on earth were baptized in their place. St. Paul perhaps speaks of some superstitious and false rite then in use, or the sense is that those faithful are baptized so that they may rise with the dead unto eternal beatitude.

The reason for the other part of the principle is that not every man has the qualities required for all the sacraments. Thus a woman cannot validly receive the sacrament of order, nor can a healthy man receive the sacrament of extreme unction.

With these things premised, we treat first the valid and then the licit reception of the sacraments.

[320] Cf. *S. theol.* 3, q. 80, a. 2 ad 1.

[321] 1 Cor. 15:29.

§ 1. On The Valid Reception Of The Sacraments

87. Diverse conditions are required for validity in the diverse sacraments. In general, however, the following things are to be noted concerning all the sacraments:

1. **The faith and probity of the recipient are not required for the validity of any sacrament, penance excepted.** Hence those who received baptism or order as formal heretics are not to be rebaptized or reordained. In the sacrament of penance, however, true contrition or at least attrition is required for validity, and this assuredly cannot be had without faith and probity, at least begun.
2. **Neither internal nor external attention is required for the validity of the sacraments, provided that the intention discussed below was present.** Hence, for example, if someone is voluntarily distracted or intent upon other works while he receives sacramental absolution, he indeed sins, but receives it validly.

3. **Valid baptism of water previously received is required for the validity of all the other sacraments.** For baptism is the gate of all the sacraments.
4. **No personal intention is required in infants and the perpetually insane for receiving the sacraments of which they are capable.** For the Church then supplies the necessary intention.[322] Infants can validly receive baptism, confirmation, the Eucharist, and order.[323] According to the present discipline of the Church, however, no sacrament other than baptism, and in some regions confirmation, is customarily administered to infants and the perpetually insane.
5. **In adults having the use of reason, some intention is required for the validity of all the sacraments, the Eucharist excepted, and it is diverse for the diverse sacraments.** It is said: **the Eucharist excepted**, which, since it consists in a permanent thing, that is, in the consecrated species, as regards validity depends upon no intention either of the one ministering or of the one receiving. Hence one who were to receive the Eucharist under narcosis or in a complete loss of consciousness, or one who were to consume a host which he does not know to be consecrated, would indeed consume the true body of Christ, but only materially and without fruit if every intention were lacking.

The **necessity of intention** on the part of the recipient is inculcated by Innocent III,[324] who rejects the opinion of those who teach that the sacraments can be conferred at least validly not only upon those sleeping and the insane, but also upon the unwilling and those contradicting, saying: "But it is contrary to the Christian religion that anyone always unwilling and altogether contradicting should be compelled to receive and preserve Christianity." St. Thomas,[325] speaking of baptism, teaches: "If in an adult the intention of receiving the sacrament were lacking, he would have to be rebaptized." The reason *a priori* is the will of Christ instituting the sacraments in this manner, which will is gathered from the doctrine and practice of the Church and is very consonant with the essence and dignity of the sacraments. For the sacraments are the most worthy means of conferring grace. Now, it is most fitting that a man capable of the use of reason receive them voluntarily, and not merely passively or under compulsion.

The **quality of the required intention** is diverse for the diverse sacraments, as will be explained below when the individual sacraments are discussed. In general, however, it can be said: **A lesser intention is required in the subject than in the minister of the sacraments**; hence an actual and virtual intention is not required, but a habitual intention also suffices, that is, one once possessed and not retracted.[326] Three sacraments, however, are excepted, namely: a) matrimony, in which at least a virtual intention is required, since the contracting parties themselves are also the ministers of that sacrament; b) according to the discipline now in force, the same holds for sacred ordination, since through it a man undertakes a new state and new grave burdens; likewise, c) for penance, in which the acts of the penitent, and notably contrition, must be present at least virtually while sacramental absolution is given.

As regards the sacraments of baptism, confirmation, the Eucharist, and extreme unction, an implicit habitual intention suffices for validity, that is, one which is included in the Christian life or, if it concerns baptism, in the resolution to undertake the Christian life. But that will alone which is present in every contrition or attrition, namely, of doing the things necessary for salvation, does not seem to suffice. Hence, for example, a missionary can baptize a dying pagan deprived of his senses, provided that the latter previously manifested a resolution to undertake the Christian life[327] or to receive baptism. But if such a resolution never was and is not present, baptism seems unable to be administered. Nevertheless, certain modern authors, for example, Vermeersch[328] and Cappello,[329] notwithstanding the response of the Holy Office of March 30, 1898, think that an unbeliever dying and deprived of his senses can be baptized under the condition, "if you are capable,"

provided that scandal is avoided. The reason is that in extreme necessity it is lawful to baptize even doubtfully validly.

As regards the objections deduced against the necessity of intention from certain historical facts, see Billuart.[330] The councils, however, enumerate only the matter, form, and intention of the minister as essentially required for all the sacraments because the personal intention of the subject is not in reality required in all the sacraments, for example, in the baptism of infants.

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[322] Cf. *S. theol.* 3, q. 68, a. 9 ad 1.

[323] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 81.

[324] C. 3, X 3, 42.

[325] *S. theol., l.c.*, a. 7 ad 2.

[326] Cf. St. Alphonsus, *l.c.*

[327] Cf. Holy Office, March 30, 1898 (*Collectan. de Prop. Fide*, n. 1993).

[328] *Theol. mor.* III, 243.

[329] *De sacr.* I, 243.

[330] *De sacr.*, diss. 6, a. 1.

§ 2. On The Licit Reception Of The Sacraments

88. Diverse conditions are required for licitly receiving the diverse sacraments, as will be explained more broadly below. In general, however, the following can be noted:

1. An adult possessing the use of reason, in order licitly to receive any **sacrament of the dead**, must, besides the required intention, have at least supernatural attrition concerning the sins committed. For no remission of guilt is granted by God without sorrow for the offense committed. In true supernatural attrition are included faith, hope, and initial love.
2. An adult receiving a **sacrament of the living** must be **in the state of sanctifying grace**, which state is possessed either from baptismal grace never lost, from perfect contrition, or from sacramental absolution rightly received.[331] But knowingly to receive a sacrament of the living in the state of mortal sin is a grave sacrilege, since it is a grave abuse of a most holy thing.

St. Alphonsus[332] enumerates two very rare cases in which, to avoid a greater evil, it is lawful to receive the Eucharist notwithstanding the state of mortal sin. "If a consecrated host were about to be profaned by heretics, and someone, on account of that sudden assault, could not so quickly become contrite, then it seems that he could consume it without sin, although without fruit. For then he would not consume it as a sacrament, but would only hide it in his body as in a wall in order to free it from injury.... They probably say the same concerning a layman reclining at the Communion rail who should remember a mortal sin and could not elicit contrition on account of the shortness of time."

3. An adult possessing the use of reason must receive any sacrament whatsoever with reverence and actual devotion; for a sacrament is a most holy thing.
4. Of itself, it is not lawful to request the sacraments from a minister who is **certainly unworthy**. It is said: **certainly unworthy**; for if he is not certainly known to be unworthy, he must be presumed good.

But that minister is called unworthy who cannot administer a sacrament without mortal sin, either because he is bound by some censure or because he himself is in the state of mortal sin. The reasons why it is not lawful in ordinary cases to request the sacraments from ministers of this kind are several, namely: a) incitement or cooperation in the sin which the minister perpetrates by administering the sacraments; b) scandal, which not rarely arises therefrom; c) danger of one's own perversion.

5. For a just and proportionate cause, however, it is lawful to request a sacrament from an unworthy minister, provided that he can administer it validly. The reason is that such a petition is nothing other than **material cooperation** in the sin of another, and this cooperation is lawful for a just and proportionate cause. Several just causes are enumerated by St. Alphonsus,[333] for example, if the precept of confession or Communion is urgent, especially if spiritual danger threatens from delayed reception; if someone would have to remain longer in the state of mortal sin; if otherwise he could not gain a jubilee indulgence. Indeed, St. Thomas[334] says generally: "As long as [a minister] is tolerated by the Church in the ministry, he who receives a sacrament from him does not communicate in his sin."

But if a minister is a) an excommunicate to be avoided, or b) if a condemnatory or declaratory sentence has been rendered against him, or c) if he is a public heretic or schismatic, it is not lawful to request any sacrament from him except at the moment or in danger of death.[335] The reason is that such a minister is most gravely forbidden to administer the sacraments; indeed, outside danger of death all jurisdiction has been taken away, such that he cannot validly absolve; and finally, because from such a petition there would arise both most grave scandal and danger of perversion.

According to the discipline now in force,[336] the faithful situated in danger of death can request sacramental absolution from any priest, even an excommunicate to be avoided; but the other sacraments only if another minister is lacking. The older discipline was more severe in this matter.[337]

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[331] Concerning confession necessary before Communion, see below, n. 192.

[332] *Theol. mor.*, l. 6, n. 86.

[333] *Ibid.*, n. 89.

[334] *S. theol.* 3, q. 64, a. 6 ad 2.

[335] Canon 2261, § 3 of the Code of Canon Law determines: "From excommunicates to be avoided, and likewise from other excommunicates after a condemnatory or declaratory sentence has intervened, the faithful can, in danger of death alone, request both sacramental absolution and also, if other ministers are lacking, the other sacraments and sacramentals." But to request the sacraments outside danger of death from heretics or schismatics is gravely prohibited, since it is communication in divine things.

[336] Cf. c. 2261 cited above.

[337] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 88.

Appendix On The Sacramentals

89. 1. Definition. Sacramentals are taken either in a broader sense, and then they include certain pious exercises, such as the Lord's Prayer, almsgiving prescribed by the Church, and also the sacred ceremonies which are employed in the administration of the sacraments; or in a stricter sense, and then they are "things or actions which the Church is accustomed to employ, in some imitation of the sacraments, in order to obtain effects, especially spiritual ones, through her impetration."[338] In this latter sense alone do we speak here of the sacramentals, which were called **minor sacraments** by the older theologians.[339]

It is said, first: **things or actions**, to signify the two classes of sacramentals which will be discussed below.

It is said, second: **which the Church is accustomed to employ in some imitation of the sacraments**, because all sacramentals were directly instituted by the Church and not by Christ Himself. They can nevertheless be called instituted by Christ insofar as He gave the Church the power of instituting them; indeed, sometimes insofar as Christ indicated them by His own example, for example, exorcism. The Apostolic See alone can establish new sacramentals, authentically interpret those received, or abolish or change any of them.[340]

Sacramentals have some similarity with the sacraments insofar as they are means of obtaining grace, but they also differ from the sacraments in many ways, namely: 1. **by reason of origin**: the sacraments are from Christ, but the sacramentals were immediately instituted by the Church; 2. **by reason of effect**: the sacraments directly cause sanctifying grace or its increase, but the sacramentals directly obtain only actual graces and other aids; 3. **by reason of the mode of operating**: the sacraments cause grace *ex opere operato*, but the sacramentals operate *ex opere operantis* of the Church and of man; 4. **by reason of number**: the sacraments are seven, and this number cannot be changed; the number of the sacramentals is indefinite and variable.

It is said, third: **in order to obtain effects, especially spiritual ones, through her impetration**. For the sacramentals, through the impetration of the Church, supernaturally produce certain effects, both corporal, such as health, and spiritual, such as the restraint of the devil. But all these aids are in some way ordered toward sanctifying grace. Hence St. Thomas[341] teaches: "Among those things which the Church visibly performs, some are sacraments, such as baptism; some are sacramentals, such as exorcism. Their difference is this: that action of the Church which attains the effect principally intended in the administration of the sacraments is called a sacrament; but that action which, although it does not attain that effect, is nevertheless ordered in some way toward that principal action, is called a sacramental."

The Church applies the sacramentals principally to Catholics, but according to modern discipline she permits them, and especially blessings, to be given to catechumens and non-Catholics in order to obtain the light of faith and at the same time health of body.[342] By canon law, however, the following are excluded from receiving sacramentals:

1. excommunicates after a declaratory or condemnatory sentence, c. 2260, § 1;
2. those personally interdicted, c. 2275, n. 2;
3. Catholics who have dared to enter a mixed matrimony without a dispensation of the Church, until they have obtained a dispensation from the Ordinary, c. 2375.

The first and second cases are most rare today, but the third is sufficiently frequent.

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[338] Code of Canon Law, c. 1144.

[339] Hugh of St. Victor, treating these minor sacraments, says: "There are certain sacraments in the Church in which, although salvation does not principally consist, nevertheless salvation is increased by them insofar as devotion is exercised.... Therefore, of these sacraments some consist in things, such as water of aspersion, the reception of ashes, the blessing of branches and candles, and other such things. Others consist in deeds, such as the sign of the cross, the exsufflation of exorcism, the extension of hands, the bending of knees, and other things of this kind. Others consist in words, such as the invocation of the Trinity and whatever things are of this manner" (*De sacr.* II, P. 9 [Migne, *Patr. lat.* 176, 471]).

[340] Code of Canon Law, c. 1145.

[341] *Suppl.*, q. 20, a. 1.

[342] Code of Canon Law, c. 1149.

90. 2. Divisions. The sacramentals are very numerous, nor are the same ones always in force in the Church. They can nevertheless be reduced to two great categories, namely, to permanent sacramentals or things, and to transient sacramentals or actions. **Permanent sacramentals or things** are certain blessed or consecrated things by the use of which the faithful obtain supernatural aids, for example, holy water, scapulars, etc. Not every blessed thing, however, is a sacramental; otherwise even a blessed man, a blessed house, etc., would be sacramentals; but only those things which, by a blessing called constitutive,[343] are employed exclusively for divine worship. **Transient sacramentals or actions** are certain actions to which special graces are annexed by the ordinance of the Church, for example, the recitation of the *Confiteor*, the imposition of ashes, exorcism, etc.

In present times a great part of the sacramentals consists in **blessings**, of which some are reserved to the Supreme Pontiff, for example, the blessing of the *Agnus Dei*, of the pallium, etc.; some pertain to bishops, for example, the blessing of bells, of chrism, etc.; some pertain to religious orders, for example, the blessing of rosaries, scapulars, etc.; some are reserved to the pastor, for example, the blessing of houses on Holy Saturday, but not on other days, the nuptial blessing, etc.; finally, very many blessings are given which can be performed by any priest, for example, the blessing of holy water, of a woman after childbirth, etc.

By delegation almost all blessings can be given by a simple priest. Indeed, even reserved blessings which are given by a simple priest without delegation are valid if a) the Holy See has not expressly determined the contrary; b) the formulas prescribed by the Church are employed (Code of Canon Law, c. 1147, § 3; 1148, § 2). It is self-evident that such blessings knowingly usurped in this manner are illicit. When a deacon, with the permission of the Ordinary or pastor, administers Viaticum, he can bless the sick person and those assisting with the Most Holy Sacrament; likewise, he can bless the grave.[344] Laymen can perform no liturgical blessing and no sacramental.

The clause "with the consent of the local Ordinary," which is sometimes found in rescripts by which certain faculties are granted, for example, of blessing things with Apostolic indulgences, is to be understood in this manner:

a) for the valid exercise of this faculty, approval to hear confessions, at least those of men, is required;

b) for its licit exercise, tacit or even prudently presumed consent suffices;

c) religious can exercise it in their religious house with the permission of their religious superior.[345]

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[343] Besides the constitutive blessing (*Weihesegen*, consecratory blessing), there is an invocative blessing (*Bittsegen*, petitionary blessing), for example, the blessing which a priest gives in the Mass after *Ite, missa est.*

[344] Sacred Congregation of Rites, August 14, 1858 (*Decr. auth.*, n. 3074).

[345] Sacred Congregation of Indulgences, June 4, 1888, and June 14, 1901.

91. 3. The efficacy of the sacramentals does not consist solely in the good works, prayers, or salutary excitations which are customarily joined with them, but **in a special impetratory power granted to them by the Church**. Assuredly, the sacramentals do not have efficacy as the sacraments do, namely, from a power granted to them directly by Christ, but because prayers by the Church herself supplicating for the obtaining of graces are annexed to them, as will be said more broadly below. Through the sacramentals the Church supplicates especially for four[346] kinds of graces:

a) **for actual graces** rightly to discharge the duties both of the Christian life and of the state chosen. In this sense many sacramentals are efficacious, for example, the nuptial blessing, the anointing of a king, the first clerical tonsure, etc.

b) **for the remission of venial sins.** Such are, for example, holy water, ashes blessed at the beginning of Lent, and the *Confiteor* recited in the Mass or in the Divine Office. Nevertheless, this effect is not produced *ex opere operato* as in penance and the other sacraments, but *ex opere operantis*, insofar as actual grace is obtained for detesting all sins.

c) **for averting the maleficence of the devil.** The devil can harm a man in many ways, if God permits it, namely: 1. by inflicting physical evils, for example, exciting diseases, causing the ruin of fortune; 2. by instigating to sins through vehement temptations; 3. by besieging the body of a man. Demonic obsession cannot be denied, since manifest examples of it are found in the Gospel; nevertheless, in our times it is to be supposed most rarely. When it is lawful to employ an exorcism in this case, see above, II, n. 463, in the tract on adjuration.

d) **for obtaining temporal goods.** Many blessings tend toward this end, for example, blessings of fields, of bread, etc.

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[346] Certain authors enumerate still more graces produced by the sacramentals. Thus, for example, Francis Schmid, in a special work which he wrote concerning the sacramentals (*Die Sakramentalien der kath. Kirche*, Brixen 1896), enumerates seven effects of the sacramentals.

92. 4. Mode of operating. The sacramentals operate principally by the impetratory power of the Church, but secondarily from the quality of the minister and recipient. Although the goodness of the minister and recipient greatly increases the efficacy of the sacramentals - for a blessing given by a most holy priest and received by a most devout man has greater effects than if lesser qualities are present both in the minister and in the recipient - nevertheless, the principal efficacy proceeds from the impetratory power of the Church, which received from Christ the power of blessing diverse things and restraining the maleficence of the devil. For just as a prince often grants to the prayers of a whole community what he denies to an individual man requesting, so God grants graces on account of the Church petitioning by means of the sacramentals.

In this sense the sacramentals can be said to operate *ex opere operato* by the Church, but it is better, in order to avoid ambiguities, to say that **the sacramentals operate *ex opere operantis* both of the Church and of the man receiving**. The effect of the sacramentals, since it is produced principally from the prayers of the Church, which are always heard, is **infallible**, unless there is an obstacle or impediment on the part of man. For since all sacramentals must ultimately tend toward procuring or increasing sanctifying grace, if either the disposition of man or the temporal good, for example health, sought through the sacramentals impedes this end, then the effect is not produced.

93. Notes.

1. **Sacramentals differ from indulgences.** For indulgences, from the treasury of the merits of Christ from which the Church draws, remit the temporal punishments of sin; but the sacramentals, from the prayers of the Church, obtain diverse aids, especially supernatural ones, but not the remission of temporal punishments, at least directly. For if a sacramental is joined with a satisfactory work, for example, humiliation in the reception of ashes, then it also indirectly remits temporal punishments, namely, on account of that satisfactory work.

2. Sacramentals which are not assisted by the impetration of the Church are not of much avail. But the Church is not considered to assist those things and actions which are not performed according to her laws and prescriptions. Therefore, sacramentals in whose confection or use the prescriptions of the Church are not observed are invalid. Hence it follows that those things which the Church commands concerning the sacramentals are to be faithfully observed. This holds especially for ecclesiastical blessings and consecrations, which are invalid if they are notably changed.[347]

[347] Code of Canon Law, c. 1148, § 2.

Treatise II. On Baptism

We divide this treatise into seven chapters: 1. on the notion, institution, and division of baptism; 2. on its essence; 3. on its effects; 4. on its necessity; 5. on its minister; 6. on its subject; 7. on its ceremonies.

The same authors who were cited above, n. 2, concerning the sacraments in general can be consulted. Pourrat, however, does not treat the sacraments in particular.

Chapter I. On The Notion, Institution, And Division Of Baptism

94. 1. Diverse names. The name baptism is taken from the Greek word βαπτισμός or βάπτισμα, which signifies the same as immersion or washing.[1] In Sacred Scripture the word baptism is not rarely taken in diverse senses, for example, for "to take a bath,"[2] and for legal purifications,[3] in which sense "baptisms of cups and pitchers" are narrated as having been performed by the Pharisees.[4] Among the Greeks baptism is often called φωτισμός, that is, **illumination**. Baptism is also often called the sacrament of regeneration or the sacrament of faith. There are still several other denominations of baptism which there is no leisure to enumerate here.[5]

[1] The German word *taufen* also signifies *untertauchen*, "to submerge," or to immerse; cf. Grimm, *Deutsches Wörterbuch.*

[2] Judith 12:7.

[3] Heb. 9:10.

[4] Mark 7:3 sq.

[5] See Gihr, *Die hl. Sakr.* I, § 28, and *Cat. Rom.* P. 2, c. 2, q. 3.

95. 2. Definition. Among the diverse definitions which are given concerning the sacrament of baptism, we adduce only the definitions offered by St. Thomas and by the Roman Catechism. St. Thomas offers the definition given by Peter Lombard, saying: "Baptism is an exterior washing of the body performed under the prescribed form of words."[6] Hugh of St. Victor thought that the essence of baptism consists in the sanctified water itself. The Angelic Doctor does not approve this opinion, because the water itself is not the principal cause in baptism, but the action of washing joined with the words of the sacramental form; and this is expressed excellently by the definition customarily attributed to St. Augustine: "Baptism is an immersion in water sanctified by the word of life."[7] The Roman Catechism, however, defines baptism as "the sacrament of regeneration through water in the word."[8] For by nature we are born from Adam children of wrath, but by baptism we are reborn in Christ as children of mercy.

Baptism is a true sacrament of the New Law. Thus teach all the Holy Fathers, and the Council of Florence defines: "Holy baptism holds the first place among all the sacraments, for it is the gate of spiritual life; for through it we are made members of Christ and of the body of the Church. And since through the first man death entered into all, unless we are reborn of water and the Spirit, we cannot, as the Truth says, enter into the kingdom of heaven."[9]

[6] *S. theol.* 3, q. 66, a. 1.

[7] Cf. IV Sent., dist. 3, q. 1, a. 1, sol. 1.

[8] Part 2, c. 2, q. 4.

[9] Denz., n. 696.

96. 3. The institution of baptism was certainly accomplished by Christ. A few non-Catholics teach the contrary, among whom are Harnack[10] and Drews.[11]

If Christ instituted all the sacraments, as was proved above, *a fortiori* this holds for baptism, which is the gate of all the sacraments. Theologians dispute greatly, however, **when** Christ instituted this sacrament. There are four opinions:

1. St. Thomas, almost all Thomists, several others, and the Roman Catechism teach that the sacrament of baptism was instituted when Christ was baptized in the Jordan: "It is perceived that this sacrament [of baptism] was then instituted by the Lord, when He Himself, baptized by John, gave to water the power of sanctifying."[12]
2. Others, among whom is Estius, think that baptism was instituted when Christ said to Nicodemus: "Unless a man be reborn of water and the Holy Spirit, he cannot enter into the kingdom of God."[13] This opinion is not very probable, since it does not seem so fitting that Christ should have instituted so necessary a sacrament in a private conversation held at night.
3. Others teach that Christ instituted baptism before the Passion, namely, before He first sent the disciples to baptize. Thus teach Scotus, Suarez, Christian Pesch,[14] and others.
4. Others teach that baptism was instituted after the Resurrection, when Christ said to the disciples: "Going therefore, teach all nations, baptizing, etc."[15] Thus teach Alexander of Hales,[16] Melchior Cano,[17] and Schanz[18] and Gihr[19] also seem to think thus. This opinion likewise is not very probable; for then at the Last Supper Christ would have given the Eucharist and conferred the sacrament of order upon Apostles not yet baptized, which seems very unfitting. Moreover, it is read in the Gospel[20] that Christ and His disciples baptized. Now, it is not likely that such baptisms were mere ceremonies or were not much more excellent than the baptism of John. Hence it is sufficiently established that the sacrament of baptism was instituted before the Passion of Christ, but the time at which it was instituted is not so established. The first opinion seems better, both because of the great authority of St. Thomas and the Roman Catechism, and because it is most fitting that Christ instituted baptism at that time when in the Jordan He approved by His example the exterior rite of this sacrament and when, by the appearance of the whole Trinity ("This is My Son" ... "the dove"), the form of baptism was indicated not obscurely.

While Christ was still living, the Apostles were already baptizing;[21] nevertheless, baptism before the Passion and Resurrection of the Savior was not under strict precept. For the New Law began to oblige only when Christ said in the Passion, "It is consummated," and when, as a sign of the Old Law having been abolished, the veil of the temple was torn. But the words of Christ to Nicodemus, "Unless a man be reborn of water and the Holy Spirit, he cannot enter into the kingdom of God," are to be understood in the same manner as the words of the same Savior: "Unless you eat the flesh of the Son of Man and drink His blood, you shall not have life in you"; namely, the obligation both of baptism and of the Eucharist **would be** most strict after the redemption had been completed. For no one teaches that the Eucharist was instituted or commanded from the time these words were uttered. Therefore, the obligation of receiving baptism began when Christ said to the Apostles after the Resurrection: "Going therefore, teach all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit."[22]

[10] *Dogmengesch.* I, 68, note 3: "That Jesus instituted baptism cannot be demonstrated."

[11] *Realencyklop. f. prot. Theol.*, s.v. "Taufe" (p. 427).

[12] *Cat. Rom.* P. 2, c. 2, 16; cf. *S. theol.* 3, q. 66, a. 2.

[13] John 3:5.

[14] *Prael. dogm.* VI, n. 354.

[15] Matt. 28:19.

[16] *In IV Sent.*, q. 12, membr. 3, a. 1.

[17] *De loc. theol.*, l. 8, c. 5.

[18] *Die Lehre v. d. hl. Sakr.* I, § 15.

[19] *Die hl. Sakr.* I, § 29. The author does not clearly express his opinion.

[20] John 3:22-26. Cf., however, c. 4, v. 2, where Christ is said not to have baptized Himself, but through His disciples.

[21] Cf. John 3:22 sqq.

[22] Matt. 28:19. Cf. St. Thomas, *S. theol.* 3, q. 66, a. 2, and Billuart, *De bapt.*, diss. 1, a. 2, § 2.

97. 4. Divisions.

a) Baptism is **solemn and non-solemn or private**, according as it is administered with all the rites and ceremonies which are prescribed in the ritual books, or without them.[23] Private baptism is customarily employed a) in danger of death, for example, if a midwife baptizes a dying infant (baptism of necessity, *Nottaufe*, emergency baptism); b) if baptism is repeated under condition, for example, in some regions if a newly converted person doubtfully baptized is received into the bosom of the Church.

b) According to the diverse mode of producing grace, baptism is customarily distinguished as baptism of water, of desire (*flaminis*), and of blood.

Baptism of water is the sacrament itself instituted by Christ.

Baptism of desire (*flaminis*) is a perfect act of charity including at least virtually and implicitly the desire for baptism of water. It is called *flaminis* because the Holy Spirit, who is sometimes called the *flamen*, moves the heart of man to love God above all things and to grieve concerning sins.

Baptism of blood is martyrdom endured in any manner for Christ before baptism of water. The innocent infants slaughtered by Herod received such a baptism of blood.

This threefold distinction was already known to the Holy Fathers.[24] But if the same Fathers in other places do not speak so clearly, or seem to teach the contrary, a correct interpretation must be employed.[25] An example of baptism of desire (*flaminis*) is found in the centurion Cornelius and others who had already received the Holy Spirit before baptism of water.[26]

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[23] Code of Canon Law, c. 737, § 2.

[24] St. Ambrose, *In Ps.* 118, sermon 3 (Migne, *Patr. lat.* 15, 1292); St. Augustine, *De bapt.*, l. 4, c. 21 (Migne, *ibid.* 43, 172); St. Jerome, *Super Eph.* 4 (Migne, *ibid.* 26, 523); St. Gregory Nazianzen, Orat. 39 *in sancta lumina* (Migne, *Patr. graec.* 36, 355).

[25] Cf. Drouven, *De re sacr.*, l. 2, q. 6, c. 4, app. I.

[26] Cf. Acts 10:44. The efficacy of these three baptisms will be discussed below, n. 106 sqq.

Chapter II. On The Essence Of Baptism

Since every sacrament is constituted essentially from matter and form, we must treat 1. the matter and 2. the form of baptism.

Article I. On The Matter Of Baptism

98. 1. The valid remote matter of baptism is all and only natural water.

Thus teaches Catholic dogma.[27] The Council of Trent[28] defines: "If anyone says that true and natural water is not necessary for baptism, and therefore twists into some metaphor those words of Our Lord Jesus Christ, 'Unless a man be reborn of water and the Holy Spirit,' let him be anathema."

St. Thomas[29] shows by several reasons how fittingly Christ willed water to be employed in baptism:

a) Water washes and cools; thus baptism washes from the stains of sin and mitigates the ardor of concupiscence.

b) Baptism is a sacrament than which no other is given that is more necessary. Therefore, its matter must be easily found everywhere on earth. Now, no matter is as common as water.[30]

A few heretics, such as certain Gnostics, Manichaeans, Albigensians, and Cathars, denied that water is the matter of baptism. Luther and Beza, however, taught that in a case of necessity baptism can also be conferred in another fluid matter.

Note. In practice, what constitutes the valid matter of baptism is to be taken not so much from chemical analysis as from the **common estimation of men**. Hence:

a) **Certainly valid matter** is water from a spring, well, river, sea, or rain; water melted from ice, snow, or hail; distilled water; sulfurous water and other mineral water; water to which a small quantity of another matter is admixed, although its color, odor, or taste is thereby altered, provided, however, that water always remains the predominant matter. Thus on August 21, 1901, the Holy Office declared that one-thousandth part of sublimated mercuric bichloride (*Sublimat*) can be admixed with water to forestall the danger of infecting the mother if an infant is to be baptized in the maternal womb.

b) **Doubtful matter** is broth, coffee, tea, beer, liquids expressed from plants,[31] etc. The reason is that in all these and similar liquids water indeed greatly predominates and is not chemically transmuted, but according to the common estimation of men it is no longer called water. Therefore, outside a case of extreme necessity it is not lawful to use doubtful matter of this kind.

c) **Certainly invalid matter** is milk, blood, saliva, wine, oil, and the humors of the human body, such as sweat, urine, etc.[32] The reason is that although a great part of water is contained in these matters, nevertheless that water has been changed either chemically or at least according to the common estimation of men.

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[27] Fourth Lateran Council, c. 1 (Denz., n. 430); Eugene IV, Decree for the Armenians (Denz., n. 696).

[28] Sess. 7, can. 2 on baptism (Denz., n. 858).

[29] *S. theol.* 3, q. 66, a. 3.

[30] Cf. *Cat. Rom.* P. 2, c. 2, q. 8.

[31] Thus according to St. Alphonsus (*Theol. mor.*, l. 6, n. 103); St. Thomas seems to hold liquids from plants to be invalid matter, *S. theol.* 3, q. 66, a. 4 ad 5.

[32] Cf. St. Alphonsus, l. 6, n. 103.

99. 2. The licit remote matter in solemn baptism is consecrated baptismal water that is becomingly clean. Thus it is from the Roman Ritual.[33] Solemn baptism is considered to be that which is performed with all the ceremonies, whether in a church or in another place, even in a private house, as was already said. In baptism of necessity, that is, when death is imminent, "if baptismal water is not available and danger threatens, let the priest use plain water." Thus the old Roman Ritual.[34] Nevertheless, holy or blessed water seems to be preferred to plain water. In private baptism, that is, in one which is administered outside the moment of death without the ceremonies, baptismal water is likewise to be employed if it can easily be had; otherwise blessed or holy water is to be employed. Such private baptism sometimes occurs in the reception of a heretic returning to the bosom of the Church if baptism is repeated under condition.[35]

In extreme necessity, if pure water is lacking, it is lawful to baptize with any matter, even doubtful matter, but not with matter that is certainly invalid.

He sins gravely who, outside a case of necessity, solemnly baptizes with unconsecrated water; likewise, he who baptizes with muddy or foul-smelling water, or water mixed with other matters, because this is a grave irreverence against the sacrament. If consecrated baptismal water has become foul-smelling or impure and no other pure water can be had, then plain pure water is to be employed in baptism rather than that foul baptismal water. If, however, there is no danger in delay, new baptismal water must be consecrated according to the special formula prescribed in the Roman Ritual.[3637]

In the Instruction of the Sacred Congregation for the Propagation of the Faith of September 8, 1869 (n. 42),[38] missionaries are commanded to preserve consecrated baptismal water in some becoming place and vessel and to carry it with them when they must make a journey to administer baptism, if, however, this can easily be done; otherwise - if, namely, baptismal water cannot be had without notable inconvenience - it is lawful in solemn baptism "to use common water, especially if it has been blessed."[39]

When baptismal water seems likely to run short, it is lawful to admix natural water, and this even more than once, provided, however, that each time the quantity of natural water to be poured in is less than the baptismal water already present.[40] Even in baptisms which in some regions, with the permission of the bishop, are performed outside the church in private houses, consecrated baptismal water is to be employed. For it is solemn baptism.

If the baptismal water is too cold, it can be warmed by bringing it near a fire, or even, as the Roman Ritual permits, by pouring in a little very hot natural water. Likewise, nothing prevents a small quantity of water from the Jordan from being admixed with the baptismal water[41] if the parents request and procure it.

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[33] Tit. 2, c. 1, n. 5; cf. Code of Canon Law, c. 757, § 1.

[34] Tit. 2, c. 2, n. 29. These words are not found in the new Ritual.

[35] Thus, for example, it is found in the acts of the First Council of Westminster, c. 16, n. 8. Baptism of this kind is not to be performed publicly, but altogether privately with holy water and without ceremonies.

[36] Tit. 2, c. 8; Code of Canon Law, c. 757, § 3.

[37] Cf. Holy Office, April 17, 1839.

[38] *Collect. de Prop. Fide*, n. 1346.

[39] On April 6, 1741, the Holy Office (*Collect. de Prop. Fide*, n. 325) determined that, when baptismal water is lacking, natural water should be employed rather than blessed water; but on June 20, 1883 (*ibid.*, n. 1598), it decreed generally: "When baptismal water is

not available, blessed water according to the formula in the new editions and in the appendix of the Roman Ritual is to be employed, insofar as this can be done; otherwise natural water is to be employed." The sense of this response seems to be: When baptismal water blessed on Holy Saturday or on the Saturday before Pentecost is not available, baptismal water blessed according to the short formulas found in the Roman Ritual is to be employed.

[40] *Rit. Rom.*, tit. 2, c. 1, n. 6, and Code of Canon Law, c. 757, § 2.

[41] Cf. Noldin, *De sacr.*, n. 58.

100. Scholion. On the consecration of baptismal water. In churches in which a baptismal font exists, the baptismal water must be blessed twice, and not only once, during the year, that is, on the vigils of Easter and Pentecost, notwithstanding any contrary custom, which is altogether to be eliminated.[42] The old baptismal water present on those days is to be poured into the sacrarium.[43] It was already said above that in a case of necessity baptismal water can be blessed on other days also. The consecration of the baptismal font is to be performed with oils recently consecrated, that is, on Holy Thursday of the same year. But if on Holy Saturday the new oils could not yet be obtained, then a twofold mode of acting is lawful: 1. to bless the font without the infusion of the sacred oils, which the priest is afterward to pour in privately at a suitable time while reciting the omitted prayers; 2. to bless the baptismal font with the old oils if, namely, baptism must be administered before the arrival of the new oils.[44]

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[42] Sacred Congregation of Rites, April 13, 1874 (*Decr. auth.*, n. 3331); Sacred Congregation of the Council, June 10, 1922 (*Acta Ap. Sed.* XV, 227).

[43] *Rit. Rom.*, tit. 2, c. 1, n. 5. In the Eastern Church the priest consecrates the baptismal water whenever he administers baptism.

[44] Thus the Sacred Congregation of Rites, January 31, 1896 (*Decr. auth.*, n. 3879).

101. 3. The proximate matter of baptism is the application of water performed by the minister in such a way that, according to common judgment, a true washing is present. This washing can be performed in three ways: by immersion, sprinkling, and pouring. According to the discipline now in force in the Roman Church, solemn baptism must be administered not by one but by a threefold pouring or immersion.

During the first twelve centuries baptism was more commonly administered by immersion, both in the Latin Church and in the Greek Church. Even St. Thomas[45] calls immersion the more common and more praiseworthy usage. Nevertheless, baptism by pouring or sprinkling was always in force also. For it is not likely that the Apostles, who baptized 3,000 men on one day of Pentecost, employed immersion. Likewise, the so-called clinics, or the sick lying in bed, were often baptized in bed; for them baptism by immersion was scarcely possible. Moreover, St. Paul is narrated to have baptized the jailer with his household in prison,[46] which does not seem to have been performed by immersion. Furthermore, the *Teaching of the Twelve Apostles*, c. 7, St. Cyprian,[47] Eusebius,[48] and others testify that baptism by pouring was employed from the most ancient times.

Therefore the Greeks and others err who teach that baptism by immersion alone is valid. The reason is that the essence of baptism consists in washing. Now, a true washing can also be had through pouring. From the thirteenth century onward baptism by pouring became more common in the Latin Church because baptism by immersion is accustomed to introduce grave inconveniences.

Nevertheless, even in present times baptism could be performed by immersion; for the Roman Ritual[49] says: "Although baptism can be validly conferred either by the pouring of water, by immersion, or by sprinkling, nevertheless the first or second mode, or a mode mixed from both, which is more in use, is to be retained according to the custom of the Churches, so that by a threefold washing the head of the one to be baptized is

poured over or immersed"; and the same Ritual describes how immersion is to be performed in the baptism of adults. In practice, it is not lawful to depart from the **custom** in force in each Church.

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[45] *S. theol.* 3, q. 66, a. 7.

[46] Acts 16:33.

[47] Ep. 69, n. 12.

[48] *Hist. eccl.* 6, 43 (Migne, *Patr. lat.* 20, 623).

[49] Tit. 2, c. 1, *de form. bapt.*, n. 10; the Code of Canon Law, c. 758, says nearly the same.

102. Mode of baptizing. The pouring of water must be a) threefold; b) upon the head of the one to be baptized; c) the water must flow and not merely touch; d) the water must flow immediately upon the skin of the one to be baptized; e) the same minister must pronounce the form and perform the washing. Thus it is from the precept of the Ritual, which seems to oblige gravely unless, because of necessity, another mode of baptizing must be employed.

a) **The pouring must be threefold**, and is to be performed in this manner: The priest, saying the words, "I baptize you in the name of the Father," pours the water the first time; saying, "and of the Son," the second time; saying, "and of the Holy Spirit," the third time.

b) **It must be upon the head of the one to be baptized.**

For since a washing of the whole body is not required, it suffices, and is commanded, that the head be washed as the principal part of the body in which all human senses, both exterior and interior, meet.[50] In a case of necessity, which can occur especially in the baptism of an infant in the maternal womb, it is lawful to perform the washing on other parts of the body also, for example, on the foot, arm, or breast. For greater security, however, baptism is afterward to be repeated under condition if this is possible.

c) **The water must flow.**

For the proximate matter of baptism is a washing. Now, it cannot rightly be called a washing unless the water is carried from one part of the skin to another. Hence, if only one or another drop touches the skin and adheres immovably to it, there is no washing, and therefore the baptism is invalid. For this reason, not a few baptisms conferred by Protestant ministers are invalid, because they were performed with an aspergillum or with so small a quantity of water that it could not flow. If someone washes the head of the one to be baptized with a cloth or sponge moistened with water, the baptism is considered valid because a true washing is present.[51] But if he merely touches and, as it were, anoints the forehead of the one to be baptized with a moistened thumb, the baptism is invalid or certainly doubtful.[52]

d) **The water must flow immediately upon the skin of the one to be baptized.**

Hence baptism is certainly invalid if the water touches only the clothing; but it is doubtfully valid if the water touches only the hair of the person to be baptized. Therefore, in practice the baptizing priest must take care to part the hair somewhat with his left hand so that the skin appears when he pours the water with his right hand. Likewise, it is good if the baptismal water also flows over part of the forehead, so that every doubt concerning validity is removed.

When an infant is baptized in the maternal womb while still enveloped in the so-called "secondines," baptism is invalid because these afterbirth membranes are, as it were, an extraneous covering of the infant, and therefore in this case the water does not touch the infant himself. Just as baptism conferred upon clothing is

invalid, so the same must be said of baptism conferred upon any other extraneous covering. *A fortiori*, baptism is invalid if the water is poured not upon the infant but upon the skin of the mother.

But it can scarcely be called into doubt whether baptism conferred upon an infant still existing in the maternal womb is valid if it is morally certain that the water, after the "secondines" have been perforated, touched the skin of the infant. For the reason adduced against the validity of such baptism is specious rather than solid, namely, that this infant, not yet born naturally, cannot be reborn spiritually. The response is that an infant living in the maternal womb is a true man in the wayfaring state, having an immortal soul. But there is no reason why a true man cannot be baptized. Moreover, it is false that such an infant has in no way been born. For he is a true man, as all must now concede, and nothing is lacking to him except separation from his mother, which seems to be something merely accidental.

Nevertheless, in practice, both because the minister is ordinarily a layman and not so skilled in baptizing, and because of the difficulty of truly washing an infant in the maternal womb, the Church commands baptism conferred upon an infant in the maternal womb to be repeated under condition.[53] Moreover, below, n. 129, it will again be discussed how infants in the maternal womb are to be baptized.

e) **The same minister must apply the form and perform the washing.**

Hence baptism would be invalid if someone, seeing an infant falling into water, willed to baptize him by saying, "I baptize you, etc."; or if one person pronounces the form and another performs the pouring or immersion, as occurred in the case in which the one to be baptized descended into a pool and a minister standing at the edge pronounced the form.[54] But baptism is valid if someone, taking an infant, places him beneath falling rain or water flowing from a channel while at the same time pronouncing the form,[55] or even if he were to throw the infant into water. The reason is that it seems indifferent whether the water is brought to the infant or the infant to the water. Nevertheless, if in the latter case the infant is certainly going to die, such a mode of acting seems illicit, since it would be a direct killing.[56] Noldin,[57] Lehmkuhl,[58] and Ballerini-Palmieri[59] teach that this mode of acting is lawful. Moreover, with St. Alphonsus I say: "Since such a question is scarcely reduced to practice, I consider it superfluous to linger over it."[60]

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[50] *S. theol.* 3, q. 66, a. 7 ad 3.

[51] Cf. Noldin, *De sacr.*, n. 60.

[52] The response of the Holy Office of December 14, 1898, seems worthy of note: "After the recent death of the pastor of the place N., it was discovered by certain testimonies that for many years he had conferred baptism upon children not by a washing, but by way of an anointing on the forehead with his thumb moistened in baptismal water. It is impossible to say how many children and from what time were thus baptized: many are now adults and have departed for other regions; many have already died. What is to be thought concerning the validity of this baptism, and what is to be done in practice with those thus baptized? Response: Care is to be taken that they be baptized again privately under condition, with the matter and form alone employed without ceremonies, and according to the mind. The mind is that the bishop investigate in a special manner whether any of those thus baptized were promoted to sacred orders."

[53] Cf. Sacred Congregation of the Council, March 16, 1897.

[54] Sacred Congregation of the Sacraments, November 17, 1916 (*Acta Ap. Sed.* VIII, 480).

[55] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 106.

[56] Cf. Billuart, *De bapt.*, diss. 1, a. 3, § 3.

[57] *Sum. Theol. mor.* III, n. 60.

[58] *Theol. mor.* II, n. 86.

[59] *Opus theol.* IV, n. 729.

[60] *L.c.*

Article II. On The Form Of Baptism

103. In the Latin Church the form of baptism is: "N., I baptize you in the name of the Father and of the Son and of the Holy Spirit." But in the Eastern Church: "Let N., the servant of Christ, be baptized in the name of the Father and of the Son and of the Holy Spirit." Certain Rituals of the Eastern Rite have not "let him be baptized," but "he is baptized." Which mode is better is not so established.[61] This entire doctrine is found in the Decree for the Armenians in the Bull *Exsultate Deo* of Eugene IV:

"The form [of baptism] is: 'I baptize you in the name of the Father and of the Son and of the Holy Spirit.' Nevertheless, we do not deny that true baptism is also perfected through these words: 'Such a servant of Christ is baptized in the name of the Father and of the Son and of the Holy Spirit,' or: 'Such a one is baptized by my hands in the name of the Father and of the Son and of the Holy Spirit'; for since the principal cause from which baptism has its power is the Holy Trinity, but the instrumental cause is the minister who outwardly delivers the sacrament, if the act which is exercised through the minister himself is expressed with the invocation of the Holy Trinity, the sacrament is perfected."[62]

From these words it follows that at least two things must necessarily be expressed in the baptismal form, namely: a) the act of baptizing performed by the minister; b) the unity of the divine nature, which is signified by the word **name**, and the distinction of the three Persons of the Most Holy Trinity, by whom baptism is conferred.

a) The expression of the **act of baptizing** includes three things, namely, the minister, the subject, and the action itself.

Therefore it is required, first, that the **minister** himself be signified in some way in the formula.

"It is necessary that the cause of baptism be expressed in the form of baptism. Now, the cause is twofold: one is principal, from which it has its power, which is the Most Holy Trinity; but the other is instrumental, namely, the minister who outwardly delivers the sacrament. And therefore it is necessary that mention of both be made in the form of baptism." Thus St. Thomas,[63] whom Suarez[64] contradicts: "It is not of the essence of this form that the person of the minister be expressed in it. This is a certain conclusion." So far is the conclusion of Suarez from being certain that, on the contrary, it is not lawful to follow it in practice.

For it is required that the person of the minister be expressed at least in an indirect manner. Hence, for example, in the French language the form "*te baptise au nom du Père*, etc." ("baptize you in the name of the Father"), with the word *Je* ("I") omitted, would be certainly doubtful, not to say invalid. In the Latin, Greek, and certain other languages, the person of the minister is sufficiently signified by the verb *baptizo*, etc., itself; hence the form "I baptize you," etc., with the word *Ego* omitted, would be certainly valid, although illicit. But in very many languages, for example, French, German, English, Dutch, etc., it is necessarily required that the word "I" be expressed.

The person of the minister is also expressed in the form employed by the Greeks, although not so clearly and perfectly as among the Latins. For in the word "he is baptized" or "let him be baptized" there is understood: **by me**, just as Arcudius and Goar expressly note in their Greek Euchologies.[65]

Furthermore, it is necessary, second, that the **subject** be signified in the baptismal form.

Therefore, if someone were to omit the word "you" and not substitute anything equivalent, for example, "your lordship," he would baptize invalidly. According to the Roman Ritual, not only the word "you" but also the name of the one to be baptized is to be expressed, for example, "Peter, I baptize you in the name," etc.

Finally, it is required, third, that the **act of baptizing** be expressed either by the verb "to baptize" or by another synonymous verb, for example, "I wash," "I dip."[66]

Therefore, if the act of baptizing were in no way expressed in words, the baptism is null, as is evident from the Decretal of Alexander III[67] and from the proposition condemned by Alexander VII: "At one time baptism conferred under this form was valid: 'In the name of the Father' ... with those words, 'I baptize you,' omitted."[68] St. Thomas[69] gives the reason: "Because the washing of a man in water can be performed for many purposes, it is necessary that it be determined in the words of the form for what purpose it is performed. This is not done by saying: 'In the name of the Father,' ... because we ought to do all things in such a name, as is found in Colossians, c. 3. And therefore, if the act of baptism is not expressed either in our manner or in the manner of the Greeks, the sacrament is not perfected."

b) The **explicit expression of the three Persons of the Trinity is altogether necessary, while at the same time indicating the unity of the divine essence.**

Theologians indeed dispute whether the Apostles baptized **in the name of Jesus**, since in several places of the New Testament the Apostles are narrated to have baptized in this manner,[70] and since St. Ambrose[71] and Nicholas I[72] seem to teach thus. Billuart[73] rightly says that both opinions, the negative as well as the affirmative, are probable, and that authors of great name stand for each opinion. For the affirmative opinion are cited the Master of the Sentences, Albert the Great, St. Thomas,[74] St. Bonaventure, Scotus, Durandus, Valentia, Toletus, and others; for the negative are adduced Suarez, Estius, Sylvius, Natalis Alexander, Christian Pesch, Schanz, Gihr, and others.

If one regards the texts of Sacred Scripture, the affirmative opinion indeed seems more probable; but if it is considered how incongruous it would have been a) that the Apostles themselves acted against the precept of Christ saying, "Going ... baptizing them in the name of the Father," etc.; b) that the form of baptism, which is the most necessary sacrament, would have been one thing in the time of the Apostles and another in subsequent times, then the negative opinion seems more probable. Whatever may be the case, all modern theologians teach that today baptism cannot be validly conferred in the name of Jesus, but that express mention of the three Persons of the Most Holy Trinity is required.

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[61] Cf. Billuart, *l.c.*, a. 4, § 1. According to the *Εὐχολόγιον τὸ μέγα* (Rome 1873), p. 156, the Greek text reads thus: "Βαπτίζεται ὁ δοῦλος τοῦ Θεοῦ (ὁ δεῖνα) εἰς τὸ ὄνομα τοῦ πατρὸς καὶ τοῦ υἱοῦ καὶ τοῦ ἁγίου πνεύματος. Ἀμήν· νῦν καὶ ἀεὶ καὶ εἰς τοὺς αἰῶνας τῶν αἰώνων. Ἀμήν." ("The servant of God [so-and-so] is baptized in the name of the Father and of the Son and of the Holy Spirit. Amen; now and always and unto the ages of ages. Amen.")

[62] Denz., n. 696.

[63] *S. theol.* 3, q. 66, a. 5.

[64] *De sacr.*, disp. 21, sect. 4, n. 4.

[65] Cf. Billuart, *De bapt.*, diss. 1, a. 1.

[66] In the English language the formula "I christen thee" is sometimes employed; among the Slavic peoples, for example, Poles, Bohemians, Moravians, etc., and also in Dalmatia (cf. concerning this matter Lugo, *Respons. Mor.*, l. 1, dub. 3), the expression "*krstim te*" is found. Baptism conferred under these and similar formulas seems to be valid.

[67] C. 1, X 3, 42.

[68] Denz., n. 1317.

[69] *L.c.*, ad 2.

[70] For example, Acts 2:38: "Let every one of you be baptized in the name of Jesus"; Acts 8:12 and 16; 10:48; Rom. 6:3.

[71] *De Spir. S.*, l. 1, c. 3, n. 42 (Migne, *Patr. lat.* 16, 714).

[72] *Responsa ad Bulgar.*, c. 104 (Denz., n. 335).

[73] *L.c.*, § 3.

[74] *S. theol.* 3, q. 66, a. 6 ad 1 and 2.

104. The following resolutions can be deduced from what has been said:

The following formulas are **invalid**: "I baptize you in the name of the Most Holy Trinity," because the individual Persons of the Trinity are not expressed; "I baptize you in the names of the Father and of the Son and of the Holy Spirit," because the divine essence seems to be multiplied;[75] "I baptize you in the Father and the Son and the Holy Spirit," with "in the name" omitted, because this form does not state the unity of the divine essence clearly enough; "I will to minister to you the sacrament of the baptism of sins in the name of the Father and of the Son and of the Holy Spirit. Amen," because it does not suffice to express the will to baptize, but it must be said: "I baptize you." On June 23, 1840, the Holy Office declared baptisms conferred under these four forms null.[76] Likewise invalid is the formula, "I baptize in the name of the Father," etc., with the word "you" omitted, because then the subject of baptism is not signified.

The following forms are **doubtful**: "I baptize you name of the Father," etc., with the word "in" omitted. Lehmkuhl,[77] however, adduces from the treasury of the Resolutions of the Sacred Congregation of the Council (83, 136) several decisions of the Holy Office and of the Sacred Congregation of the Council in which the form "I baptize you with the name," etc., was declared valid, if it was said without a bad intention. The form "I baptize you into the name" also seems valid, because the Greek text of the Gospel has: εἰς τὸ ὄνομα.

"I baptize you in the power, in the majesty of the Father," or: "I baptize you in the name of the Father, Son, Holy Spirit," with the word "and" omitted. Concerning this matter Lehmkuhl[78] writes: "If the word 'and' is omitted twice, some think that baptism is rendered doubtful; but if it is placed in the second position, before 'Holy Spirit,' it does not seem that the validity of the baptism is to be doubted, since more than once both the Sacred Congregation of the Council and the Holy Office have decided in such a case that 'the children in question were validly baptized, and therefore are not to be baptized, not even under condition.'"[79]

St. Alphonsus[80] thinks the form is not safe if it is said: "I baptize you in the name of the Father, and in the name of the Son," etc.; but on January 11, 1882, the Holy Office declared: "Baptism conferred with the stated form is valid." The same had already been declared on September 8, 1633, by the Holy Office, which acknowledged as valid the form: "Let my hand now baptize in the name of the Father, let my hand now baptize in the name of the Son, let my hand now baptize in the name of the Holy Spirit."[81]

There are still many other doubtful forms which can be seen in St. Alphonsus[82] or Billuart.[83] As a general rule it can be held: Since the sacrament of baptism is so necessary, and without it validly received no other sacrament can be validly received, almost any change of the form causes baptism to be permitted, and indeed often required, to be repeated under condition. Since, therefore, almost every word in the form of baptism is essential, laymen, and especially midwives, are to be diligently instructed by pastors in the due form to be employed, lest even the least change occur.

At the end of the baptismal form the word "Amen" is not to be added, as the Sacred Congregation of Rites declared on June 9, 1853, saying: "Let the Roman Ritual be strictly observed." But the word "Amen" is not found in that Ritual. Hence the opinion of certain older authors who thought that the omission of the word "Amen" was a light sin is to be corrected.[84] If baptism is repeated under condition, let the one baptizing say: "If you are not baptized, I baptize you," etc.[85]

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[75] Cf. St. Thomas, *S. theol.* 3, q. 66, a. 5 ad 6.

[76] *Collect. de Prop. Fide*, n. 901.

[77] *Theol. mor.* II, n. 89.

[78] *Ibid.*

[79] Cf. *Resolut. S.C.C.* 83, 136.

[80] *Theol. mor.*, l. 6, n. 111.

[81] *Collect. de Prop. Fide*, nn. 74 and 1501.

[82] *L.c.*

[83] *De bapt.*, diss. 1, a. 1.

[84] Cf. St. Alphonsus, *l.c.*, n. 11, and the note added by Gandé.

[85] *Rit. Rom.*, tit. II, c. 1, n. 6.

105. Scholion. On the errors of heretics concerning the form of baptism. Concerning the form of baptism several heretics erred, such as the Gnostics, Manichaeans, Paulianists, at least the later Arians, Eunomians, and others. The Pseudo-Reformers of the sixteenth century also erred. Thus, for example, Luther[86] writes: "In whatever manner baptism is delivered, provided that it is delivered not in the name of man but in the name of the Lord, it truly saves; indeed, I do not doubt that if anyone receives it in the name of the Lord, even if an impious minister does not give it in the name of the Lord, he is truly baptized in the name of the Lord." From these words it seems to follow that Protestant ministers are not bound to employ so great a care in pronouncing the correct form, and therefore baptisms conferred by them easily become invalid. Hence those priests act rightly who baptize again under condition persons returning from heresy if even a slight doubt concerning the prior baptism exists.

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[86] *De captiv. Babyl.*

Chapter III. On The Effects Of Baptism

106. Preliminary note. Here the effects of baptism of water, or of the sacrament of baptism, are treated. Discussion of the effects of baptism of desire (*flaminis*) and of blood will return in the following chapter. Meanwhile, these things are to be noted: 1. neither imprints a character, since neither is a sacrament; 2. both produce sanctifying grace, since each is an act of perfect charity, either formal or objective; 3. baptism of blood is accustomed to remit venial guilt also and temporal punishment; but baptism of desire does not always remit all venial guilt and temporal punishment, namely, when the act of charity elicited is not sufficiently intense. For just as the habit of charity can coexist with venial guilt and temporal punishment, so also can an act of charity.

107. Baptism of water produces six effects by divine law and one effect by ecclesiastical law. The effects of divine law are: 1. an indelible character; 2. the remission of every sin; 3. the remission of every

punishment; 4. the infusion of sanctifying grace, the virtues, and the gifts; 5. sacramental grace; 6. incorporation into the Church. The effect of ecclesiastical law, however, is the spiritual kinship arising between the baptized person on the one part, and the baptizer and sponsor on the other part. We say nothing further here concerning this effect of spiritual kinship, referring this matter to the treatise on matrimony, n. 836 sqq. All the effects of divine law are founded upon one principal effect, namely, upon the spiritual regeneration accomplished through baptism. "Baptism is a certain spiritual regeneration, insofar, namely, as someone dies to the old life and begins to lead a new life."[87] This new life indeed entails:

[87] *S. theol.* 3, q. 66, a. 9.

108. 1. The baptismal character, that is, an indelible sign giving the capacity to receive the other sacraments, to live in a Christian manner, and especially to believe the mystery of the Most Holy Trinity, in whose explicit name baptism was conferred. This character is imprinted in every valid baptism of water, even if grace is not given because of an existing obstacle.

109. 2. The remission of every sin, both original and actual. Hence St. Augustine[88] teaches: "Holy baptism utterly destroys all offenses, both original and personal; things said, done, and thought; things known and unknown; all are forgiven." And St. Basil[89] says, beautifully and distinctly: "Baptism is the price of redemption for captives, the forgiveness of debts, the death of sin, the regeneration of the soul, a shining garment, a seal that can be broken by no effort, a vehicle to heaven, a procurer of the kingdom, a gift of adoption." The Council of Trent, however, defines against the Protestants: "If anyone denies that, through the grace of our Lord Jesus Christ which is conferred in baptism, the guilt of original sin is remitted; or even asserts that the whole of that which has the true and proper nature of sin is not taken away, but says that it is merely erased or not imputed, let him be anathema. For in those reborn God hates nothing."[90] Similar things are found in the Second Council of Lyons, and in the Councils of Vienne and Florence.[91] Therefore, a baptized infant dying before attaining the use of reason immediately flies to heaven, since original sin has been perfectly taken away through baptism and no actual sins are present. But when an adult receives baptism, neither original sin nor his personal sins are taken away unless he elicits at least an act of attrition concerning his personal mortal sins. For personal sin, which is a voluntary and disordered aversion from God, cannot be remitted unless the man destroys that aversion; this is done through contrition, or at least through attrition. Therefore, if such attrition is lacking, baptism cannot take away any sin, either original or personal, but the sacrament will remain unformed until attrition or contrition supervenes.

[88] *De symb. ad catech.*, c. 10 (Migne, *Patr. lat.* 40, 659).

[89] Hom. *in s. Bapt.*, n. 5 (Migne, *Patr. graec.* 31, 433).

[90] Sess. 5, can. 5 (Denz., n. 792).

[91] Denz., nn. 424, 464, 482, 696.

110. 3. The remission of every punishment, whether eternal or temporal. Eternal punishment is remitted in every justification together with mortal guilt. Through baptism worthily received, however, temporal punishment also is remitted. For St. Thomas[92] says excellently: "The Passion of Christ operates in baptism by way of a certain generation, which requires that a man die entirely to his former life in order that he may receive a new life. And therefore the whole debt of punishment, which pertains to the oldness of the former life, is taken away in baptism. But in the other sacraments the power of the Passion of Christ operates by way of healing, as in penance. Healing, however, does not require that all remnants of the infirmity be taken away immediately. And the same reasoning applies in the other sacraments." This total remission of

every guilt and punishment through baptism was both called by the ancient theologians "the opening of the gate of the heavenly kingdom,"[93] and is signified in the discipline of the Church by the fact that in the baptism of adults no salutary penance to be fulfilled is imposed, as, for example, is done after sacramental confession has been made. It is evident of itself, however, that the punishment of sin is not remitted through baptism if, because of an obstacle, the guilt itself is not remitted.[94]

[92] *In ep. ad Rom.*, c. 11, lect. 4.

[93] Cf. *S. theol.* 3, q. 69, a. 7.

[94] Cf. *Cat. Rom.* P. 2, c. 2, q. 33.

111. 4. The infusion of sanctifying grace, the virtues, and the gifts. It is of faith that sanctifying grace is infused through baptism, as is evident from the canon of the Council of Trent just cited. It is certain that, besides sanctifying grace, all the virtues and gifts of the Holy Spirit are infused.

The Council of Vienne indeed declared: "Because, concerning the effect of baptism in children, certain theological doctors are found to have held contrary opinions, some of them saying that through the power of baptism guilt indeed is remitted in children, but grace is not conferred; while others, on the contrary, assert that both guilt is remitted to them in baptism, and the virtues and informing grace are infused as to habit, although not for that time as to use: We, however, attending to the general efficacy of the death of Christ, which through baptism is applied equally to all the baptized, with the sacred Council approving, have deemed that the second opinion, which says that informing grace and the virtues are conferred in baptism upon children as well as adults, is to be chosen as the more probable and more consonant and harmonious with the sayings of the saints and modern doctors of theology."[95] But the Council of Trent declared this doctrine no longer merely as the more probable opinion, but as one to be held: "In justification itself [which also takes place through baptism], together with the remission of sins, man receives all these things simultaneously infused through Jesus Christ, into whom he is ingrafted: faith, hope, charity."[96] Although the infused virtues and gifts cannot yet be employed in actual use by an infant, nevertheless they are in him a) as an adornment of the soul, and b) as a disposition toward future acts.[97]

[95] Denz., n. 483.

[96] Sess. 6, c. 7 (Denz., n. 800); cf. above I, 472.

[97] Cf. *Cat. Rom.* P. 2, c. 2, q. 39, and *S. theol.* 3, q. 69, a. 6.

112. 5. Sacramental grace, which seems to be nothing other than habitual grace itself together with a right to special assistance for exercising the faith, leading a truly Christian life, and duly receiving the other sacraments.

113. 6. Incorporation into the Church. Hence St. Bonaventure calls baptism "the seal of Christianity,"[98] and St. Thomas says: "The common effect of baptism is the building up of ecclesiastical unity."[99] Therefore, whenever anyone is validly baptized, he becomes a member of the true Church of Christ, that is, of the Catholic Church. Therefore, even those who are validly baptized by heretics are and remain members of the Catholic Church until, after attaining the use of reason, they freely consent to heresy. Hence those who abjure heresy are rightly said to return to the bosom of the Church; for they return whence they sinfully departed. Every baptized man, since he is a subject of the Church, is also bound to obey her. Therefore, heretics and schismatics also are subject to ecclesiastical laws. Thus at least *per se*; for not rarely, *per accidens*, they are free from punishment and guilt, which strike Catholics who transgress the law, both a) because of their invincible

ignorance, and b) because of the benign dispensation of the Church. Thus, for example, Protestants existing in good faith, although erroneous, are not accustomed to sin when they eat meat on Friday, as was said above, I, 185 sqq.

Scholion. On the remnants of original sin. The miseries of this life, such as pains, diseases, death, and so forth, are not taken away through baptism, because a Christian man must be conformed to Christ, with whom, if we suffer, we shall also be glorified.[100] After baptism, concupiscence also, or the tinder of sin, remains, which has been left for the contest; but for those who do not consent, not only is it unable to harm, but it even serves those who fight manfully for obtaining a glorious crown.[101]

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[98] 4, dist. 8, P. 1, a. 1, q. 1.

[99] *S. theol.* 3, q. 39, a. 6 ad 4.

[100] Cf. Rom. 8:17 and *S. theol.* 3, q. 69, a. 3.

[101] Cf. Council of Trent, sess. 5, can. 5 (Denz., n. 792).

Chapter IV. On The Necessity Of Baptism

114. Principle. Baptism is necessary by a necessity of means for eternal salvation; nevertheless, baptism of water, as regards its principal effect, namely, sanctifying grace, can be supplied a) through baptism of blood in adults and infants; b) through baptism of desire (*flaminis*) in adults alone.

The stated principle has three parts: 1. baptism is necessary by a necessity of means; 2. the principal effect of baptism of water, namely, sanctifying grace, can be obtained by adults through baptism both of desire and of blood; 3. by infants, or the perpetually insane, the same effect cannot be obtained except through baptism of blood.

Concerning the first and second parts no controversy exists among Catholic theologians. Concerning the third part, however, several theologians, for example, Durandus, Biel, Gerson, Toletus, Cajetan, Klee, Laurent, Schell, and others, think otherwise, judging that infants can be saved even without baptism of water or of blood. Cajetan[102] hesitantly and "subject to correction" opines that such infants can be saved through baptism received not in reality but in the desire of their parents. Others think, according to that saying of St. John, "He enlightens every man coming into this world,"[103] that these infants before death are miraculously enlightened by God and are saved if they consent to such illumination, but are damned if they do not. The reason why these theologians devised a substitute for baptism of water for infants is the very great difficulty of how otherwise God supplies sufficient grace for eternal salvation to children, and how otherwise it can truly be said: "God wills all men to be saved."

Nevertheless, Sacred Scripture, the Holy Fathers, and the definitions of the Church constantly teach the absolute necessity of baptism. Thus Christ says to Nicodemus: "Amen, amen, I say to you, unless a man is reborn of water and the Holy Spirit, he cannot enter into the kingdom of God,"[104] upon which text St. Ambrose notes: "Certainly He excepts no one; not an infant, not one overtaken by some necessity; ... no one ascends into the kingdom of heaven except through the sacrament of baptism."[105] St. Augustine says: "Do not believe, or say, or teach that infants overtaken by death before they are baptized can attain the forgiveness of original sins, if you wish to be a Catholic."[106] St. Thomas teaches: "These [children] cannot be assisted by another

remedy except through the sacrament of baptism."[107] The Council of Trent, however, defines: "If anyone says that baptism is optional, that is, not necessary for salvation, let him be anathema."[108]

[102] *Comm. in* 3, q. 68, aa. 1 and 2.

[103] John 1:9.

[104] John 3:5.

[105] *De Abraham*, l. 2, c. 11 (Migne, *Patr. lat.* 14, 521). The words which immediately follow in some editions of the works of St. Ambrose seem to be interpolated. These are the words: "Let them nevertheless have that hidden immunity from punishments; I do not know whether they have the honor of the kingdom."

[106] *De anima*, l. 3, c. 9 (Migne, *Patr. lat.* 44, 516).

[107] *S. theol.* 3, q. 68, a. 3.

[108] Sess. 7, can. 5 on baptism (Denz., n. 861).

115. As regards the principal effect, that is, sanctifying grace, in a case of necessity baptism of water can be supplied, and indeed:

1. Through baptism of desire (*flaminis*), which is an act of perfect charity with the desire for baptism, as was said above, n. 97. It is evident of itself that infants before the use of reason cannot, without a miracle, receive this baptism of desire, because they cannot elicit any act of perfect charity. Baptism of desire causes sanctifying grace insofar as it is joined with the desire to receive baptism of water as soon as possible.

That baptism of desire truly causes sanctifying grace is of faith. For the Council of Trent defines:[109] The justification of the impious is "a translation from that state in which man is born a son of the first Adam, into the state of grace and of the adoption of the sons of God through the second Adam, Jesus Christ our Savior; this translation, after the Gospel has been promulgated, cannot take place without the laver of regeneration or the desire thereof." Under this desire for baptism, baptism of desire is understood. St. Pius V condemned the following proposition of Baius (31): "Perfect and sincere charity, which is from a pure heart and a good conscience and an unfeigned faith, can exist both in catechumens and penitents without the remission of sins."[110] The same is established from Innocent III[111] and from several Holy Fathers already cited above, n. 97. Added to these is the authority of St. Thomas, who teaches: "Without actual baptism [someone] can attain salvation because of the desire for baptism, which proceeds from faith working through charity, by which God sanctifies man inwardly, whose power is not bound to visible sacraments."[112] The desire for baptism need not necessarily be explicit, but an implicit desire, which is present with an act of perfect charity, seems to suffice. Therefore, when a catechumen, with the assistance of God moving him, elicits an act of perfect charity, he always receives sanctifying grace; but if afterward he receives baptism, grace is increased, and the sacrament, *per accidens*, does not give but increases grace; if, however, he culpably neglects to receive baptism, he transgresses a grave precept of Christ and, consequently, by sinning mortally loses the grace previously possessed.

[109] Sess. 6, c. 4 (Denz., n. 796).

[110] Denz., n. 1031.

[111] c. 4, X 3, 42, and c. 2, X 3, 43.

[112] *S. theol.* 3, q. 68, a. 2.

116. 2. Through baptism of blood, or martyrdom endured for preserving the faith and other religious virtues, baptism of water is supplied both in adults and infants. Above, II, n. 622, when the virtue of fortitude was discussed, enough was already said concerning the essence and effects of martyrdom.

Baptism of blood, or martyrdom, gives sanctifying grace not only to adults possessing the use of reason, but also to infants. Thus stands the constant doctrine of the Church, which celebrates the feast of the "Innocents" slain for Christ. St. Thomas gives the reason: Baptism of water has its efficacy from the Passion of Christ, to which it is conformed. Now through martyrdom every man, even an infant, is conformed in a very perfect manner to Christ crucified. Therefore, it is fitting that martyrdom have the principal effect of baptism, namely, sanctifying grace. Moreover, in adults martyrdom is always joined with a perfect act of charity, according to that saying: "Greater love no man has than that a man lay down his life for his friends."[113] Martyrdom effects the remission of guilt and punishment as if *ex opere operato*, and not because of a preceding formal act of contrition or charity; this indeed is evident of itself in infants, since they are not capable of eliciting those acts. In adults, however, martyrdom is not of less efficacy than in infants; and therefore a formal act of perfect charity or contrition is not required in them either. Faith and hope are required, however, since otherwise they are not true martyrs; moreover, aversion from the personal sins committed is required, at least through attrition, because no sin is remitted without detestation of it, as was already said above, n. 109. St. Thomas[114] says simply: "Martyrdom cleanses from every guilt, both venial and mortal, unless it actually finds the will adhering to sin."

[113] John 15:13.

[114] *S. theol.* 3, q. 87, a. 1 ad 2.

117. Scholion. On the lot of infants who have died without baptism. Theologians treating the necessity of baptism are accustomed to discuss the lot of infants dying without baptism. Since, however, this question pertains more to Dogmatic Theology than to Moral Theology, and since, moreover, nothing certain can be said about it, we touch upon it only in passing. The Council of Florence defined: "The souls of those who depart in actual mortal sin or in original sin alone descend immediately into hell, to be punished, however, with unequal punishments."[115] From these words it seems to follow, 1. that some men depart with original sin alone; 2. that the same suffer punishments. Hence the opinions of those theologians are excluded who admit in dying infants some miraculous illumination at the moment of death, by the acceptance of which they are saved, but by the rejection of which they are damned. For then there would be either eternal salvation from grace accepted, or hell from grace rejected and actual sin. Likewise excluded are those opinions which admit at least perfect natural beatitude. For how can perfect beatitude exist together with the punishments by which these infants are afflicted? For at the resurrection before the Last Judgment, infants will know the existence of heaven; and, moreover, every man has a natural desire to see God through His essence.[116] Nevertheless, these infants do not have the punishment of sense, as St. Thomas[117] teaches with the most common opinion against Gregory of Rimini, because the punishment of sense is not owed except for a disordered conversion to earthly goods, and such a disordered conversion cannot exist in infants. Since these things are so, either some very slight punishment in the limbo of children must be admitted with St. Augustine,[118] or with St. Thomas[119] it can be granted that these infants rejoice greatly in the natural knowledge and love of God. Moreover, possessing a right will and knowing well that they do not merit supernatural beatitude, they do not grieve so greatly over the lack of the beatific vision.[120]

[115] Denz., n. 693. Cf. also the rather severe words of the Second Council of Milevis, Denz., n. 102, note 3.

[116] Cf. *S. theol.* 1, q. 12, a. 1.

[117] *De malo*, q. 5, a. 2.

[118] *Contra Julian.*, l. 5, c. 11, n. 44 (Migne, *Patr. lat.* 44, 809).

[119] 2, dist. 33, q. 2, a. 2 ad 5, and *De malo*, q. 5, a. 3.

[120] Cf. Synod of Pistoia, prop. 26 (Denz., n. 1526), and Schanz, *Die Lehre v. d. Sakr.* I, § 20.

Chapter V. On The Minister Of Baptism

118. The doctrine and present practice concerning the minister of baptism are stated thus by the new Roman Ritual,[121] according to the norm of the Code of Canon Law: "The ordinary minister of solemn baptism is a priest; but its conferral is reserved to the pastor, or to another priest with the permission of the same pastor or of the local Ordinary, which in a case of necessity is legitimately presumed. Even a traveler is to be solemnly baptized by his own pastor in his own parish if this can be done easily and without delay; otherwise, any pastor can solemnly baptize a traveler in his territory. In another territory no one may confer solemn baptism without due permission, not even upon inhabitants of his own place."

A twofold minister of baptism is distinguished: one of solemn baptism, which is administered with all the prescribed ceremonies; the other of non-solemn baptism, which is given with these ceremonies omitted, especially in danger of death. Danger of death, since it is not the same as the moment of death, is judged to be present when it is feared that the one to be baptized may die before he receives solemn baptism. Hence, when a priest is absent in mission territories, catechists or other laymen are accustomed to baptize recently born infants who, although they are now well, can nevertheless easily die before the arrival of the priest. The minister of solemn baptism is again twofold: one ordinary and by office; the other delegated. With these things premised, the following three propositions are set down:

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[121] Tit. 2, c. 1, on the sacrament of baptism, n. 12 sq.

119. 1. The ordinary minister of solemn baptism is a priest; but its conferral is reserved to the pastor, or to another priest with the permission of the same pastor or of the local Ordinary, which in a case of necessity is legitimately presumed. Thus the Code of Canon Law, c. 738, § 1, establishes.

Hence the right of solemnly baptizing is an exclusive parochial right. Therefore, whoever solemnly baptizes without the permission, express or at least duly presumed, of the pastor or Ordinary gravely injures the right of another and commits a grave sin.[122] Likewise, those who offer infants to be baptized by another pastor sin. The parochial right in this matter is territorial and not personal,[123] since ordinarily solemn baptism cannot be administered except in the parish church. Hence a pastor cannot on his own authority baptize his subjects who may be living outside the territory of the parish; but he can baptize not only vagrants but also travelers staying in his territory, if they cannot easily and without delay be carried to their own pastor.[124] According to the present discipline, whenever a woman has given birth outside the place of her domicile or quasi-domicile, the infant must, for the proper keeping of baptismal registers, be baptized in her own parish. But if this cannot be done conveniently and without delay, baptism can be conferred in the parish in which the birth occurred, as was said, or even in another parish. Since this case frequently occurs in our days in hospitals intended for women in childbirth, particular statutes or legitimate customs are to be observed.

What has been said concerning the right of conferring baptism applies also to the supplying of the ceremonies when baptism in a case of necessity has already been conferred by another.

If conditional baptism is in question, such as is customarily employed in the conversion of heretics, particular statutes are to be observed. Since conditional baptism today in some regions is customarily performed without ceremonies, the parochial right is not established; and therefore it can be performed in any church or sacristy, unless the bishop has established otherwise. Nevertheless, a record of the baptism conferred is to be preserved in the archive of that church. It is better still if the same baptism is noted also in the register of the parish church, since everyone who afterward contracts marriage must be entered in the baptismal book of the parish. This cannot be done if all the names of the baptized are not contained in the register of the parish church. According to modern discipline, conditional baptism also must be performed by a priest and in a sacred place, at least in the sacristy or in some chapel; hence outside a case of necessity it is not becoming to act otherwise.

The solemn baptism of adults, where this can conveniently be done, is to be referred to the local Ordinary, for example, the bishop or vicar general, so that, if he wishes, it may be conferred more solemnly by him or by his delegate.[125]

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[122] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 115, second point to be noted.

[123] Code of Canon Law, c. 739. Whether and in what manner personal pastors, for example, military chaplains, can baptize their subjects is to be ascertained from particular statutes or from legitimate custom.

[124] Code of Canon Law, c. 738, § 2.

[125] Code of Canon Law, c. 744.

120. 2. The extraordinary minister of solemn baptism is a deacon.

Although a deacon receives in his ordination the faculty of solemnly baptizing, nevertheless, according to the present discipline of the Church, he is only an extraordinary minister, and therefore he cannot licitly baptize unless these two things are present together: 1. the commission of the pastor, or local Ordinary; and 2. a just cause.[126] In a case of necessity a deacon can indeed solemnly baptize even with the presumed permission of the pastor,[127] but in other cases the commission, express or at least tacit, of the pastor is necessary. Indeed, according to the opinion which St. Alphonsus[128] called the more probable and most common, a deacon solemnly baptizing without such a commission would incur an irregularity. Nevertheless, the opinion denying the irregularity is safe today; for the text cited for the opposite opinion rather proves the contrary. These are the words: "If anyone not ordained should baptize or exercise any divine office, on account of his temerity let him be cast out of the Church and never be ordained."[129] But a deacon in his ordination expressly receives the faculty of baptizing.[130] Therefore, he cannot be called "not ordained." But if a subdeacon, another cleric, or a layman rashly confers solemn baptism, he is irregular. The reason why a deacon ordinarily cannot solemnly baptize without the commission of the pastor is that deacons, as their very name indicates, are only assisting ministers, and it does not pertain to them to furnish any sacrament principally and as if from their own office. Thus the Angelic Doctor[131] gives this general rule: "He who cannot consecrate the Eucharist cannot solemnly open the approach to this sacrament. But baptism is the approach to the Eucharist and to all the other sacraments. Therefore, a deacon who cannot consecrate the Eucharist cannot solemnly baptize on his own authority."

Note. 1. A deacon solemnly baptizing probably cannot bless the salt or water, but must use these things blessed by a priest.[132] 2. Those who knowingly presume to offer their children to non-Catholic ministers to be solemnly baptized incur an excommunication reserved to the Ordinary.[133]

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[126] *Ibid.*, c. 741. The local Ordinary or pastor can delegate a deacon to baptize solemnly for a just cause, for example, because he himself is sick, absent, or occupied in hearing confessions, and so forth.

[127] Code of Canon Law, c. 741.

[128] *Theol. mor.*, l. 6, n. 116.

[129] c. 1, X 5, 28.

[130] Thus Noldin, *De sacr.*, n. 63, and Gasparri, *De s. ordinat.*, n. 339.

[131] *S. theol.* 3, q. 67, a. 1.

[132] Sacred Congregation of Rites, February 10, 1888 (*Decr. auth.*, n. 3684). Whether this decree was abolished by the Code of Canon Law, c. 1153, is not certainly established.

[133] Code of Canon Law, c. 2319, § 1, n. 3.

121. 3. The minister of non-solemn baptism in a case of necessity is any man possessing the use of reason and willing and able duly to apply the form to the matter.[134]

Therefore, for example, a completely mute man can never baptize validly, not even in extreme necessity. This doctrine concerning the minister of non-solemn baptism has now been defined in several Councils, for example, by the Fourth Lateran Council: "The sacrament of baptism ... duly conferred by anyone profits unto salvation."[135] The Council of Florence, however, defines: "In a case of necessity, not only a priest or deacon, but also a layman or woman, indeed even a pagan and a heretic, can baptize, provided that he observes the form of the Church and intends to do what the Church does."[136] St. Thomas[137] assigns the reason of fittingness: "Lest man be able to suffer a lack concerning so necessary a remedy, it was instituted that both the matter of baptism should be common, namely, water, which can easily be had by anyone, and that the minister of baptism should also be anyone not ordained, lest on account of a lack of baptism man should suffer the loss of his salvation."

Among the ancient Fathers St. Cyprian did not recognize as valid baptism conferred by a layman.[138] St. Augustine, however, certainly admitted the validity of baptism conferred by a layman, saying: "Even if [baptism] is usurped without any necessity and is given by anyone to anyone, that which has been given cannot be said not to have been given, although it can rightly be said to have been given illicitly";[139] nevertheless, he seems to doubt somewhat whether not only a layman, but also a pagan, can baptize.[140] Tertullian, after his manner, inveighs most vehemently against women conferring baptism, but it does not so clearly appear whether he considers such baptisms entirely invalid.[141] The Angelic Doctor[142] treats the validity of baptism conferred by a layman, a woman, or a pagan, and resolves the principal difficulties arising from history.

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[134] The Code of Canon Law, c. 742, § 1, moreover admonishes that in such a baptism, insofar as it can be done, two witnesses, or at least one, are to be employed, by whom the conferral of baptism can be proved.

[135] In Denz., n. 430.

[136] Denz., n. 696.

[137] *S. theol.* 3, q. 67, a. 3.

[138] Ep. 73, 7, 8 (Migne, *Patr. lat.* 3, 1159).

[139] *Contra ep. Parm.*, l. 2, c. 13, n. 29 (Migne, *l.c.* 43, 71).

[140] *De bapt.*, l. 7, c. 53, n. 102 (Migne, *l.c.* 43, 234).

[141] *De bapt.*, c. 17 (Migne, *l.c.* 1, 1219).

[142] *S. theol.* 3, q. 67, aa. 3-5.

122. 4. The order to be observed among ministers in a case of necessity is established in this manner by the Roman Ritual and by the Code of Canon Law, c. 742, § 2: "If a priest is present, he is to be preferred to a deacon, a deacon to a subdeacon, a cleric to a layman, and a man to a woman, unless for the sake of modesty it is becoming that a woman rather than a man baptize an infant not entirely delivered, or unless the woman knows better the form and manner of baptizing." Hence it is a mortal sin: 1. if a non-priest is preferred to a worthy priest; 2. if an infidel, heretic, schismatic, or excommunicated person to be avoided is preferred without necessity to a Catholic; 3. if someone who is not the pastor is preferred to the proper pastor who is present and willing to baptize. Lehmkuhl[143] rightly notes: "That inversion of order is a grave sin both on the part of the minister and on the part of him who requests it to be done thus or permits it by approving." In other cases the inversion of the established order does not seem to be a mortal sin. Hence, for example, a layman baptizing in the presence of a deacon or cleric does not sin mortally.[144]

A father and mother cannot licitly baptize their own offspring even in danger of death when another capable and willing person is present, because it is not becoming that a twofold paternity be joined in the same person: natural paternity from generation, and spiritual paternity from the administration of baptism. Thus it is from the precept of the Ritual and the Code, which nevertheless does not seem to oblige when a serious doubt exists whether another person present truly has the intention of doing what the Church does, or baptizes validly. Such a doubt is not rash if, for example, the physician present is a man of no religion. Then it is better and safer if the parent baptizes his own offspring in danger of death.

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[143] *Theol. mor.* II, n. 93.

[144] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 117.

123. Scholion. On baptism of necessity conferred by laymen. Concerning the baptism of infants who have been baptized in danger of death by midwives and other laymen, the following things are to be observed: The pastor is bound diligently to instruct laymen, and especially midwives and physicians, in the correct manner of baptizing.[145] He should teach them that, insofar as it can be done, they must employ two witnesses, or at least one, by whom the conferral of baptism can be proved.[146] Moreover, it is advantageous prudently to examine midwives from time to time as to whether they truly know correctly the manner of baptizing. Whenever a midwife or another layman has baptized in a case of necessity, the pastor must investigate whether all the essentials for validity were present. A good manner of conducting this investigation is for the pastor not to put determinate questions, but to say to the midwife and to the witness, if one was present: "Tell me how it was done." Then he will easily perceive whether anything essential was omitted. If the pastor remains doubtful whether the baptism conferred was valid, he must baptize again under condition; otherwise, he is to supply only the baptismal ceremonies.

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[145] Code of Canon Law, c. 743.

[146] Cf. *ibid.*, c. 742, § 1.

Chapter VI. On The Subject Of Baptism

124. Principle. The subject capable of baptism is every and only man who is a wayfarer and has not yet been baptized.[147]

It is said, first: **every man who is a wayfarer.** Therefore, no exception is given; and consequently, if anyone were miraculously born without original sin, he would still need baptism in order to receive the baptismal

character and to be incorporated into the Church.[148] Hence theologians commonly teach that even the Blessed Virgin Mary was baptized.[149] That little children are capable of baptism even before the use of reason has been defined as of faith several times, for example, in the Council of Trent:[150] "If anyone says that little children, because they have no act of believing, are not to be numbered among the faithful after receiving baptism, and therefore are to be rebaptized when they arrive at the years of discretion; or that it is better that their baptism be omitted than that, not believing by their own act, they be baptized in the faith of the Church alone, let him be anathema." The reason is that, just as in the Old Law infants were circumcised to destroy original sin, so *a fortiori* in the New Law infants are to be baptized to obtain the same effect. Moreover, without baptism eternal salvation is not given to one who dies, as was said above. Now, a great danger of death threatens little children especially. Therefore, they are to be baptized as soon as possible. When a man is no longer a wayfarer but is dead, he cannot be baptized, because all the sacraments were instituted for the living alone.

It is said, second: **one who has not yet been baptized**, because baptism cannot be repeated.

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[147] Code of Canon Law, c. 745.

[148] Cf. St. Thomas, *S. theol.* 3, q. 68, a. 1 ad 3.

[149] Benedict XIV, *De canoniz. sanct.*, l. 4, P. 2, c. 21, n. 14.

[150] Sess. 7, can. 13 on baptism (Denz., n. 869).

125. Dispositions of the subject. In infants no disposition is required in order that they may be validly and licitly baptized. The same applies to adults who are perpetually insane, since they are equated with infants. But if insane persons enjoyed the use of reason before they fell into insanity, they cannot be validly baptized unless, before contracting insanity, they manifested in some manner the will to receive baptism. But if a doubt exists concerning such a manifestation, they can be baptized under condition, especially if they are in danger of death.[151] When, after baptism thus conditionally conferred, an insane person unexpectedly recovers the use of reason, an investigation concerning his intention is to be made; and after that investigation has been made, if any doubt remains, baptism is to be repeated conditionally.

In adults, for the valid reception of baptism, at least a habitual intention is required, as is evident from what was said above, n. 87, concerning the sacraments in general, and will be said again below, n. 135.

After these things have been said concerning the subject who can be validly baptized, certain special precepts enacted by the Church are to be presented: 1. concerning the baptism of infants both of Catholics and of non-Catholics; 2. concerning the baptism of unborn or abortive fetuses; 3. concerning the baptism of adults.

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[151] Code of Canon Law, c. 754, § 3.

Article I. On The Baptism Of Infants Of Catholics And Non-Catholics

126. 1. Infants of Catholic parents are to be baptized as soon as possible.

Hence the Code of Canon Law, c. 770, commands: "Infants are to be baptized as soon as possible, and pastors and preachers are frequently to admonish the faithful concerning this grave obligation of theirs." The reason is that the life of infants is so tender that death can occur very easily and very quickly, and then the gate of heaven would remain closed to them for all eternity. Therefore Leo XIII most vehemently reproves the custom of delaying the baptism of infants: "Nothing surely is more unjust than this evil custom, nothing more contrary to ecclesiastical sanctions, since it not only brings the eternal salvation of so many souls, with inexcusable temerity, into manifest danger, but also certainly deprives them during that time of the ineffable

gifts of sanctifying grace which are infused through the laver of regeneration.... We cannot but disapprove and execrate from our soul so detestable a usage, at once impious toward God and toward men, wherever it has unfortunately become established."[152] By common law no determinate time has been established within which infants must be baptized under grave sin; but by particular law it is not rarely prescribed that the baptism of infants not be delayed beyond one or two weeks.

Theologians dispute what delay of the baptism of infants is a grave sin. Wherever a particular law concerning this matter exists, it is to be observed, and transgressions of it are to be judged according to the mind of the legislator. But if particular law is lacking, grave scandal to the people and danger of death for the infant being excluded, it is utterly impossible to assign accurately what delay is a mortal sin. Concerning this matter St. Alphonsus[153] writes: "Palaus, from Suarez, thinks that delay beyond a month is grave if there is no cause; but if there is a cause, that a delay of two months is grave. Laymann thinks almost the same.... The Salmanticenses, however, judge that it is not mortal to delay, unless beyond fifteen or twenty days, even without an urgent reason. Juénin, on the contrary, according to his custom of constricting consciences to the utmost, says that baptism ought not to be delayed beyond one or two days. Tournely, however, thinks that delay is not to be extended beyond five or six days..., but more commonly and more probably, Sotus, Leander, and Ledesma, cited by Concina and Roncaglia, say that the delay is not grave unless ten or eleven days are exceeded." In so great a multitude of opinions, which clearly demonstrates that nothing certain can be answered to this question, pastors and confessors are most earnestly to exhort parents not to delay the baptism of their offspring beyond three days without a most urgent cause.[154]

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[152] Epistle to the Bishop of Anglona, July 22, 1899 (*Collect. de Prop. Fide*, n. 2060).

[153] *Theol. mor.*, l. 6, n. 118.

[154] Noldin (*De sacr.*, n. 66), following Ballerini-Palmieri (*Opus theol.* IV, n. 745) and Génicot (*Theol. mor.* II, 146), thinks that a delay, even a notable one, is not to be accused of grave sin, provided that there is a serious will not to neglect baptism and that danger of death is not truly to be feared. This opinion indeed seems sufficiently lax and opposed to the words of Leo XIII cited above. In some regions, however, parents are excused from mortal sin because of an erroneous conscience. The delay of the baptism of adults will be discussed below, n. 134.

127. 2. Infants of heretical and schismatic parents could, by strict right, be baptized by the Catholic Church, since they are subjects of ecclesiastical laws; nevertheless, the Church does not use this right and has even forbidden pastors to baptize such infants unless there is hope of educating them in the Catholic religion.[155]

In this matter the response of the Holy Office on August 26, 1885, is to be noted: "If, because of the lack of a Protestant minister, an infant to be baptized is offered to a pastor or another Catholic priest by Protestant parents, who nevertheless are unwilling to promise the Catholic education of that infant, can the pastor in this case confer baptism for the salvation of the infant's soul, setting aside what will happen if the infant reaches the years of discretion? Reply: In the negative, except at the moment of death." This response seems to have been given especially for the case in which the parents approach a Catholic pastor solely because of the lack of a Protestant minister. For if the pastor then conferred baptism solemnly, great scandal would arise. But if in this case the pastor confers baptism only privately and without all the ceremonies, because no one else is present who would certainly baptize validly, and if at least some probable hope exists that the offspring will be educated in the true faith, we think that he acts licitly, since he thus provides for the eternal salvation of the infant, nor does serious scandal seem to arise therefrom.

Resolutions. The infants of those Catholic parents who, because of indifferentism or even hatred toward the Church, refuse baptism can be baptized. For since these parents have not yet publicly apostatized from the true religion, some hope still exists that the infants, after attaining the use of reason, will be instructed in the Catholic religion. If an infant not yet baptized is at the moment of death, charity gravely requires that anyone confer baptism upon him even against the will of the parents.[156]

A pastor can licitly baptize an infant when either parent consents and promises a Catholic education, although he foresees that the other parent will object and that the offspring will be educated in heresy.[157] The reason is that some hope of a Catholic education is then present.

After an infant reaches the years of discretion, he can be baptized when he himself asks and wills it, although his heretical parents object. Nevertheless, because of the unjust civil laws in force in many regions, it is often advantageous, in order to avoid greater evils, to delay baptism, at least solemn baptism, until that age which grants children the right to live in the true religion against the will of their parents. Meanwhile, such a child is to be well instructed in the Catholic religion and frequently to elicit an act of perfect charity, so that he thus receives baptism of desire and remains in the state of sanctifying grace. Moreover, according to his ability he must guard against every proximate danger of perversion. He could obtain a dispensation from positive ecclesiastical laws, for example, the laws of hearing Mass, abstinence, and so forth; but he could not fictitiously receive the Supper in a Protestant church.

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[155] Holy Office, May 17, 1916.

[156] Code of Canon Law, c. 751.

[157] Cf. Lehmkuhl, *Theol. mor.* II, 114.

128. 3. Infants of infidel parents cannot, outside the moment of death, be baptized without the knowledge or against the will of their parents.

Concerning this matter St. Thomas[158] writes: "The children of infidels either have the use of reason or they do not. If they have it, they begin to be of their own power in those things which are of divine or natural law; and therefore by their own will, against the will of their parents, they can receive baptism. But if they do not yet have the use of free will, according to natural law they are under the care of their parents.... And therefore it would be against natural justice if such children were baptized against the will of their parents.... It is also dangerous to baptize the children of infidels in this manner, because they would easily return to infidelity because of their natural affection for their parents. And therefore the Church does not have this custom, that the children of infidels be baptized against the will of their parents." Indeed, the Church has positively forbidden such children to be baptized outside the moment of death.[159]

In three cases these infants can and must be baptized, namely: 1. when they are in such danger of death that they are prudently foreseen to be going to die before they attain the use of reason; 2. when, being placed outside the power of parents and guardians, they can be educated in the Catholic religion. This latter case frequently occurs in mission territories, where infants are exposed or sold by their parents; 3. if both infidel parents, or at least either one, or the person who uses paternal authority in place of the parents, consents to the baptism of the infant, and at least some hope exists that a Christian education will be had, or that the danger of future perversion will not be so proximate and certain. The third exception is evident of itself and has been confirmed by the Roman Curia.[160] The reason for the first exception is that at the moment of death the eternal salvation of the infant to be procured altogether requires that baptism be conferred upon him. Nevertheless, if in such a case great harm to the common good, for example, a persecution of religion, would

arise from baptism being conferred, then it is necessary to abstain from baptism, because the private good of the infant must yield to the common good of society. On July 18, 1894, the Holy Office established that infants can be baptized not only at the moment, but also in danger of death, indeed even when it is foreseen that they will not reach the years of discretion.[161] The reason for the second exception is that a pagan education and the danger of perversion are the sole obstacle to conferring baptism. But this obstacle is removed in the case.[162]

Scholion. On the baptism of exposed infants. Exposed infants[163] ordinarily are to be baptized under condition, unless it is established that they have already received valid baptism.[164] But if moral certitude of baptism having been received is had from a note attached to the infant or from elsewhere, it is not lawful to baptize again.

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[158] *S. theol.* 3, q. 68, a. 10.

[159] Cf. Benedict XIV, Constitution *Postremo mense*, February 28, 1747, who, relying especially upon the doctrine of St. Thomas, treats at great length the question of baptizing Jews and infidels, both infants and those possessed of reason (Denz., nn. 1480 sqq.).

[160] Cf. Holy Office, February 13, 1867 (*Collect. de Prop. Fide*, n. 1302); Code of Canon Law, c. 750, § 2, n. 1.

[161] Cf. *Collect. de Prop. Fide*, n. 1877.

[162] When, notwithstanding the prohibition of the Church, an infant has been baptized against the will of infidel or Jewish parents, he must even by force be educated in the Catholic faith. Thus it was done in the celebrated case of Edgar Mortara, who, having been baptized by a maidservant, was afterward educated in the Catholic religion against the will of his Jewish parents by command of Pius IX. When this boy reached the years of discretion, he freely chose to remain in the Catholic religion, and afterward became a Canon Regular of the Lateran.

[163] Commonly *Findelkinder*, foundlings.

[164] Benedict XIV, *De syn. dioec.*, l. 7, c. 6, n. 5; *Acta Conc. Plen. Americae Latinae* (1899), n. 502; Code of Canon Law, c. 749.

Article II. On Baptizing Infants Not Yet Born And Abortive Fetuses

Notions. Under the name **infant** is here understood a "viable" human being, that is, an infant who is able to live outside the maternal womb; this is accustomed to occur after the seventh month of gestation. A **fetus**, however, is a conceived but nonviable human being.

129. 1. An infant existing in the maternal womb can and must be baptized if his life is in danger and there is no probable hope that, having been duly delivered, he can be baptized.[165] He can then be baptized because physicians today have instruments so perfect that, with moral certitude, the head of the infant, or at least another principal part of his body, can be washed with water. But he must be baptized because otherwise his eternal salvation is endangered or even destroyed.

Baptism conferred upon an infant still totally enclosed in the mother's womb must, after a successful birth, be repeated under condition, even though the physician testifies that the water touched the infant's head in the womb.[166] But "if the infant has put forth the head and danger of death threatens, he is to be baptized on the head; nor afterward, if he survives, is he to be baptized again. If he has put forth another member, he is to be baptized upon it under condition if danger threatens; but then, if after birth he lives, he is again to be baptized under condition."[167]

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[165] Code of Canon Law, c. 746, § 1.

[166] Thus the Sacred Congregation of the Council, July 12, 1794, and March 16, 1897; Code of Canon Law, c. 746, § 5.

[167] Thus the Roman Ritual, tit. 2, c. 1, n. 20; Code of Canon Law, *ibid.*, §§ 2 and 3.

130. On Caesarean section[168] and other similar surgical operations. It is necessary to distinguish whether Caesarean section is performed while the mother is living or dead.

a) Must Caesarean section be performed while the mother is living?

Because baptism can with moral certitude be validly conferred upon an infant in the maternal womb, the mother now does not seem to have a strict obligation to undergo Caesarean section for the sake of conferring baptism upon the infant. For Caesarean section almost always causes the mother a grave danger of death, which she is not bound to undergo, since the spiritual salvation of the infant can be sufficiently secured in another manner, namely, through baptism in the maternal womb. For the bodily salvation of the offspring, however, the mother is not bound to expose her own life to the greatest danger. Nevertheless, the mother can sometimes licitly permit Caesarean section to save the infant and to render his baptism more secure, unless, however, most grave disadvantages would arise for the husband or for other offspring already born from the death of the mother which might follow.

b) Must Caesarean section be performed when the mother is dead: a) in order to baptize the fetus; b) in order to save the bodily life of the infant?

It is answered to a): If a physician is present who can and wills to perform this operation, it certainly must be performed in order to save the soul of the infant. Otherwise, however, so many and so great inconveniences are accustomed to arise from civil laws and other circumstances that a priest is not bound to urge it. The Holy Office, when asked concerning this obligation on December 13, 1899, ordered that a response already issued on February 15, 1780,[169] be given, in which it is stated: "Although this extraction of the fetus from the womb of a pregnant and deceased mother is to be disclosed and urged, nevertheless His Holiness expressly guards against and forbids missionaries, in particular cases, to involve themselves in ordering the section, much less in performing it." Moreover, if the infant is near to delivery, he can be baptized by means of some instrument without Caesarean section, as was said above. In the first four months, however, neither conception itself is certain, nor *a fortiori* is it certain that a fetus still living exists, since it is morally certain that so tender a fetus does not survive its dead mother. Therefore, at that time there is no grave obligation to perform Caesarean section with great inconvenience.

It is answered to b): If a truly well-founded hope of preserving the life of the offspring is present, this surgical operation certainly is to be performed, since the order of charity requires this. Such a hope is present, however, a) if the offspring has already been conceived for seven months; b) if the mother has not been consumed by a long and protracted disease; and c) if the section is performed immediately after the death of the mother has occurred. For from the seventh month the offspring is viable, as they say; but a long disease of the mother is accustomed also to harm the offspring and cause his death in the maternal womb.[170]

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[168] What Caesarean section is was already stated above, II, n. 133.

[169] *Collectan. de Prop. Fide*, nn. 541 and 2073.

[170] Cf. above, II, n. 135.

131. 2. Every abortive fetus, even the smallest, is to be baptized at least under condition, unless it is established from his putrefaction that he is lifeless. The reason is that several authors probably teach that the soul is joined to the fetus immediately after conception. Therefore, every living fetus is judged to be a human being, for whom baptism is accordingly altogether necessary. In practice it is sometimes difficult to judge whether an expelled fetus is living or dead. If he is certainly alive, let him be baptized absolutely; but if

doubtfully alive, or if the least probability of life exists, the fetus is to be baptized under the condition: "If you are alive." Concerning the manner of baptizing, however, these things are to be noted according to Capellmann:[171] The expelled fetus is to be taken carefully, and, by placing him in lukewarm water, not cold water, his membranes are to be ruptured, so that the amniotic fluid flows out and the water can touch the fetus himself. Then immediately the form is to be pronounced: "If you are alive, I baptize you..."; and afterward he is to be removed from the water. The reason for this manner of acting is that baptism conferred upon the so-called "secondines" is invalid. But if the secondines were ruptured outside the water, there would be a danger that the fetus would die suddenly from contact with the air. But if the secondines are ruptured under water, that danger is not so imminent, and moreover there is a greater probability that the water truly touches the fetus. Mothers, midwives, and physicians are to be diligently and prudently admonished not to omit baptizing abortive fetuses. For such abortions, whether culpably or inculpably, occur very frequently; and unless baptism is then conferred, innumerable infants are excluded from the kingdom of heaven.

[171] *Pastoralmedizin*[10], 259.

132. On baptizing monsters.[172] The Roman Ritual and the Code of Canon Law also speak **of baptizing monsters**. For it sometimes happens that a woman delivers a mass which has a very deformed appearance. According to modern physiological science, this mass is either 1. a so-called "mole," that is, a certain growth produced in the womb from fluids and fibers, which certainly is not a human being;[173] it is not lawful to confer baptism upon masses of this kind, not even under condition, as is evident of itself; or it is 2. a true human fetus, although deformed. For today it is rejected by all that a woman can, without a miracle, give birth to a beast or another living being which is not human. Therefore, if such a deformed fetus gives signs of life, he is to be baptized. But if his life is doubted, he is to be baptized under the condition: "If you are alive." But if it is doubted whether such a deformed fetus is one human being or two, for example, because he has two heads or two chests, it is safer to baptize the individual heads or chests separately, saying: "I baptize you," etc. The first head or chest is to be baptized absolutely, but the others conditionally. But if danger of death threatens and time does not suffice for the individuals to be baptized separately, the minister can, while pouring water upon the heads of each, baptize all simultaneously, saying: "I baptize you all in the name of the Father and of the Son and of the Holy Spirit." Nevertheless, it is lawful to employ this form only in these and other similar dangers of death, for baptizing several simultaneously, and where time does not permit the individuals to be baptized separately; never otherwise.[174]

[172] *Mißgeburt*, deformity.

[173] Commonly, a growth (*Gewächs*).

[174] Cf. *Rit. Rom.*, tit. 2, c. 1, n. 22; cf. Code of Canon Law, c. 748.

Article III. On Baptizing Adults

133. Who is considered an adult. In relation to receiving baptism, those who after the seventh year of age enjoy the use of reason are considered adults; but under the name of little children or infants come those not yet seven years old, and with them are numbered persons insane from infancy, at whatever age they may be.[175]

For a grave and reasonable cause, the local Ordinary can permit the ceremonies prescribed for the baptism of infants to be employed in the baptism of adults.[176]

The baptism of adults is accustomed to occur in two cases: 1. when an infidel embraces the Catholic religion; 2. when a heretic concerning whose reception of baptism a doubt exists returns to the bosom of the Church.

[175] Code of Canon Law, c. 745, § 2.

[176] *Ibid.*, c. 755, § 2.

134. 1. An adult infidel who believes the truth of the Catholic religion must be baptized as soon as possible. The reason is evident. For everyone is bound by divine law to embrace the true religion and the Church, in which baptism holds a very excellent place. It is not established, however, what delay of baptism made without a reasonable cause is a mortal sin. Concerning this matter St. Thomas[177] writes: "A person is not bound to receive baptism immediately after he has the intention of baptism, such that he sins mortally unless he is baptized immediately; nor is there any determinate time beyond which, if he delays baptism, he incurs mortal sin. But it can happen that in delaying baptism there will be a mortal sin, or there will not be; and this must be weighed from the cause of the delay." From these words it follows that for a reasonable cause it is lawful to delay the baptism of an adult even for a long time. Such reasonable causes are, for example, instruction in the Catholic religion which must be given and perfected, and most grave persecutions to be feared here and now. Therefore, for example, the baptism of a twelve-year-old Jewish boy could licitly be delayed until a more mature age if his parents would otherwise cast him out of the house and thrust him into misery. But when baptism of water must be delayed, baptism of desire must be received immediately, and all proximate dangers of perversion are to be eliminated according to one's ability, as was already said above, n. 127. It was already said above, n. 126, that the baptism of infants is not to be delayed at all.

[177] Suppl., q. 6, a. 5.

135. Three conditions are required in an adult infidel receiving baptism, namely, intention, faith, and penance. The first condition is required for the valid reception of baptism, but the following two conditions are required for its licit reception.

Therefore, for the valid reception of baptism, **intention** is required in the adult, which ordinarily must be explicit; an implicit intention,[178] however, suffices if the infidel to be baptized is dying and deprived of his senses. The minister of baptism must inquire concerning the existence of a true intention in the recipient and procure moral certitude for himself. Thus at least if the baptism of an adult who is outside danger of death is in question. But if the adult infidel is dying, he can be baptized under condition, provided that some probability concerning his true intention is had.[179] For the sacraments are for men, and in order to save a dying man it is lawful to baptize him under condition, although he is doubtfully disposed. Nevertheless, it is not lawful to presume the due intention of receiving baptism in a pagan deprived of his senses. Hence the Holy Office established on March 30, 1898, that baptism should be administered to dying Muslims deprived of their senses only "if they previously gave signs of wishing to be baptized." Therefore, it does not seem sufficient that they previously led a good life if they nevertheless showed not even some inclination toward the Christian religion. The contrary opinion, which asserts: "There seems to be no dying person deprived of his senses, whether in a Christian region or an infidel region, who, scandal being excluded, cannot be baptized under condition," is difficult to reconcile with the response of the Holy Office just cited and with the Code of Canon Law, c. 754, § 3.

[178] Cf. above, n. 87.

[179] Cf. Code of Canon Law, c. 752.

136. For the licit reception of baptism, moreover, there are required, as was said:

a) Faith, that is, knowledge of at least four truths of faith, namely, that God exists, that God rewards, that God is incarnate, and that God is triune in Persons. Hence on January 25, 1703, the Holy Office decreed that a missionary is not to baptize a dying infidel who is not altogether incapable unless he has first explained to him the mysteries of faith which are necessary by a necessity of means, especially the mysteries of the Trinity and the Incarnation.[180] The reason is that the Savior said: "He who believes and is baptized shall be saved."[181]

b) Penance, that is, at least attrition, according to the admonition of the Apostles: "Do penance, and let every one of you be baptized."[182] The reason is that no personal sin is remitted unless the man first detests it. But an adult pagan always has personal sins unless God has miraculously preserved him. Nevertheless, there is no need of confession, because all previous sins are remitted through baptism itself. "If, however, any of those to be baptized wished from their devotion to confess their sins, their confession should be heard, not in order that satisfaction be imposed upon them, but so that spiritual instruction for life against their habitual sins might be delivered to them."[183] An infidel who refuses to abandon some evil custom is to be barred from baptism. Therefore Alexander VII[184] already established that henceforth no one should be admitted to baptism who had not entirely put off the old man and pagan morals. The Holy Office forbids the baptism of a pagan who has not cast his concubines out of his house,[185] or of one who has the custom of going about with his body entirely naked.[186] On the other hand, the same Holy Office permits girls who are to be sold and betrothed to pagans and polygamists to be baptized, provided that they firmly resolve not to sin and rather to die than to be defiled.[187]

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[180] *Collect. de Prop. Fide*, n. 254; cf. also Holy Office, March 30, 1898.

[181] Mark 16:16.

[182] Acts 2:38.

[183] *S. theol.* 3, q. 68, a. 6.

[184] January 18, 1658 (*Collect. de Prop. Fide*, n. 129).

[185] May 10, 1703 (*ibid.*, n. 256).

[186] June 4, 1851 (*ibid.*, n. 1061).

[187] September 14, 1892 (*ibid.*, n. 1813).

137. 2. Adult heretics returning to the bosom of the Church must be baptized under condition if there is doubt concerning the baptism they received. Certainly, the Church acknowledges the validity of baptism conferred by heretics, provided that the essential conditions of matter, form, and intention were observed. Therefore, she has always reproved the custom of rebaptizing indiscriminately all who return from heresy. "But in the conversion of heretics, from whatever place or from whatever sect they have come, inquiry is to be made concerning the validity of the baptism received in heresy. Therefore, an examination having been instituted in individual cases, if it has been discovered that [baptism] was either null or conferred invalidly, they are to be baptized absolutely. But if, according to the circumstances of times and places, after the investigation has been performed, nothing is discovered either for validity or invalidity, or if a probable doubt concerning the validity of the baptism still remains, then they are to be baptized secretly under condition. Finally, if it is established that it was valid, they are to be received only to abjuration and profession of faith."[188] Since baptism is so necessary a sacrament, and since a defect of faith is so widespread among heretical ministers, who consequently do not take much care concerning the correct application of the form to

the matter and concerning forming the intention of doing what the Church does, it will often be better and safer to baptize conditionally those who return from heresy.[189] Before such heretics are baptized under condition, however, they are bound not only sufficiently to know the truths of faith and to elicit attrition or contrition concerning sins committed, but they must also confess all the sins of their past life.

An adult heretic who is dying and deprived of his senses seems able to be baptized under condition, provided that every scandal is avoided. For baptism received by him in heresy in present times is truly doubtful, as is evident from what was said above. Moreover, it is deservedly presumed that he, as a Christian by desire, now has the intention of receiving valid baptism, which is so necessary a means of salvation.

Admonition. "It is becoming that both the priest who is about to baptize adults and the adults themselves, if they are well, should be fasting. Unless grave and urgent causes prevent it, the baptized adult should immediately assist at the sacrifice of the Mass and receive Holy Communion."[190]

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[188] Holy Office, November 20, 1878 (*Collect. de Prop. Fide*, n. 1504).

[189] Instruction of the Sacred Congregation for the Propagation of the Faith, July 26, 1845. Cf. also above, n. 105.

[190] Code of Canon Law, c. 753.

138. Scholion. On the confession of a new convert who is baptized under condition. There are certain theologians, among whom are Bucceroni,[191] D'Annibale, Génicot, and Cappello, who think that a heretic who, because of a doubtfully received baptism, is baptized again under condition is not bound to the confession of sins. For if the first baptism was actually invalid, then confession and absolution likewise are altogether invalid, since they cannot extend to sins committed before valid baptism. Therefore, a priest baptizing such a heretic under condition and also absolving him acts, as it were, illogically; for he supposes the first baptism to be invalid, and for that reason baptizes again; but at the same time he supposes the same baptism to be valid, and consequently absolves from sins committed after that baptism. Therefore, in every event he administers one or the other sacrament invalidly. For if the first baptism was valid, the second is invalid; but if the first baptism was invalid, the sacramental absolution is invalid.

Nevertheless, the contrary practice is altogether to be observed. For the Holy Office decreed both in the year 1715 and on December 17, 1868, that confession is to be required from new converts.[192] The Sacred Congregation for the Propagation of the Faith established the same on July 12, 1869, saying at the same time that the Decree of the Holy Office constitutes a universal law and that it is not lawful to teach the contrary opinion.[193] The reason why the Holy Office prescribes confession and conditional absolution after the conditional baptism of a new convert is greater security. Certainly, either the baptism or the absolution is rendered ineffective in this case, but the remission of sins is obtained more securely; nor is irreverence offered to the sacraments, because with the best intention they are administered under condition in a case in which sufficient certitude cannot be had.

For the sake of uniformity, the following manner and order of proceeding in the reception of new converts was assigned by the Holy Office for North America on July 20, 1859:[194] 1. abjuration of heresy and profession of faith; 2. conditional baptism; 3. confession with conditional absolution. The same order is prescribed in the Cologne Ritual[195] and seems very simple and commendable everywhere in the world. Another, somewhat more complicated order is admitted by the Holy Office in 1875, namely: 1. confession; 2. conditional baptism; 3. resumption of the confession in its chief points and conditional absolution.

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[191] *Anal. eccl.* V, 230; *Instit. Theol. mor.*[*6], *de poen.*, n. 672.

[192] *Collect. de Prop. Fide*, nn. 286 and 1338.

[193] *Collect. de Prop. Fide*, n. 1338, note. Notwithstanding these decisions, certain authors, for example, Bucceroni, Génicot, Cornelisse, Arregui, and Ojetti, think that the contrary opinion is probable. Thus it is stated in Génicot, *Theol. mor. instit.* II, n. 259: "Nevertheless, with Ballerini-Palmieri (*Opus theol.* I, n. 28), D'Annibale (*Summula Theol. mor.* III, n. 301, note 3), and Bucceroni (*De poenit.*, n. 12), we judge that the opinion of many of the older authors, for example, Lacroix, *De consc.*, l. 6, P. 1, n. 223, who deny this obligation [of confession], remains probable whenever a probable doubt concerning the conferral or validity of baptism remains. For it is supported by a valid reason: in this hypothesis the obligation of confessing sins probably remitted through the conditional baptism just received is uncertain." It must be admitted that this opinion is a logical application of probabilism; but that it cannot be reduced to practice follows from the response of the Sacred Congregation for the Propagation of the Faith issued on July 12, 1869, and afterward published in 1899. These are the words: "In the Letter of the Sacred Congregation for the Propagation of the Faith of July 12, 1869, to the Archbishop of Quebec, these things are contained concerning the matter: As regards the doubt proposed by Your Excellency touching the sacramental confession to be required from new converts, it must be observed that the response of the past year, although given only at the request of the bishops of England, contains a universal law, and therefore binds not only in England but also in other regions. Hence it is evident that it can in no way be permitted that an opinion contrary to the aforesaid decision be taught." Cf. Lehmkuhl, *Theol. mor.* II, nn. 424 sqq.

[194] *Collect. de Prop. Fide*, n. 1178.

[195] 1900, tit. 2, c. 2, n. 5.

Chapter VII. On The Ceremonies Of Baptism

139. Notion. Since baptism is so necessary and excellent a sacrament, the Church has been accustomed from the earliest times to administer it with great solemnity of ceremonies. Under the name of ceremonies, however, we understand here not only the actions to be performed by the minister, but also all the other things that the Church prescribes for the worthy administration of baptism. Therefore, we also include sponsors. "For indeed, from most ancient tradition, the presence of sponsors at baptism has always been regarded as a principal ceremony in the Church of Christ."[196]

[196] Holy Office, September 15, 1869.

140. Obligation. Outside a case of necessity, baptism must be conferred solemnly with all the ceremonies prescribed in the Ritual.[197] Hence a priest sins gravely not only if, without cause, he omits all the prescribed ceremonies, but also if he knowingly neglects some notable part of them, for example, the anointing with chrism,[198] the insufflation, and the imposition of saliva and salt.[199] It was already said above, n. 100, that it is gravely forbidden for a priest to use the old oils of the past year, unless necessity compels it. For if fresh oils cannot be had, baptism is not therefore to be deferred, but is to be administered with the oils of the preceding year.

The entire baptismal rite must be performed in the Latin language.[200] In some dioceses, however, there exists a legitimate custom approved by the Supreme Pontiff of putting the questions either in the vernacular language alone or in both languages.[201] The sponsors may recite the *Our Father* and the *Creed* in the vernacular language while the priest recites them in Latin.[202]

The ceremonies may licitly be omitted: a) in a case of necessity, that is, when danger of death is imminent. The Roman Ritual describes how one is then to proceed;[203] b) if a heretic certainly baptized validly returns to the bosom of the Church. In that case the new convert is neither rebaptized nor are the ceremonies of baptism repeated; c) if a heretic doubtfully baptized is rebaptized under condition. This is so, at least by the particular law of certain regions, for example, England and the ecclesiastical Province of Philadelphia.[204] For the bishop can permit private baptism to be conferred, and consequently the ceremonies to be omitted, if heretics are

baptized under condition in adult age.[205] When baptism has been conferred without ceremonies in danger of death, they must afterward be supplied. But if, while the ceremonies of solemn baptism are being performed, danger of death should become imminent for the person to be baptized, baptism itself must be performed immediately; then, while the baptized person is still living, the ceremonies marked for after baptism, and finally the ceremonies marked for before baptism, must be supplied. Thus the Roman Ritual.[206]

When the parents of an infant belong to different rites, for example, to the Latin and Greek rites, the infant is ordinarily to be baptized according to the rite of the father.[207]

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[197] Code of Canon Law, c. 755.

[198] St. Alphonsus, *Theol. mor.*, l. 6, n. 141.

[199] Cf. the Constitutions of Benedict XIV, *Inter omnigenas*, February 2, 1744, and *Omnium sollicitudinum*, September 13, 1744.

[200] Holy Office, August 25, 1880.

[201] Cf. Schüch, *Handb. der Pastoral*, § 273.

[202] Sacred Congregation of Rites, December 30, 1881, ad X (*Decr. auth.*, n. 3535).

[203] Tit. 2, c. 2, n. 28 sqq.

[204] Sacred Congregation of the Sacraments, January 4, 1914, in *The Ecclesiastical Review* (1914), 723.

[205] Code of Canon Law, c. 759, § 2.

[206] Cf. Göpfert, *Moraltheol.* III, 38.

[207] Sacred Congregation for the Propagation of the Faith, April 11, 1894; Code of Canon Law, c. 756, § 2.

141. Place. Solemn baptism must be conferred in a church or in a public oratory,[208] for "the proper place for administering solemn baptism is the baptistery in a church or public oratory." A parish church has a baptistery by the law itself; another church or public oratory has one by ordinance of the local Ordinary.[209] The reason of fittingness is that baptism is the gate through which entry is made into the Catholic Church. Therefore, it is fitting that a man be baptized in some place deputed to the public worship of the Catholic Church. Such a place is a church or public oratory. There are, however, cases in which it is lawful to baptize outside a church:

a) The children or grandchildren of those who actually hold supreme sovereignty can be baptized in the chapel of the house or in another decent place.[210]

b) It is lawful to baptize in the sacristy for a reasonable cause to be approved by the bishop, for example, because of severe cold harmful to the infant.[211]

c) In mission territories or elsewhere, where Catholics live far from a church, so that infants newly born cannot be carried to church without great inconvenience, it is lawful to baptize in private houses.[212] The custom of baptizing at home the infants of the wealthy or of others, however, seems to be illegitimate, unless somewhere the bishop, for a just and reasonable cause, has permitted it in some extraordinary case.[213]

When a priest administers baptism in a private house because of imminent danger of death, he need not necessarily employ the other ceremonies prescribed in the Ritual. But if he baptizes in a private house outside imminent danger of death, for example, because an infant recently born cannot be carried without grave danger to health to a distant church, then he must employ all the ceremonies of the Roman Ritual[214] or of another legitimately approved Ritual.

Time of baptism. In ancient times, the vigils of Easter and Pentecost were observed for baptism, and this discipline is still commended in the baptism of adults.[215] Today no time is appointed, except that the Church commands that baptism be received as soon as possible.[216]

[208] Code of Canon Law, c. 773.

[209] Roman Ritual, tit. 2, c. 1, n. 42 sq.

[210] Code of Canon Law, c. 776, § 1.

[211] Sacred Congregation of Rites, March 14, 1861 (*Decr. auth.*, n. 3104, dub. 9).

[212] Sacred Congregation of Rites, February 4, 1871 (*ibid.*, n. 3234, dub. 3).

[213] Sacred Congregation of the Sacraments, December 23, 1912 (*Acta Apostolicae Sedis* IV, 735); Code of Canon Law, c. 776.

[214] Thus the Sacred Congregation of Rites, June 17, 1914 (*Acta Apostolicae Sedis* VI, 32).

[215] Code of Canon Law, c. 772.

[216] Cf. above, n. 126.

142. Name. A name must be imposed upon the one to be baptized, and indeed a Christian name, although this seems to be a counsel rather than a strict precept.[217] The pastor, however, should take care that "obscene, fabulous, or ridiculous names, or the names of vain gods or of impious pagan men, are not imposed."[218] But if the parents altogether demand that such a name be imposed, for example, Venus, Epicurus, and so forth, baptism is not therefore to be deferred; rather, the infant is to be baptized, with a Christian name added in a lowered voice, and both names are to be entered in full in the book of the baptized.[219]

[217] St. Alphonsus, *Theol. mor.*, l. 6, n. 145.

[218] Roman Ritual, tit. 2, c. 1, n. 70.

[219] Holy Office, January 13, 1883; Code of Canon Law, c. 761.

143. Sponsor. From ancient times,[220] sponsors were employed in the conferral of baptism, who were called receivers, sponsors, sureties, and so forth. The laws concerning sponsors now in force in the Church were enacted by the Code of Canon Law,[221] which establishes "that only one be employed, although of a sex different from the one to be baptized, or at most one man and one woman." This statute indeed binds under grave sin; hence a pastor would sin gravely if, for example, he admitted three sponsors. St. Alphonsus[222] thinks that it is also a grave sin if two female sponsors were taken for a boy, or two male sponsors for a girl; but that it is a light sin if two male sponsors were admitted for a boy and two female sponsors for a girl. The reason is that, in the first case, spiritual kinships with the baptized person would be uselessly multiplied, but not so in the second case.

The law of sponsors can be explained briefly in this manner: In every solemn baptism one sponsor suffices, whether a man or a woman; two sponsors are permitted, provided that they are of different sexes; three or more sponsors are prohibited.

Today, in many regions, especially where numerous Protestants live, there exists a custom of presenting several sponsors. This custom cannot be tolerated, but the pastor is bound to obey Catholic law. Nothing prevents more than two from being admitted as witnesses of baptism, or as so-called "honorary sponsors."

[220] Cf. Tertullian, *De bapt.*, c. 18 (Migne, *Patr. lat.* 1, 1330).

[221] c. 764.

[222] St. Alphonsus, *Theol. mor.*, l. 6, n. 156.

144. Necessity of sponsors. a) In solemn baptism there is required under grave sin, insofar as it can be done, at least one sponsor, whether a man or a woman. b) In a baptism of necessity or in private baptism, there is no grave obligation of summoning a sponsor.

Everyone indeed concedes that a sponsor is not strictly required: 1. if a layman baptizes in necessity; 2. when a heretic is rebaptized under condition. Whether, however, a priest administering private baptism is strictly bound to employ a sponsor is not established. The negative opinion seems truer, because private baptism is administered without ceremonies. Moreover, among the ceremonies of baptism, the designation of a sponsor holds the first place.[223] Therefore, if private baptism is administered, a sponsor is not strictly required, but one should be employed if he can easily be had,[224] since this tends to the benefit of the one to be baptized. But when the baptismal ceremonies are supplied after a baptism of necessity, a sponsor also must be employed, who nevertheless in this case contracts no spiritual kinship.[225]

c) In baptism repeated conditionally, the same sponsor who perhaps was present at the prior baptism and who then contracts spiritual kinship should be employed, insofar as this can be done. Outside this case a sponsor is not necessary in conditional baptism; if one is nevertheless employed, he does not contract spiritual kinship.[226]

Qualities of sponsors[227] are partly for validity and partly for liceity.

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[223] Holy Office, September 15, 1869.

[224] Code of Canon Law, c. 762, § 2.

[225] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 147; Code of Canon Law, c. 762, § 2.

[226] Code of Canon Law, c. 763.

[227] Cf. Code of Canon Law, cc. 765 and 766.

145. For validity it is required:

1. **That they have the perfect use of reason and the intention of undertaking this office.** Hence a ratification given afterward does not suffice.[228]
2. **That they be Catholics, and neither a) infidels or persons belonging to a heretical or schismatic sect; nor b) persons who, by a condemnatory or declaratory sentence, are excommunicated, infamous with infamy of law, or excluded from legitimate acts; nor c) deposed or degraded clerics.**[229]

Benedict XIV already laid down, through an Instruction of the Holy Office dated December 9, 1745, "that infidels, heretics, or schismatics cannot be sponsors in a baptism conferred upon the children of Catholics; which same statute we read in the Roman Ritual under the title concerning sponsors, where these words are found: 'Pastors should know, moreover, that infidels or heretics are not to be admitted to this office.'" The reason for this prohibition is evident; for the office of sponsors is, when parents are lacking, to instruct the baptized person in the truths of faith and morals. But who can persuade himself that a heretic would wish to instruct the baptized person in the Catholic faith, which he himself opposes? This prohibition is indeed so strict that baptism is to be administered without sponsors rather than with a non-Catholic sponsor. Thus Benedict XIV (*loc. cit.*) and the Holy Office several times.[230] But if a heretic has already been designated as sponsor by the parents and cannot be removed without great inconvenience, he can then be admitted as a witness; he cannot, however, be inscribed in the book of baptisms as sponsor, since he has exercised the office

of sponsor invalidly. According to the custom of several dioceses, in this case the pastor designates as sponsor the midwife carrying the infant, if she is a Catholic, or the assisting sacristan.

Just as a heretic cannot be admitted as sponsor in a Catholic baptism, so also a Catholic cannot be a sponsor in a baptism administered by a heretical minister. Benedict XIV said in the cited Instruction that it is safer for a Catholic to abstain; but the Holy Office, on June 30 and July 7, 1864, decreed: "It is absolutely unlawful for Catholics, either personally or through others, to discharge the office of sponsor in baptisms administered by heretics to the children of heretics."[231] There are indeed authors who permit this for a reasonable cause,[232] but in practice there must be no departure from the Decrees of the Holy Office, because otherwise the Catholic would commit forbidden communication in sacred things with heretics.

3. **That they be neither the father nor the mother nor the spouse of the one to be baptized.**

The reason is twofold: a) to avoid spiritual kinship among such persons; b) because parents are already bound by natural law to the education of their children, whereas sponsors by ecclesiastical law must sometimes supply their place. But no one can supply for himself. Hence, according to the discipline now in force, a father or mother can in no case validly exercise the office of sponsor in the baptism of his or her own child. But if no one else is present who can hold the child to be baptized, the father or mother can indeed perform this task, but does not become a sponsor.

4. **That they be designated by the one to be baptized himself, or by his parents or guardians, or, if these are lacking, by the minister of baptism.**[233]
5. **That, in the act of baptism, they physically hold or touch the one to be baptized, either personally or through a proxy, or immediately lift or receive him from the sacred font or from the hands of the baptizer.**[234]

As regards this contact, it suffices "if the sponsor, by physical contact with the infant, joins himself to the person by whose hands the infant is held, and accompanies the one carrying him to the infusion of the water, without its being necessary that the sponsor, male or female, alone, after the carrier has been removed, receive the infant into his or her hands and present him to the priest to be baptized."[235] In most regions it is now customary for the midwife or another woman to carry the infant, while the male and female sponsors accompany her, answer the questions, and, while the priest pours the water, place a hand upon the infant, touching him. In the baptism of adults, however, the sponsors place a hand upon the shoulder of the one to be baptized. When a sponsor discharges his office through a proxy, the proxy indeed must touch the infant, but it is the designated sponsor, and not the proxy, who contracts spiritual kinship and the other obligations.

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[228] Cf. Holy Office, September 15, 1869.

[229] Code of Canon Law, c. 765, n. 2.

[230] For example, May 3, 1893; June 27, 1900.

[231] *Collect. de Prop. Fide*, n. 1257.

[232] For example, Azor, Diana, and Laymann; St. Alphonsus (*Theol. mor.*, l. 6, n. 156) also seems to favor this opinion.

[233] Sess. 24, c. 2, *De reform. matr.* Cf. Code of Canon Law, c. 765, n. 4.

[234] Code of Canon Law, c. 765, n. 5.

[235] Thus the old Roman Ritual, tit. 2, c. 1, n. 25.

146. For liceity it is required:[236]

1. **That they have attained the fourteenth year of age, unless for a just cause it should seem otherwise to the minister.**
2. **That they not be excommunicated or excluded from legitimate acts because of a notorious delict,**[237] **or infamous, whether by infamy of law or of fact, nor interdicted, nor publicly criminal.**

Those who are punished with these penalties by sentence of a judge exercise the office of sponsor not only illicitly but also invalidly, as was said above, n. 2.

Illicit sponsors are, for example, concubinarians living in an invalid civil marriage, and notorious Freemasons, concerning whom the Holy Office wrote to the Ordinaries of Brazil on July 5, 1878: "It is altogether to be forbidden that notorious Masons undertake the office of sponsor in the sacrament of baptism or confirmation. For they, insofar as they adhere to a sect condemned by the Church, are in no way fit to procure, if there should be need, the Christian education of their spiritual children." A pastor cannot, however, exclude from the office of sponsor one who neglects annual confession and Communion, or who indulges excessively in intoxicating drink, unless public scandal would arise from his admission. The reason is that in present times sponsors rarely exercise a real influence upon the spiritual education of their children.

3. **That they know the rudiments of the faith.**

It is also most fitting that sponsors have been signed with the sacrament of confirmation. Thus the old Roman Ritual, tit. 2, c. 1, n. 24.

4. **That they not be religious of either sex or novices, unless necessity urges and the express permission of at least the local superior is had.**

Such necessity can easily occur in foreign missions.

5. **That they not be constituted in sacred orders, unless the express permission of their own Ordinary is added.**

Therefore a secular priest cannot undertake the office of sponsor without the express permission of the bishop or vicar general, while an exempt religious priest cannot do so without the express permission of his major superior.

The office of sponsors, since they are spiritual parents, is "to have their spiritual child perpetually commended to them and, in those things which pertain to instruction in the Christian life, to take diligent care that throughout his whole life he show himself to be such as they solemnly promised at his baptism that he would become."[238] This obligation of caring for the Christian education of the child is grave of itself, but it does not bind unless it is established that the child is not sufficiently educated by his parents and those who take their place. Thus St. Thomas[239] and theologians commonly teach.

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[236] Code of Canon Law, c. 766.

[237] By the name of legitimate ecclesiastical acts are signified: exercising the office of administrator of ecclesiastical goods; discharging the parts of judge, auditor and relator, defender of the bond, promoter of justice and of the faith, notary and chancellor,

messenger and apparitor, advocate and procurator in ecclesiastical causes; exercising the office of sponsor in the sacraments of baptism and confirmation; casting a vote in ecclesiastical elections; exercising the right of patronage (Code of Canon Law, c. 2256, § 2).

[238] Code of Canon Law, c. 769.

[239] *S. theol.* 3, q. 67, a. 8.

147. Scholion 1. On the pastoral prudence to be employed in rejecting an unworthy sponsor. In doubt whether someone can be admitted validly or licitly to the office of sponsor, the pastor, if time permits, should consult the Ordinary.[240] In rejecting the unworthy from the office of sponsor, the pastor should employ all prudence and kindness, lest he offend others or harm the good of religion. Hence he should never use harsh and injurious words, but should say in a gentle manner that he is acting solely from the prescriptions of the Church and cannot admit such a person as sponsor. When an infant is announced to be baptized, the priest should at once inquire concerning the quality of the sponsors and not wait until all are prepared in the church. He should then immediately admonish them that another sponsor be designated. If very great inconveniences would arise from the rejection of an unworthy sponsor, he should take care that the sponsor not touch the one to be baptized in the act of baptism; and if not even this is possible, he can tolerate the unworthy sponsor, provided that grave scandal does not arise therefrom. For the law concerning the rejection of unworthy sponsors is a positive ecclesiastical law. But no positive law binds with great inconvenience, nor is our pious mother the Church judged to urge that law in such great straits, especially since in our times the principal office of a sponsor, namely, the spiritual education of the baptized infant, can scarcely ever be put into practice.

Although the admission of a heretical sponsor is gravely prohibited, and indeed today is invalid, nevertheless several authors, for example, Lehmkuhl[241] and Noldin,[242] think that, in order to avoid grave evils, the pastor can tolerate a heretic touching the one to be baptized in the act of baptism. For the office of sponsors today is honorific rather than practical. Therefore, the Sacred Penitentiary also permitted on December 10, 1860, that a bishop could admit to the office of sponsor one notoriously bound by ecclesiastical censures, if otherwise graver evils would occur.

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[240] Code of Canon Law, c. 767.

[241] *Cas. consc.* II, n. 86.

[242] *De sacr.*, n. 78.

148. Scholion 2. On the book of the baptized. The pastor or one taking his place is bound diligently to record in the book of the baptized those baptized, whether born legitimately or illegitimately, according to the prescriptions of the new Roman Ritual, tit. 12, c. 2, and of the Code of Canon Law, c. 777.[243] In this book of the baptized it is also to be noted if the baptized person has received confirmation, contracted marriage, unless it concerns a marriage of conscience, received the sacred order of the subdiaconate, or made solemn profession; and these annotations are always to be included in the certificate of baptism received.[244]

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[243] Cf. our *Man. iur. can.*, q. 283.

[244] Code of Canon Law, c. 470, § 2. For the faithful from Russia, cf. Sacred Congregation for the Oriental Church (Pontifical Commission for Russia, July 13, 1928), *Acta Apostolicae Sedis* XX, 260.

149. Scholion 3. On the blessing of a woman after childbirth. It is a pious and laudable custom, but not a precept, that a woman after childbirth come to church to give thanks to God for her safety and receive the

special blessing found in the Roman Ritual, tit. 7, c. 3. This blessing is not among strictly parochial rights, but can be given by any priest in any church or public oratory.[245] A bishop, and *a fortiori* a pastor, cannot by his own authority derogate from this statute of common law. If the pastor himself has been requested, he cannot refuse this blessing. This blessing is not to be denied to a Catholic woman, even if her offspring was born dead without baptism.[246] On the contrary, this blessing is to be denied: a) to a non-Catholic mother, at least if scandal of the faithful is rightly feared therefrom; b) to all mothers who have borne offspring from manifestly illegitimate intercourse, for example, from fornication, adultery, a merely civil marriage, and so forth; c) to a mother whose offspring is baptized and educated in heresy or schism; d) to a mother who, without a dispensation of the Church, entered a mixed marriage, even though valid.[247]

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[245] Sacred Congregation of Rites, January 12, 1704, and November 21, 1893 (*Decr. auth.*, n. 2123 ad 6; n. 3813).

[246] Sacred Congregation of Rites, May 19, 1896 (*Decr. auth.*, n. 3904).

[247] Code of Canon Law, c. 2375.

Treatise III. On Confirmation

Besides the authors cited above concerning baptism, the following may be consulted: Heimbucher, *Die heilige Firmung* (Augsburg 1889); Dölger, *Das Sakrament der Firmung* (Wien 1906); Laur. Janssen, O.S.B., *La confirmation. Exposé dogmatique, historique et liturgique* (Lille 1885).

We divide this treatise into five chapters: 1. on the notion, existence, and effects of confirmation; 2. on its matter and form; 3. on its minister; 4. on its subject; 5. on its ceremonies.

Chapter I. On The Notion, Existence, And Effects Of Confirmation

The name "to confirm," which signifies "to give the Holy Spirit," seems first to have been employed by St. Ambrose in the fourth century, who says: "You have received the spiritual seal, the spirit of wisdom. God the Father has sealed you, Christ the Lord has confirmed you, and has given the pledge of the Spirit in your hearts."[1] The sacrament of confirmation has sometimes been called by other names: imposition of the hand, mystery of the ointment, sacrament of chrism, seal, perfection, sacrament of fullness, and so forth; in Greek, however: σφραγίς, χρίσμα, μύρον, the last of which names is now customarily employed by the Greeks.

[1] *De myst.*, c. 7, n. 42 (Migne, *Patr. lat.* 16, 403).

150. Definition. Among the Holy Fathers and the older Scholastics there is no definition properly so called, but only a description of confirmation. It can be defined: **A sacrament instituted by Christ the Lord, whereby the Holy Spirit is given to the baptized, through the imposition of the hand and the anointing with chrism under certain sacred words, for courageously and publicly confessing the faith by words and works.** This definition will become clearer from what is to be said below concerning the effects of this sacrament and concerning its matter and form.

151. Existence. That confirmation exists as a true sacrament of the New Law is of faith, defined by several Councils, but especially by the Council of Florence, which teaches: "The second sacrament is confirmation, whose matter is chrism made from oil ... and balsam ... blessed by the bishop";[2] and by the Council of Trent, which says: "If anyone says that the confirmation of the baptized is an idle ceremony and not rather a true and proper sacrament, or that formerly it was nothing other than a certain catechesis whereby those approaching adolescence gave an account of their faith before the Church, let him be anathema."[3]

It is not so certain whether the ancient heretics, namely, the Novatians and afterward the Albigensians, Waldensians, Wycliffites, and Hussites, truly denied confirmation or rather neglected it.[4] The first who expressly denied that confirmation is a sacrament was Luther, although he had previously taught the contrary. Luther wished confirmation to be a mere ecclesiastical rite; Melanchthon, Calvin, and Chemnitz wished it to be a catechesis or public profession of faith. Against them the existence of the sacrament of confirmation is proved:

a) **From Sacred Scripture.** When the Samaritans "had believed Philip preaching of the kingdom of God, men and women were baptized in the name of Jesus Christ." Therefore, they had already been validly baptized, but had not yet received the Holy Spirit in a special manner; therefore, "when the apostles who were in Jerusalem had heard that Samaria had received the word of God, they sent to them Peter and John. Who, when they had

come, prayed for them that they might receive the Holy Spirit; for He had not yet come upon any of them, but they had only been baptized in the name of the Lord Jesus. Then they laid their hands upon them, and they received the Holy Spirit."[5] From this text three things follow: 1. baptism is distinct from the imposition of hands and has another effect; 2. Philip, since he was a deacon, could not impose hands, but this was the proper office of the Apostles and their successors; 3. confirmation is a true sacrament, just as the Catholic Church has always taught. For in it are found: a) a sensible sign, namely, the imposition of hands; b) the conferral of grace, that is, a special reception of the Holy Spirit; c) institution by Christ, who often promised that He would send the Holy Spirit,[6] and who alone can join sanctifying grace to a sensible sign.

b) **From tradition.** Tertullian speaks not obscurely of baptism and confirmation and adds that these things are done "from the ancient discipline."[7] St. Cyprian, speaking of the baptism of Philip and of the imposition of hands by Peter and John narrated in the Acts of the Apostles, says: "This is also done now among us, that those who are baptized in the Church are brought to the prelates of the Church and, through our prayer and the imposition of hands, obtain the Holy Spirit and are perfected with the Lord's seal."[8] The testimonies of other Fathers, for example, St. Augustine, St. Basil, St. John Chrysostom, and especially St. Cyril of Jerusalem, who has an entire catechesis, the third, concerning this sacrament,[9] may be seen among the dogmatic theologians, for example, Billuart,[10] or in the Roman Catechism.[11] A very efficacious argument for the existence of the sacrament of confirmation can also be drawn from the agreement of the Eastern Churches, all of which, except the Nestorians, acknowledge this sacrament.[12] When, however, Cyril Lucaris, Patriarch of Constantinople, denied confirmation among the other sacraments in the seventeenth century, he was immediately and vehemently opposed from all parts of the East.[13]

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[2] Denz., n. 697.

[3] Sess. 7, can. 1 on confirmation (Denz., n. 871).

[4] Cf. Drouven, *De confirm.*, q. 1.

[5] Acts 8:12 sqq.

[6] John 7:38 sq.; 14:15.

[7] *De bapt.*, c. 7 sq. (Migne, *Patr. lat.* 1, 1206 sqq.).

[8] Ep. 73 to Jubaianus, n. 9 (Migne, *loc. cit.* 3, 1160).

[9] Migne, *Patr. graec.* 33, 1090.

[10] *De confirm.*, a. 1.

[11] P. 2, c. 3, q. 3.

[12] Cf. Drouven, *loc. cit.*, c. 1.

[13] Cf. *ibid.*

152. Institution. Christ instituted confirmation, as He did all the other sacraments. When He did this is unknown. Some think that He did so at the Supper of the Lord after the institution of the Eucharist; for this reason, according to a most ancient custom introduced by St. Fabian in the third century, chrism is also consecrated by bishops on Thursday in the Supper of the Lord. St. Alphonsus favors this opinion.[14] Pope Fabian writes in his second epistle: "For on that day [of the Last Supper], after the Lord Jesus had supped with His disciples and washed their feet, as our predecessors received from the holy Apostles and left to us, He taught them to confect chrism."[15] Others think that confirmation was indeed instituted after the Resurrection, but that the obligation of it began after Pentecost. Concerning this matter St. Thomas[16] writes: "Concerning

the institution of this sacrament there is a twofold opinion. For some said that this sacrament was instituted neither by Christ nor by the Apostles, but afterward, in the course of time, in a certain Council;[17] others, however, said that it was instituted by the Apostles. But this cannot be, because to institute a new sacrament belongs to the power of excellence, which belongs to Christ alone. And therefore it must be said that Christ instituted this sacrament, not by exhibiting it, but by promising it."

From these words it is by no means lawful to conclude that Christ did not institute the sacrament of confirmation but only promised it. Otherwise the Angelic Doctor ought to have conceded institution by the Apostles, which nevertheless he denies in express words. The sense, therefore, is: Christ truly instituted the sacrament of confirmation, but this sacrament was not actually administered until after the promised descent of the Holy Spirit at Pentecost. "And this was because in this sacrament the fullness of the Holy Spirit is given, which was not to be given before Christ's Resurrection and Ascension, according to that saying:[18] 'The Spirit was not yet given, because Jesus was not yet glorified.'"[19]

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[14] *Theol. mor.*, l. 6, n. 161.

[15] In Mansi, *Collect. Conc.* I, col. 775. Some consider this epistle of Fabian apocryphal.

[16] *S. theol.* 3, q. 72, a. 1 ad 1.

[17] At Meaux in the year 845; this is the opinion of Alexander of Hales; cf. above, n. 49.

[18] John 7:39.

[19] St. Thomas, *loc. cit.*; cf. the condemned thesis 44 of the Syllabus of Pius X (Denz., n. 2044).

153. The effects of confirmation are three by divine law: a) character; b) an increase of sanctifying grace; c) sacramental grace; by ecclesiastical law there is added d) spiritual kinship.

a) **That a character is imprinted in confirmation** is of faith, defined by the Council of Trent.[20] That the character of confirmation differs numerically and essentially from the character of baptism is taught by the far more probable and common opinion. The Holy Fathers often speak of this character as of a seal,[21] by which a man is marked and disposed as a good soldier to fight courageously in dangers to the faith. Because of the character imprinted, the sacrament of confirmation cannot be repeated.

St. Thomas[22] writes concerning the character of confirmation: "Through the sacrament of confirmation there is given to man spiritual power for certain other sacred actions besides those for which power is given to him in baptism. For in baptism man receives the power to do those things which pertain to his own salvation, insofar, namely, as he lives according to himself; but in confirmation man receives the power to do those things which pertain to the spiritual battle against the enemies of the faith, as is evident from the example of the Apostles, who, before they received the fullness of the Holy Spirit, were persevering in prayer in the upper room; but afterward, going forth, they did not fear publicly to confess the faith even before the enemies of the Christian faith.... The character of confirmation is a distinctive sign, not of infidels from the faithful, but of those spiritually advanced from those to whom it is said: 'As newborn infants,'[23] and so forth."

b) **An increase of sanctifying grace** is given in confirmation, and notably the seven gifts are increased, by which man is made well disposed to be moved by the Holy Spirit. For confirmation is a sacrament of the living, which accordingly presupposes the state of grace and increases it. Certainly, in every conferral of sanctifying grace the Holy Spirit is given, since the whole Trinity dwells in the soul of the just; but in a special manner the Holy Spirit comes through confirmation and increases grace, the seven gifts, and all the virtues.

c) **The sacramental graces** annexed to confirmation are reduced especially to the exercise of a special fortitude and are not unfittingly signified by the diverse ceremonies of confirmation. For in confirmation an anointing with oil mixed with balsam is employed. Just as an anointing was accustomed to prepare one for battle, just as oil signifies the brightness of conscience, and balsam the fragrance of the virtues, so in confirmation man receives sacramental graces for fighting courageously, for preserving purity of conscience, and for furnishing a virtuous example. The anointing is made upon the forehead and with the imposition of the hand, to cast out all undue shame and to signify a certain deputation or consecration to the office of a soldier of Christ. The blow on the cheek is given with the words, "Peace be with you," so that it may be signified most beautifully that a Christian man ought and is able to suffer injuries of every kind without the interior peace of the soul thereby being disturbed.

The Roman Catechism, using the words of Pseudo-Miltiades (Melchiades), explains very fittingly and concisely the difference between the graces of baptism and confirmation: "In baptism man is received into the soldiery, and in confirmation he is armed for battle. In the font of baptism the Holy Spirit bestows fullness unto innocence; in confirmation, however, He ministers perfection unto grace. In baptism we are regenerated unto life; after baptism we are confirmed for battle. In baptism we are washed; after baptism we are strengthened. Regeneration by itself saves in peace those receiving baptism; confirmation arms and instructs them for contests."[24] This text also plainly demonstrates that, already in the most ancient times, not only the existence but also the efficacy of confirmation was acknowledged. For although the works of Miltiades are today regarded as spurious, they are nevertheless certainly most ancient.[25]

d) **Spiritual kinship** arises from valid confirmation between the confirmed person and the sponsor; from this kinship the sponsor must have the confirmed person perpetually commended to him and care for his Christian education.[26] Nevertheless, an impediment of marriage no longer arises from such kinship.

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[20] Sess. 7, can. 9 on the sacraments in general (Denz., n. 852).

[21] Cf. the text of St. Cyprian cited above.

[22] *S. theol.* 3, q. 72, a. 5, corp. and ad 1.

[23] 1 Peter 2:2.

[24] P. 2, c. 3, q. 4.

[25] Cf. Jaffé, *Reg. Rom. Pont.*², p. 28, nn. 171-173.

[26] Code of Canon Law, c. 797.

Chapter II. On The Matter And Form Of Confirmation

154. a) The remote matter of confirmation is sacred chrism, that is, an ointment composed of olive oil and balsam, and blessed by a special consecration by a bishop.

Thus it is gathered from the decrees of Clement VI, Eugene IV, and Clement VIII.[27] Therefore five things are required for the remote matter of confirmation: 1. olive oil; 2. an admixture of balsam; 3. a blessing; 4. performed by a bishop; 5. and performed in a special manner.

1. **Olive oil** is required not only by an ecclesiastical precept but also for the validity of the sacrament. Thus all now teach. Hence confirmation would be conferred invalidly, for example, with petroleum, nut oil, and so forth, or if the anointing were omitted and the imposition of the hand alone were employed.

2. **The admixture of balsam** is required not only by a grave precept but, more probably, also for the validity of the sacrament, since Eugene IV teaches simply in the Decree for the Armenians: "The matter of confirmation is chrism confected from oil, which signifies the brightness of conscience, and balsam, which signifies the fragrance of a good reputation."[28] Moreover, it is certain that from the most ancient times balsam was always mixed with the oil.[29] Balsam from any region suffices, provided that it is present in such a quantity that it gives forth its fragrance.

3. **The oil and balsam must be blessed,** and indeed for the validity of the sacrament, as the most common opinion teaches. Drouven[30] teaches the contrary opinion, for which Cajetan also is sometimes, though undeservedly, cited.[31]

4. **The blessing must be performed by a bishop.** St. Thomas seems to teach that this is necessary for the validity of the sacrament.[32] Several, however, deny this, for example, Tournely, Valentia, Suarez, and St. Alphonsus, who holds the negative opinion speculatively probable.[33] But in practice the first opinion must be followed. Accordingly, the old Roman Ritual, treating of a priest who administers the sacrament of confirmation by delegation, says: "Let him take care to have with him chrism confected by a Catholic bishop ... and let him know that it is never lawful for him to administer confirmation without it."[34] The Supreme Pontiff, however, can delegate a simple priest to consecrate chrism. This was done on March 21, 1916, for several dioceses of the occupied regions of Russia, so that during the war and for three months after the beginning of peace, Apostolic Administrators and Vicars Capitular lacking the episcopal character, and even Vicars General governing dioceses in which the bishops were absent, possessed, among other faculties, the faculty of confecting the sacred oils.[35]

5. **The blessing must be performed in a special manner.** Therefore, it does not suffice that the oil of the sick or of catechumens be employed, although it has been blessed by a bishop. For if the admixture of balsam is required for the validity of confirmation, as was said above, it is self-evident that no oil other than chrism is valid matter for confirmation. Nevertheless, St. Alphonsus thinks[36] that, at the point of death, confirmation can be conferred conditionally with oil alone if chrism cannot be obtained; for the great utility of this sacrament would be a just cause for administering it conditionally.

By a grave ecclesiastical precept it is required that **recent chrism** (that is, chrism consecrated on the most recently elapsed Thursday of the Lord's Supper) be employed in the administration of confirmation. In a case of necessity, however, when recent chrism is lacking, it is lawful to administer confirmation with old chrism.

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[27] Denz., nn. 571, 697, 1086.

[28] Denz., n. 697. Noldin, *De sacram.*, n. 86, and Dölger, *Das Sakr. der Firm.*, pp. 192 sq., teach that the admixture of balsam is not of the essence of this sacrament.

[29] Cf. Roman Catechism, p. 2, c. 3, q. 6, and the letter which Pseudo-Isidore attributes to Pope Fabian.

[30] *De confirm.*, q. 3, c. 3, § 2, q. 8.

[31] Cf. *Comm. in S. theol.* 3, q. 72, a. 3.

[32] *S. theol.* 3, q. 72, a. 3.

[33] *Theol. mor.*, l. 6, n. 163.

[34] Roman Ritual, in the appendix.

[35] Sacred Congregation for Extraordinary Ecclesiastical Affairs. From letters authentically signed by the Titular Archbishop of Scythopolis and sent to the editor.

[36] *Theol. mor.*, l. 6, n. 162.

155. b) The proximate matter of confirmation is the so-called "chrismation," that is, an anointing with chrism upon the forehead of the person to be confirmed in the form of a cross, made immediately by the imposition of the hand.

As is evident from what was said above in n. 8 concerning the sacraments in general, the proximate matter of any sacrament is the application of the remote matter. According to the Latin rite, the application of the remote matter in confirmation is made in the following manner: The pontiff, with his hands extended toward those to be confirmed, says: "Let us pray. Almighty, everlasting God," and so forth. After this, the pontiff, either sitting or standing, "with the tip of the thumb of his right hand dipped in chrism, says: 'N., I sign thee with the sign of the cross.' While he says this, he traces the sign of the cross with his thumb upon the person's forehead; then he continues: 'And I confirm thee with the chrism of salvation, in the name of the ✠ Father, and of the ✠ Son, and of the ✠ Holy Spirit. R. Amen.'" In the Greek rite, however, the priest with the sacred ointment makes the sign of the cross upon the forehead, the eyes, the nostrils, each ear, and the feet, saying: "Σφραγὶς δωρεᾶς πνεύματος ἁγίου." Certain Eastern Churches, for example, the Jacobites and Armenians, employ the anointing alone, while certain others have, besides the anointing, also the imposition of the hand. But since there is no small difference between the two rites, and since, on the other hand, it is established that Christ determined at least as to species the matter and form of all the sacraments,[37] the question arises as to what is essential in the proximate matter of confirmation. The most common and certain opinion teaches that the essential and adequate proximate matter of confirmation is **the anointing with chrism joined with the imposition of the hand.**[38] The reason is that, if blessed chrism is the remote matter, as was proved above, then the proximate matter is the application of the chrism, that is, the anointing, with which the imposition of the hand is joined. It is also established from tradition that confirmation was always administered in this manner.[39]

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[37] Cf. above, n. 50.

[38] Other less probable opinions concerning the proximate matter of confirmation may be seen in Heimbucher, *Die hl. Firmung*, pp. 61 sqq. The two principal ones are: 1. The proximate matter is the imposition of the hand alone. Thus Aureolus and Sirmond. This is certainly false and contradicts the Council of Florence. 2. Both impositions of the hand and the anointing are the proximate matter. Thus Tournely, Gotti, Concina, and others. This contradicts the decision of the Holy Office of April 17, 1872, and the Eastern rites, in which the first imposition of the hand is not found.

[39] Cf. the numerous testimonies of the ancient Fathers in Drouven, *loc. cit.*, c. 1, or in St. Alphonsus, *loc. cit.*, n. 164.

156. Concerning this proximate matter the following things must be noted:

1. In the administration of confirmation there is a twofold imposition of hands: namely, the first at the beginning, when the bishop extends his hands over all those to be confirmed and recites the prayer "Almighty"; and the second, which is not distinct from the anointing. The first imposition of the hand is not of the essence of confirmation; for it is not found in the Greek rite, and on April 17, 1872, the Holy Office declared valid the confirmation conferred upon boys who were not present at the bishop's first extension of hands.[40] *A fortiori*, the blessing given by the bishop at the end of the ceremony is not of the essence of confirmation. Therefore, the prohibition of the Ritual that no one depart before the blessing is only a certain rubric. But because the anointing must be joined with the imposition of the hand, it is altogether unlawful to anoint with the aid of any instrument.[41]

2. The anointing must be made **upon the forehead and by the sign of the cross.** Both are considered essential and were always in use; therefore Tertullian already called confirmation "the seal of the foreheads."[42] St. Thomas[43] gives the reason for this: "In this sacrament man receives the Holy Spirit for the strength of spiritual battle, that he may courageously confess the faith even among the adversaries of the faith of Christ. Hence he is fittingly signed with chrism by the sign of the cross upon the forehead for two reasons: first, because he is marked with the sign of the cross as a soldier with the sign of his leader, and this ought to be evident and manifest. But among all the places of the human body, the forehead is most manifest, since it is almost never covered; and therefore the confirmed person is anointed with chrism upon the forehead, that he may manifestly demonstrate himself to be a Christian, just as the Apostles, after receiving the Holy Spirit, manifested themselves, though previously they had lain hidden in the upper room. Secondly, because one is hindered from the free confession of the name of Christ for two reasons, namely, because of fear and shame. But the sign of both of these is manifested especially upon the forehead, ... for those who are ashamed blush, while those who fear grow pale.... And therefore he is signed with chrism upon the forehead, that neither because of fear nor because of shame may he omit to confess the name of Christ." The Council of Florence[44] gives the same reason.

St. Alphonsus,[45] who says the following, treats and resolves the question of the proximate matter of confirmation excellently in the sense explained above: "I confess that, although I had labored for nearly fifteen days in reading the canons and writers, I was unable to render a judgment as to what was to be held as certain. At length the force of the reasons ... removed every doubt from my mind; and I formed a certain judgment concerning my opinion."

3. The anointing must be made with **the thumb of the right hand**, and not with a brush or another instrument, as was already said. If, however, the bishop has an infirm thumb, he may licitly anoint with the thumb of the left hand or with another finger.[46]

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[40] *Collect. de Prop. Fide*, n. 1383.

[41] Cf. Holy Office, January 14, 1885; Code of Canon Law, c. 781, § 2.

[42] *Contra Marc.*, l. 3, c. 22 (Migne, *Patr. lat.* 2, 353).

[43] *S. theol.* 3, q. 72, a. 9.

[44] Denz., n. 697.

[45] *Theol. mor.*, l. 6, n. 164.

[46] Cf. St. Alphonsus, *loc. cit.*, n. 165.

157. The form of confirmation consists in the words: "N., I sign thee with the sign of the cross and I confirm thee with the chrism of salvation, in the name of the Father and of the Son and of the Holy Spirit. R. Amen."

Thus it is established from the Council of Florence and from the Roman Ritual. More probably, all these words, if perhaps the particles "and" and "in" be excepted, are of the essence, so that nothing can be omitted. St. Thomas[47] shows well the fittingness of this form. The form must signify the essence of the sacrament. Now, in confirmation three things are necessary. The first is the cause conferring the fullness of spiritual strength, which is the Holy Trinity and which is expressed by the words, "In the name of the Father," and so forth. The second is spiritual strength, and this is signified by the words, "I confirm thee with the chrism of salvation."

The third is the sign which is given to the combatant, and with respect to this it is said: "I sign thee with the sign of the cross."

The form in the Greek Church is: "The seal of the gift of the Holy Spirit," as was already said. This form is certainly valid, since the Supreme Pontiffs permit it to the united Greeks, but it is much less perfect than the Latin form. "The seal" is the same as "I sign thee." The words "of the gift of the Holy Spirit" signify grace strengthening unto faith.

It must be admitted that, down to the twelfth or thirteenth century, very many forms were in use, which Martène collected,[48] for example: "Receive the sign of the holy cross with the chrism of salvation in Christ Jesus unto eternal life. Amen." "The sign of Christ unto eternal life." "I confirm thee and sign thee in the name," and so forth. Whether all these forms were valid is not so evident. For it is possible that errors crept into certain dioceses. Moreover, it is not established that these forms have come down to us unchanged. The Holy Fathers do not speak of a determinate form of confirmation. From the time of St. Thomas, however, the form now used in the Latin Church has prevailed.[49]

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[47] *S. theol.* 3, q. 72, a. 4.

[48] *De antiq. Eccl. rit.*, l. 1, c. 2, n. 4.

[49] Cf. Schanz, *Die Lehre v. d. Sakr.* I, § 24.

Chapter III. On The Minister Of Confirmation

Principle. The ordinary minister of confirmation is a bishop; the extraordinary minister is a priest duly delegated.

158. 1. That a bishop is the ordinary minister of confirmation is of faith, defined at the Council of Trent: "If anyone says that the ordinary minister of holy confirmation is not the bishop alone, but any simple priest, let him be anathema."[50] This doctrine is also clearly gathered from Acts, chapter 8, where Peter and John were sent into Samaria to administer the sacrament of confirmation to those who had been baptized by Philip the deacon. St. Thomas gives this reason of fittingness: The bishop is in the Church as a leader in an army, to whom it belongs to receive and mark soldiers. Now, through confirmation man becomes a soldier of Christ.

In another diocese a bishop cannot licitly administer confirmation without at least the reasonably presumed permission of the local Ordinary, unless it concerns his own subjects, to whom he confers confirmation privately and without crozier and miter. On the contrary, a bishop can administer this sacrament in his own diocese to all, even to travelers who are not his subjects, provided, however, that the express prohibition of their own Ordinary does not stand in the way.[51]

The obligation of administering confirmation. Since the bishop is the ordinary minister of confirmation in his diocese, and since so great a good comes to the faithful from confirmation worthily received, he is therefore bound to provide, insofar as it can be done, that this sacrament be administered to his subjects at least within every five-year period.[52] Nor can he demand any temporal recompense for this administration of the sacrament, unless a contrary and reasonable custom has already existed for a long time.[53] But if a bishop delays for eight or ten years to make a circuit at least of the principal places of his diocese for this purpose, he sins mortally, unless a moral impossibility is present.[54] Theologians commonly teach, however, that a bishop is not bound to confer confirmation upon every dying person who asks for it.[55] For the sacrament of confirmation is not of such great necessity, and it would be too great a burden, and indeed sometimes morally

impossible, for the bishop to confirm all dying persons who ask. Thus much concerning the strict obligation. But a bishop acts laudably if he administers confirmation more frequently in the different parishes of his diocese, or if he even sometimes visits a dying person to confirm him, as St. Charles Borromeo did.

[50] Sess. 7, can. 3 on confirmation (Denz., n. 873). Cf. also sess. 23, can. 7 on orders (Denz., n. 967).

[51] Code of Canon Law, c. 783.

[52] Cf. *ibid.*, c. 785.

[53] Cf. Sacred Congregation for the Propagation of the Faith, March 28, 1778.

[54] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 175.

[55] Cf. *ibid.*

159. 2. The extraordinary minister of confirmation is a priest to whom that faculty has been granted either by common law or by a particular indult of the Holy See. Thus teaches the certain opinion, which is confirmed both by the Council of Florence[56] and by the constant practice of the Church. The Code of Canon Law, c. 782, § 2, establishes the same. Durandus, Estius, and a few others contradicted it. This delegation is granted by **the Supreme Pontiff alone**, who nevertheless sometimes commits to a bishop the designation of one or another priest to administer the sacrament of confirmation.[57] By the law itself the following are delegated: Cardinals; an abbot or prelate *nullius*; an Apostolic Vicar; and an Apostolic Prefect. But the latter three cannot validly administer this sacrament, unless they are bishops, outside the boundaries of their territory or after their office has expired.[58] A delegated priest must observe those things which are prescribed to him in the instrument of delegation with respect to places, times, persons, and so forth. Especially, however, he cannot confirm except with chrism blessed by a Catholic bishop, and not by a schismatic bishop. Moreover, before the solemn administration of this sacrament he must always expressly admonish the people in the vernacular language that he is the minister of confirmation only by a special delegation. This admonition does not pertain to the validity of the administration, but it must by all means be made.[59]

In the Greek Church all priests, even schismatics, confirm validly, unless this power has been expressly taken away from them, as, for example, in Bulgaria, Cyprus, Italy, and so forth. The Holy Office replied several times, for example, on July 5, 1853, April 2, 1879, and January 14, 1885, that it is not expedient that those who were confirmed by schismatic priests be anointed again by a bishop, unless there is among them someone who is to be promoted to Tonsure and Orders, or unless they themselves or their parents request it; in that case the sacrament of confirmation is to be conferred secretly and, ordinarily, conditionally. It is forbidden for priests of the Eastern rite who enjoy the faculty or privilege of conferring confirmation together with baptism upon infants of their own rite to administer the same to infants of the Latin rite.[60] It is established generally: A priest who shall have presumed to transgress the limits of the faculty granted to him for administering confirmation is by that very fact deprived of the same faculty.[61]

[56] Denz., n. 697.

[57] Cf. Holy Office, May 4, 1903, and Instruction of the Sacred Congregation of the Sacraments, Pentecost 1934 (*Acta Apostolicae Sedis* XXVII, 11 sqq.).

[58] Code of Canon Law, c. 782, § 3.

[59] Sacred Congregation for the Propagation of the Faith, September 11, 1841 (*Collectan. de Prop. Fide*, nn. 940 and 1539).

[60] Code of Canon Law, c. 782, § 5.

[61] *Ibid*., c. 2365.

Chapter IV. On The Subject Of Confirmation

160. Principle. Every baptized and not yet confirmed human being is a subject capable of confirmation.

The reason is that every baptized human being needs strength for confessing the faith in difficult occasions, should any occur. Confirmation is therefore the complement of baptism; hence, during the first twelve centuries, throughout the universal Church there existed, and in the Greek Church there still exists, the practice of conferring confirmation immediately after baptism. But the practice of the Latin Church now has it almost everywhere that the faithful are not confirmed until after attaining the use of reason, that is, around the seventh year of age. Nevertheless, it can be conferred even earlier if an infant is placed in danger of death, or if it appears expedient to the minister for just and grave causes.[62]

In Spain, Latin America, and other regions, infants, at least sick infants, are confirmed.[63] Therefore, legitimate custom concerning the age of those to be confirmed is to be observed. Benedict XIV[64] teaches concerning this matter: "By the most prudent decrees of the Supreme Pontiffs it was providently ordained that the sacrament of confirmation be conferred upon those reborn in the font of baptism only at that age at which the faithful, having put away the things that belonged to a child, would understand ... that through baptism they had indeed been received into the soldiery, but through confirmation were strengthened for battle and furnished by grace for enduring the contests."

1. For receiving confirmation **validly**, not only baptism is required, but in a person capable of reason also at least a habitual intention.
2. For receiving confirmation **licitly**, the following are required:

a) **the state of grace**, because confirmation is a sacrament of the living. Although a sinner can acquire the state of grace by perfect contrition with the desire for confession, nevertheless in practice it must be strongly insisted upon that anyone existing in the state of grave sin make a sacramental confession before confirmation;

b) **due instruction** in one who has sufficient use of reason. Hence the Roman Ritual admonishes: "Those to be anointed with sacred chrism are first to be diligently instructed ... concerning the nature, dignity, effects, and dispositions required for worthily receiving a sacrament of this kind."

According to the ancient usage of the Church, those to be confirmed had to be fasting, and therefore it would be desirable that this be observed even at present. Thus the old Roman Ritual.

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[62] Code of Canon Law, c. 788, and St. Thomas, *S. theol.* 3, q. 72, a. 8 ad 4.

[63] Cf. *Acta et Decreta Concilii plenarii Americae Latinae* 1899, n. 520; Pontifical Commission, June 16, 1931 (*Acta Apostolicae Sedis* XXIII, 353); and Sacred Congregation of the Sacraments, June 30, 1932 (*Acta Apostolicae Sedis* XXIV, 271).

[64] Constitution *Eo quamvis tempore*, May 5, 1745.

161. 3. The obligation of receiving confirmation is not of the necessity of means. Thus all teach. Whether, however, it is of the necessity of a grave precept is disputed. Very many deny it. St. Alphonsus[65] already cited twenty-three authors for this negative opinion, among whom was St. Thomas. In our days the negative opinion is held by Lehmkuhl,[66] Noldin,[67] Gihr,[68] Göpfert,[69] Larraga-Sanchez,[70] and many others.

Many, however, affirm it, among whom are St. Bonaventure, though not with equal certainty, St. Antoninus, St. Alphonsus, and Benedict XIV.[71] Among modern authors this affirmative opinion is held by Marc,[72] Aertnys,[73] Müller,[74] Dölger,[75] and others. All concede that the omission of confirmation is a grave sin if contempt, scandal, or a special danger to salvation is present. Apart from these three cases, however, a grave obligation of receiving confirmation cannot be proved with certainty. For it was said above, in n. 158, according to the common opinion, that a bishop is not bound to administer the sacrament of confirmation to a dying person who asks for it; likewise, a bishop is not obliged to provide each individual member of the faithful of his diocese an opportunity to receive this sacrament except within a period of five years. These things can scarcely be reconciled with a grave obligation of the faithful to receive confirmation. If such a grave obligation truly existed, then bishops would be bound much more strictly to administer that sacrament. Moreover, the graces conferred in confirmation, although certainly most precious, can also be obtained in other ways, for example, by repeated reception of the Eucharist. Finally, if this grave obligation were present, it would exist for all capable human beings. But no one will say that a dying infant is bound under grave obligation to receive confirmation. Therefore, although no one is permitted to neglect this sacrament when an opportunity is offered, as the Code of Canon Law, c. 787, aptly admonishes, and the faithful are earnestly to be admonished to endeavor to receive confirmation worthily, it must not be said that otherwise they are guilty of mortal sin. St. Alphonsus also at first favored the negative opinion, since no precept, either natural or positive, could be adduced which imposed such a grave obligation; but afterward, thinking that Benedict XIV[76] had determined the contrary, he abandoned this opinion, which on account of the authority of Benedict XIV he considers insufficiently probable.[77] Nevertheless, the words of Benedict XIV can be explained otherwise.

Behold those words: "They [the Italo-Greeks] are to be admonished by the Ordinaries of places that they are held by the guilt of grave sin if, when they can approach confirmation, they refuse and neglect it." The Instruction of the Sacred Congregation for the Propagation of the Faith of May 4, 1774, approved by Clement XIV, has similar words. The Pontiff prescribed that confirmation be received by the Italo-Greeks because otherwise a grave scandal would have arisen there. For these Italo-Greeks, contrary to every law, had caused their infants to be confirmed by simple priests; afterward, however, they refused the valid reception of confirmation from bishops. Therefore, there was obstinate disobedience on their part. Accordingly, the Pontiff deservedly charges them with mortal sin unless they are willing to receive confirmation. Moreover, it appears sufficiently that Benedict XIV did not wish to settle the controversy concerning the obligation of confirmation, because in his book *On the Diocesan Synod*,[78] which he published after the cited Constitution, he seems somewhat to favor the opposite opinion. As regards the Instruction of the Sacred Congregation for the Propagation of the Faith, Lehmkuhl replied:[79] "This statement is an opinion which has the more common opinion against it and cannot in any way become a law." Setting aside this reply, which seems insufficiently reverent, I say that the Sacred Congregation wished only to condemn grave **contempt** for confirmation; for it asserts: "This sacrament cannot be rejected and neglected without the guilt of grave sin." But all admit this, and St. Thomas already taught it in express words.[80]

From all that has been said it follows that one who, because of a notable inconvenience, delays confirmation or even does not receive it is not to be accused of mortal sin.[81] For example, one is not bound under grave obligation to receive confirmation if, on account of a very advanced age, this would cause him great embarrassment; one is not bound under grave obligation to request confirmation if there is doubt concerning a prior confirmation, unless, however, he wishes to be promoted to Tonsure and Orders.[82]

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[65] *Theol. mor.*, l. 6, n. 181.

[66] *Theol. mor.* II, n. 140.

[67] *De sacr.*, n. 92.

[68] *Die hl. Sakr.* I, § 48.

[69] *Moraltheol.* III, 45.

[70] *Prontuario*, n. 1225.

[71] *Instit.* 6, n. 10.

[72] *Instit. mor.* II, n. 1501.

[73] *Theol. mor.*, l. 6, n. 60.

[74] *Theol. mor.* III, § 83.

[75] *Das Sakr. d. Firm.*, sect. 2, chap. 1, § 3.

[76] Constitution *Etsi pastoralis*, May 26, 1742.

[77] *Theol. mor.*, l. 6, n. 182, at the end.

[78] L. 7, c. 10, n. 9.

[79] *Theol. mor.* II, n. 142.

[80] *S. theol.* 3, q. 72, a. 1 ad 3.

[81] Cf. Billuart, *De confirm.*, a. 8, § 2.

[82] Cf. Holy Office, January 14, 1885.

Chapter V. On The Ceremonies Of Confirmation

162. 1. The ceremonies prescribed in the Pontifical are to be observed, and those which certainly or even probably pertain to the validity of the sacrament bind under grave obligation, for example, the anointing upon the forehead and in the form of a cross.

Confirmation is ordinarily to be administered in a church or public chapel with solemnity, that is, with miter and crozier. But when a reasonable cause exists, for example, the illness of the person to be confirmed, the bishop, wearing a rochet and stole, or even clothed with the pastoral stole alone, can confer it in any decent place, on any day and at any hour.[83] A bishop can confer confirmation even in exempt places of his diocese.[84]

The ceremony of the blow on the cheek does not bind under grave obligation.[85]

In confirmation a person can, but is not bound to, impose upon himself another name besides that received in baptism.[86]

When a duly delegated priest administers the sacrament of confirmation, he cannot use pontifical insignia unless he already possesses this privilege from another source.[87] The ceremonies to be observed by him were formerly indicated in the Instruction *For a Simple Priest Administering the Sacrament of Confirmation by Delegation of the Apostolic See*, issued by the Sacred Congregation for the Propagation of the Faith on May 4, 1774.[88] A new Instruction of the same name was issued by the Sacred Congregation of the Sacraments at Pentecost 1934 (*Acta Apostolicae Sedis* XXVII, 11 sqq.).

[83] Cf. Sacred Congregation for the Propagation of the Faith, December 7, 1626, and Holy Office, February 12, 1851.

[84] Code of Canon Law, c. 792.

[85] St. Alphonsus, *Theol. mor.*, l. 6, n. 184.

[86] Cf. Sacred Congregation of Rites, September 20, 1749.

[87] Sacred Congregation for the Propagation of the Faith, April 23, 1774.

[88] *Collect. de Prop. Fide*, n. 503.

163. 2. A sponsor is required in confirmation under pain of grave sin, just as in baptism. Thus the common opinion.[89] A case of grave necessity is excepted, namely, when a legitimate sponsor cannot be had.[90] There is to be only one sponsor for each person to be confirmed, and therefore two are not permitted as in baptism. A sponsor is to present only one or two persons to be confirmed, unless otherwise seems good to the minister for a just cause.[91]

The conditions required on the part of the sponsor for validity are:

a) That the sponsor have the intention of performing the office of sponsor and consequently have attained the use of reason. This is evident.

b) That the sponsor be designated either by the person to be confirmed himself, or by his parents or guardians, or, if these are lacking, by the minister or pastor.

c) That the sponsor himself be confirmed. Thus it is established from the Code of Canon Law, c. 795, and from the Roman Pontifical, which states: "No one who has not been confirmed can be a sponsor in confirmation." Hence it would be a grave sin if an unconfirmed person wished to act as sponsor in confirmation.[91a]

d) That in the very act of confirmation the sponsor physically touch the person to be confirmed, either personally or through a proxy. In ancient times the person to be confirmed placed his right foot upon the sponsor's right foot; now, however, custom has prevailed that the sponsor place his right hand upon the right shoulder of the person to be confirmed.

e) That the sponsor be a Catholic and neither enrolled in a heretical or schismatic sect nor marked by any of the penalties concerning which something was said above in n. 145, 2.

f) That the sponsor not be the father, mother, or spouse of the person to be confirmed.

The conditions required on the part of the sponsor for liceity are:[92]

a) That the sponsor be someone other than the baptismal sponsor, unless a reasonable cause, in the judgment of the minister, counsels otherwise, or confirmation is legitimately conferred immediately after baptism.

b) That the sponsor be of the same sex as the person to be confirmed, unless otherwise seems good to the minister in particular cases for a reasonable cause.

c) That the same things prescribed for a baptismal sponsor above in n. 147 be observed; for example, that the sponsor have attained the fourteenth year of age and not be a religious or constituted in sacred orders.

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[89] Cf. St. Alphonsus, *loc. cit.*, n. 185, and Holy Office, September 5, 1877 (*Collect. de Prop. Fide*, n. 1480). Because of the authority of the Holy Office, the opposite opinion is not probable.

[90] Cf. *Acta et Decreta Concilii plenarii Americae Latinae* (1899), n. 517.

[91] Code of Canon Law, c. 794.

[91a] Cf. St. Alphonsus, *loc. cit.*, n. 186.

[92] Code of Canon Law, c. 796.

164. Scholion. On recording a conferred confirmation. The pastor is to enter the names of the minister, the confirmed persons, their parents and sponsors, and the day and place of the confirmation in a special book; furthermore, he is to note in the book of the baptized that confirmation was conferred.[93] If the proper pastor of the confirmed person was not present, he is to be informed of the conferred confirmation as soon as possible by the minister of confirmation or his delegate.[94]

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[93] Cf. the form for recording confirmed persons in the Roman Ritual, tit. 12, cc. 1 and 3, and Code of Canon Law, c. 798.

[94] *Ibid*., c. 799.

Treatise IV. On The Eucharist

Prefatory note. Among all the sacraments the Eucharist is the most worthy. And truly the Church of God has nothing holier, nothing more worthy, nothing more salutary than this sacrament of the Body and Blood of the Lord. For while the other sacraments give or increase grace, the Eucharist furnishes to us the very Author of grace, who willed to be our spiritual nourishment and perennial sacrifice. Moreover, the other sacraments are transient actions; the Eucharist, however, does not consist in use alone, but is something permanent. Therefore, it is customary to distinguish the sacrament *in fieri*, that is, the consecration, and *in facto esse*, that is, the real presence of Christ under the species. The Eucharist can be considered under a twofold aspect: namely, as a sacrament insofar as it is received, and as a sacrifice insofar as it is offered.[1]

Accordingly, almost all theologians divide the treatise on the Eucharist into two sections: namely, on the Eucharist as it is a sacrament, and on the Eucharist as it is a sacrifice. Dogmatic theologians are accustomed first to set forth the proof and explanation of the real existence of Christ under the Eucharistic species. We presuppose this real existence and transubstantiation and, accordingly, begin immediately with the Eucharist as it is a sacrament; afterward we shall treat of the Eucharist as it is a sacrifice.

Innumerable theologians have written concerning the most august sacrament of the Eucharist. Besides St. Thomas, who is not undeservedly called the Doctor of the Eucharist, and who not only explained this mystery most profoundly but also celebrated it with the most beautiful liturgical Office of the feast of Corpus Christi, the following may be consulted: St. Bonaventure, St. Alphonsus, Drouven, Billuart, Chr. Pesch, Gihr, Schanz, and, especially for the canonical part, Gasparri, *De eucharistia*, 2 vols., Parisiis 1897; Many, *Praelect. de Missa*, Parisiis 1903. The Roman Catechism, especially in this matter, is of great authority and utility.

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[1] St. Thomas, *S. theol.* 3, q. 79, a. 5.

Section I. On The Eucharist As It Is A Sacrament

We divide this section into five chapters: 1. on the notion and institution of the Eucharist; 2. on its matter and form; 3. on its effects; 4. on its subject; 5. on its minister.

Chapter I. On The Notion And Institution Of The Eucharist

165. Diverse names.

a) The name **Eucharist** is taken from the Greek verb εὐχαριστεῖν, *to give thanks*, because St. Paul, narrating the institution of this sacrament, says: "And giving thanks, He broke and said: Take," and so forth;[2] hence Eucharist is the same as an act of thanksgiving. The Roman Catechism[3] gives still other explanations of this name.

b) This sacrament is called **synaxis**, or gathering, congregation, communion, union, both because the faithful are gathered together in some place to celebrate this mystery,[4] and because the faithful who eat this one bread ought to form one mystical body.[5]

c) It is called **the Supper of the Lord**,[6] because Christ instituted this sacrament at the Last Supper. This appellation greatly pleases Protestants, who misuse it to teach that the Eucharist is not a permanent sacrament

but consists in a transient use alone.

d) It is called **Viaticum**,[7] because this sacrament refreshes, sustains, and strengthens one on the way, and especially on the final journey, when the soul must pass into eternity. There are, furthermore, several other appellations, for example, the breaking of bread, supersubstantial bread, sacrament of the altar, most holy sacrament, Body of Christ, and so forth. The Angelic Doctor[8] explains why this sacrament is fittingly designated by so many diverse names.

[2] 1 Corinthians 11:24.

[3] P. 2, c. 4, q. 3.

[4] Cf. 1 Corinthians 11:20.

[5] Cf. 1 Corinthians 10:17.

[6] German: *Abendmahl* (evening meal).

[7] German: *Wegzehrung* (provision for a journey).

[8] In *S. theol.* 3, q. 73, a. 4.

166. Definition. The sacrament of the Eucharist can be considered in three ways: in fieri, in facto esse, and in use.

If it is considered in the first way:

The Eucharist is the conversion of bread and wine into the Body and Blood of Christ, the species remaining, for the nourishment of the soul; or, more briefly, it is the very act of transubstantiation, that is, the very words of consecration insofar as they attain the matter to be consecrated.

If it is considered in the second way:

The Eucharist is the sacrament of the Body and Blood of Our Lord Jesus Christ under the species of bread and wine for the nourishment of the soul, instituted by Christ.

Finally, if it is considered in the third way:

The Eucharist is the reception of the Body and Blood of Christ under the Eucharistic species.

The second mode of understanding is the more proper mode. For although reception is a condition without which the Eucharist cannot produce its sacramental effect, and accordingly is altogether necessary even in the sacrifice of the Mass, nevertheless the sacrament is already complete before its use, and this is something altogether peculiar to the sacrament of the Eucharist.

The Scholastics dispute wherein precisely the essence of this sacrament as such is situated. From what was said above concerning the essence of the sacraments, it is evident that every sacrament is a practical sign of grace. Now, in the Eucharist, this sign of grace appears to be the consecrated species, as containing the Body and Blood of Christ. Therefore, they are also the essence of the sacrament of the Eucharist. The Roman Catechism also teaches this, saying: "But it is evident that all these things [which were recounted previously] are less properly called sacraments. The species of bread and wine themselves, however, possess the true and absolute character of this name."[9] Whoever seeks more concerning this controversy, which is theoretical rather than practical, may consult Billuart[10] or the dogmatic theologians.

[9] P. 2, c. 4, q. 8.

[10] *De euchar.*, diss. 2, a. 1, § 2.

167. Signification. Since it is proper to each sacrament to signify something, the Eucharist signifies three things: 1. **the Passion of Christ**; hence St. Paul says: "As often as you shall eat this bread and drink the chalice, you shall announce the death of the Lord until He comes";[11] 2. **grace for nourishing and sustaining the soul**; 3. **the pledge of future glory.** Although many things are contained in the sacrament of the Eucharist, and things pertaining to its essence, namely, a twofold matter, a twofold form, and reception, nevertheless it is not a multiple sacrament, but is **one moral being**, because each of its parts has the same threefold signification.[12] From this it follows that one who receives the Eucharist under both species does not receive greater grace than one who has received Communion under the species of bread alone. Thus teaches the truer opinion. The Eucharist confers sanctifying grace upon the soul in the very reception or eating, that is, when the species are conveyed from the mouth into the stomach. For Christ said: "He who eats Me, the same also shall live because of Me."[13] Hence, if someone retains the species in his mouth so long that they have dissolved, or if a dying person cannot swallow the species, he does not receive the grace of the sacrament. One, however, who has received the species into the stomach but afterward vomits them has truly eaten and accordingly received grace.

[11] 1 Corinthians 11:26.

[12] Cf. *S. theol.* 3, q. 73, a. 2, and Roman Catechism, *loc. cit.*, q. 10.

[13] John 6:58.

168. Institution. That the Eucharist is a true sacrament instituted by Christ is of faith, and is so certain that scarcely any heretic has dared to deny it. Several indeed erred concerning the real presence of Christ in this sacrament, but scarcely anyone denied its existence. In our times, however, certain Protestants, such as Jülicher, Spitta, and others, have dared to deny that the institution of the Eucharist was made by Christ.[14] Catholic doctrine was defined at the Fourth Lateran Council,[15] the Council of Florence,[16] and the Council of Trent.[17] Christ instituted this sacrament on the day before He suffered, at the Last Supper, when, taking bread and wine into His hands, He said: "Take and eat: this is My Body.... Drink ye all of this; for this is My Blood."[18] "Do this in commemoration of Me."[19]

In the Eucharist the three constitutive elements of every sacrament are found most clearly: institution by Christ; a sensible sign, namely, bread and wine; invisible grace on account of Christ's promise: "If anyone shall eat of this bread, he shall live forever."[20]

[14] Cf. G. Rauschen, *Eucharistie und Bußsakr.*, § 3.

[15] Denz., n. 430.

[16] Denz., n. 698.

[17] Sess. 7, can. 1 on the sacraments in general, and sess. 13 throughout (Denz., nn. 844 and 874 sqq.).

[18] Matthew 26:26 sqq.

[19] Luke 22:19.

[20] John 6:52.

Chapter II. On The Matter And Form Of The Eucharist

Since the subject matter of this chapter is exceedingly extensive, we divide it into three articles: 1. on the remote matter; 2. on the proximate matter; 3. on the form of the Eucharist.

Article I. On The Remote Matter Of The Eucharist

169. The remote matter of the Eucharist is wheaten bread alone and wine from the vine. Thus teaches the Council of Florence.[21] The reason is that it is established that Christ employed bread and wine in the institution of this sacrament. Now, wheaten bread alone is called simply bread, and natural wine from the vine alone is called simply wine. For the sake of clarity, the valid and licit matter both of bread and of wine must be treated separately.

[21] Denz., n. 698.

§ 1. On The Valid And Licit Matter Of Bread

170. 1. Valid matter of bread. For validly confecting the sacrament, it is required that the bread a) be made from wheaten flour and b) natural water, and that c) it be baked by fire.

Therefore it is required:

a) That the flour be **wheaten**; therefore matter of another species is invalid, for example, that which is made from barley,[22] rye,[23] maize,[24] oats,[25] rice,[26] millet,[27] peas,[28] beans,[29] potatoes, and so forth. Valid matter, however, is flour taken from diverse accidental varieties of wheat, for example, common wheat, durum wheat, turgid wheat, spelt wheat, and so forth. Therefore, true wheat of any region and any variety suffices.

b) It is necessary that the wheaten flour be mixed with **natural water**. Therefore, if another liquid, for example, milk, wine, or oil, is mixed in a notable quantity, such as one third, the matter is invalid; but if such a mixture is made in a small quantity, the matter is indeed illicit but not invalid. Likewise, salt, sugar, or another seasoning is not to be added to the flour to be baked, since absolutely every mixture is illicit. On the other hand, it is not lawful, for the purpose of obtaining very white and beautiful hosts, to extract all the gluten from the flour so that something like starch is obtained. For gluten appears to pertain to bread, just as alcohol pertains to wine. It is lawful, however, to extract only a part of the gluten (cf. Holy Office, June 25, 1852, *Collectan. de Prop. Fide*, n. 1076).

c) The dough kneaded from wheaten flour and natural water is to be baked in such a way that it becomes **true bread**. Hence, if the dough is raw or is merely cooked in the manner of porridge, pastry, or cake, it is not true bread nor valid matter capable of being consecrated.

[22] German: *Gerste*; French: *orge*.

[23] German: *Roggen*; French: *seigle*.

[24] German and French: *Mais*.

[25] German: *Hafer*; French: *avoine*.

[26] German: *Reis*.

[27] German: *Hirse*; French: *millet*.

[28] German: *Erbsen*; French: *pois*.

[29] German: *Bohnen*; French: *fèves*.

171. 2. Licit matter of bread. For licitly confecting the Eucharist, it is required:

a) **That unleavened bread be employed in the Latin rite, but leavened bread in the Eastern rite.**[30]

The Latin Church uses unleavened bread because Christ Himself, instituting the Eucharist during the days of unleavened bread, appears to have employed unleavened bread. The obligation of consecrating unleavened bread is so grave for **Latin priests** that in only one case is the consecration of leavened bread certainly lawful for them, namely, to complete the sacrifice of a Mass already begun if unleavened bread is altogether lacking.[31] Hence, according to the opinion which St. Alphonsus[32] calls common and more probable, not even for giving Viaticum to a sick person could a Latin priest in a case of necessity consecrate leavened bread. But the opposite opinion appears probable and safe, since the precept of receiving Viaticum is derived from divine law, as will be said below. Now, a precept of divine law prevails over a precept of ecclesiastical law prohibiting consecration with leavened bread.[33]

Note. Although both Latin and Eastern priests are bound under grave obligation to **consecrate unleavened or leavened bread according to the rite proper to each**, and indeed "wherever they celebrate Mass," nevertheless, "where necessity urges and no priest of a different rite is present, it will be lawful for an Eastern priest who uses leavened bread to administer the Eucharist consecrated with unleavened bread, and conversely for a Latin priest, or an Eastern priest who uses unleavened bread, to administer it with leavened bread; but each is to observe his own rite of administering." Thus Pius X.[34] Indeed, to all the faithful of any rite the faculty is given, for the sake of devotion, to receive the Eucharistic sacrament confected in any rite. Thus again Pius X,[35] who thereby further increased the liberty in this matter already granted by Leo XIII in the Constitution *Orientalium dignitas* of November 30, 1894. The Code of Canon Law, c. 866, § 1, establishes the same. Each person, however, is to receive Easter Communion and, *a fortiori*, Viaticum in his own rite and from his own pastor or the latter's delegate, insofar as this is morally possible.[36]

b) **The host to be consecrated must be fresh, clean, intact, and circular in form.**

The host must be **fresh**, and therefore it is not lawful to consecrate hosts already made a month before. The Sacred Congregation of Rites on December 16, 1826,[37] says that the custom of consecrating species made three months earlier in winter and six months earlier in summer is to be eliminated. The same Sacred Congregation of Rites on September 12, 1884,[38] in response to doubt 2, "Can the custom of renewing the most holy Eucharist once or twice a month be retained, although according to the Ceremonial of Bishops the same most holy Eucharist ought to be renewed every week?" replied: "Let the prescription of the Ceremonial of Bishops, l. 1, c. 6, § 2, be observed." Now, the Ceremonial of Bishops, *loc. cit.*, establishes that the most holy Eucharist "be changed and renewed at least once a week." Nevertheless, this statute does not always appear to bind under grave obligation; accordingly, when a just cause exists and danger of corruption is absent, it suffices to renew the Eucharistic species every fortnight.[39] If, however, the climate is very humid or hot, the Eucharistic species must be changed more frequently, lest they become moldy.

The hosts to be consecrated must be not only fresh but also **clean and intact**. Hence it would be a grave irreverence if a priest, without urgent necessity, were to consecrate a host notably broken or stained. But if the stain or fracture is not so notable and no scandal arises, a priest who consecrates such a host does not sin gravely. St. Alphonsus notes:[40] "If, however, the fracture [or stain] is discovered after the offertory, such a host will licitly be consecrated, unless scandal of the people is feared."

The **shape** of the host to be consecrated must be circular in the Latin Church, but square in the Greek Church, or triangular for small hosts. The host employed in Mass or in the monstrance must be larger. Its diameter is

to be 6-9 centimeters. St. Alphonsus teaches that, when a larger host is lacking, a priest can celebrate Mass with a smaller host even for devotion alone, provided, however, that he forestalls scandal of the people.[41] Small hosts intended for the Communion of the laity are not to be excessively small and thin; their diameter is to be about 3 centimeters. For if these hosts are excessively small and thin, the distribution of Communion becomes very difficult and can scarcely be performed without inconveniences. Rubricists are accustomed to express the qualities of the host to be consecrated in these verses:

White, wheaten and thin, not large, and round, May Christ's host be unleavened and not broken.

Note. Let the priest diligently take care that those who bake hosts be persons excelling in diligence, piety, and fidelity, and that they employ pure wheat and pure water.

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[30] There are, however, certain Eastern Christians, such as the Armenians and Maronites, who use unleavened bread. Cf. Sacred Congregation for the Propagation of the Faith, May 20, 1838.

[31] St. Alphonsus (*Theol. mor.*, l. 6, n. 203) thinks that a Latin priest traveling through Greece can celebrate either with leavened or with unleavened bread. This opinion can scarcely be maintained now, since the Code of Canon Law, c. 816, establishes: "In the celebration of Mass a priest must employ unleavened or leavened bread according to his own rite, wherever he celebrates Mass."

[32] *Loc. cit.*

[33] Thus also Cappello, *De sacram.*, n. 281.

[34] Constitution *Tradita*, September 14, 1912; cf. Code of Canon Law, c. 851.

[35] *Loc. cit.*

[36] Cf. Sacred Congregation for the Propagation of the Faith, March 27, 1916, nn. 11 and 12 (*Acta Apostolicae Sedis* VIII, 106); Code of Canon Law, c. 866.

[37] *Decr. auth.*, n. 2650.

[38] *Ibid.*, n. 3621.

[39] Cf. Benedict XIV, Constitution *Etsi pastoralis*, May 26, 1742, § 6, n. 4.

[40] *Theol. mor.*, l. 6, n. 204.

[41] *Ibid.*, n. 205.

§ 2. On The Valid And Licit Matter Of Wine

172. 1. Valid matter of wine. For validly consecrating wine, it is altogether required that it be uncorrupted wine from the vine, whether white, red, or mixed from both, that is, liquid expressed from mature grapes of the vine.

Therefore, every other liquid is invalid matter, for example, beer; distilled wine, such as Cognac; artificial wine; wine made from apples and other fruits; and so forth. The following are also invalid matter: a) grapes, because they are not a drink; b) wine made into vinegar or corrupted in another manner, for example, by the infusion of a great quantity of water; c) wine from which all alcohol has been removed by art,[42] because alcohol appears to pertain to the essence of natural wine.

On May 7, 1879, the Holy Office, to the question, "Whether it is lawful to celebrate with wine made from raisins or dried grapes?"[43] replied: "It is lawful, provided that the liquid is recognized from its color and taste to be true wine." Missionaries, therefore, living in regions where fresh grapes cannot be had and wine cannot easily be brought from distant regions can readily procure for themselves wine from these dried grapes, provided, however, that they wait for the fermentation of the must.

[42] German: *Alkoholfreier Wein* (alcohol-free wine).

[43] German: *Rosinen*; French: *raisins secs*; Italian: *zibibbo* (*Collectan. de Prop. Fide*, n. 1518). The following method can be used: Upon a quantity of dried grapes is poured the same or a slightly greater quantity of pure water. The grapes, absorbing the water, swell; after one day they are pressed. The juice thus obtained is must, which begins to ferment shortly afterward, and after some time true and pure wine is obtained.

173. 2. Licit matter of wine. For licitly consecrating wine, it is required that the wine be:

a) **Fermented.**

Therefore, must, or juice recently expressed from mature grapes, is indeed valid matter but illicit, because it does not appear to be perfect wine and has various non-consecrable substances mixed with it. Liquid expressed from unripe grapes (*agresto*, *verjus*) is not valid matter because it is not yet wine.[44]

b) **Pure.**

Therefore, it is illicit to employ wine which is cloudy, or to which aromatics, colors, or sugar have been added. The Holy Office permitted, on July 30, 1890, that wine spirit[45] be mixed with weak wine, provided, however, that: 1. this spirit is extracted from the fruit of the vine, not from apples or sugar; 2. the entire quantity of spirit now contained in the wine thus mixed does not exceed 12 percent; 3. the admixture is made while the wine is still very recent, so that one substance can be produced from the wine and spirit through fermentation. Indeed, the same Holy Office on August 5, 1896, permitted that the alcoholic spirit could be increased up to 17-18 percent if this is necessary for preserving very generous and extraordinarily sweet wines.[46]

c) **Not yet turning sour nor frozen.**

For wine turning sour is not indeed totally corrupted, but it is already beginning to be corrupted. Frozen wine is doubtful matter for consecration; therefore, it must first be liquefied before it can licitly be consecrated or, after consecration, before it can licitly be consumed.[47]

d) **A small quantity of natural water is to be mixed with the wine to be consecrated.**

Thus it is required by a grave precept of the Church.[48] The reasons for which the Church has prescribed the admixture of water are: 1. the example of Christ, who is believed to have consecrated with wine mixed with water; 2. the signification both of the Blood and water flowing from the side of the dead Christ and of the union between Christ and the faithful. For Christ, who is God, is signified by the wine, while the faithful, who are creatures, are signified by the water. All theologians teach that this precept is so grave that in no case can a priest consecrate wine without the admixture of water; and if a priest has forgotten to pour water into the wine, he must supply this defect before the consecration, but not afterward.

The water to be mixed must be natural and potable, even if it is acidulous, alkaline, or carbonated.[49]

The quantity of water to be mixed must be **very small**, because according to the more probable opinion this water must be converted into wine and thus consecrated into the Blood of Christ.[50] This would be impossible if a notable quantity of water were mixed with the wine. Therefore, let the priest take care not to mix more than a few drops, from 3 to 10, with the wine. In some regions water is poured in with the aid of a small spoon, lest the quantity of water be excessive. Such a usage can be tolerated.[51] But if the quantity of added water equaled one third of the wine to be consecrated, the matter would be very doubtful and it would not be lawful to consecrate it. Hence, some portion of wine would then have to be added.

According to the Latin rite, the water is to be mixed with the wine when the priest is already at the altar; therefore, it would not be lawful to pour water into the wine in the sacristy, and still less in the cellar. According to the Eastern rite, however, water is poured into the wine at the beginning of the liturgy and then again, immediately before Communion, water which is hot. This ceremony, approved by Benedict XIV,[52] signifies that the divinity did not depart from Christ's dead Body while Blood and water flowed from His side.

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[44] Cf. Roman Missal, *De defect. Miss.*, tit. 4, n. 2; St. Thomas, *S. theol.* 3, q. 74, a. 5 ad 3.

[45] German: *Weingeist* (wine spirit).

[46] Cf. Denz., nn. 1937 sqq.

[47] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 207, q. 2; Billuart, *De euch.*, diss. 3, a. 1.

[48] Cf. Council of Trent, sess. 22, c. 7 and can. 9 on the sacrifice of the Mass (Denz., nn. 945 and 956); Code of Canon Law, c. 814.

[49] German: *Natürliches Mineralwasser* (natural mineral water). Holy Office, August 11, 1904 (*Analect. eccl.* XII [1904], 370).

[50] Cf. *S. theol.* 3, q. 74, a. 8, and Roman Catechism, p. 2, c. 4, q. 16.

[51] Sacred Congregation of Rites, February 6, 1858 (*Decr. auth.*, n. 3064 ad 4).

[52] Constitution *Etsi pastoralis*, § 6, n. 2.

Article II. The Proximate Matter of the Eucharist

174. The proximate matter of every sacrament is the application of the remote matter, as has already often been said. Therefore, since the remote matter of the Eucharist is bread and wine, its proximate matter is the application of the bread and wine, which is made in the consecration. By some authors, however, the species of the Eucharist, insofar as they contain the Body and Blood of Christ, are called the proximate matter of the Eucharist. Here proximate matter is taken in the first sense.

175. 1. For valid consecration it is required: a) that the matter to be consecrated be physically present; b) that it be determined.

a) **The physical presence of the matter** is had whenever, according to the common estimation of men, the words "here" and "this" can rightly be applied. Hence all the hosts contained in a ciborium are validly consecrated, although they cannot all be seen; likewise, the consecration of hosts in a covered ciborium placed before the priest is valid; all newly ordained priests validly consecrate with the bishop, even if they stand rather far from the altar and see neither the bread nor the chalice. Whether the consecration of a host hidden beneath the corporal or at a corner of the altar, or of a ciborium placed upon the bench of the candlesticks, is valid must be determined not from its physical presence alone, but from the prior intention of the celebrating priest. For such hosts are more present to the celebrating priest than the host to be consecrated is present to newly ordained priests in their first Mass. Since these cases occur not rarely, it is preferable that every priest once and for all form a clear intention of consecrating according to the manner to be explained below in n. 177.

b) **The determination of the matter to be consecrated** by the actual or virtual intention of the consecrating priest is required for the validity of the sacrament. The reason is that every action must have a determinate terminus, and moreover the particles "here" and "this" require a special determination. In practice it is to be counseled that this determination not be exaggerated too much **with regard to number**; for example, let the priest not determine the number of hosts by saying or thinking: I wish to consecrate twenty hosts, or one host. For if there were then in fact not twenty but twenty-two hosts, or if there were not one but

two, it is doubtful whether and which ones would be consecrated. Therefore, let the priest simply propose to himself to consecrate the consecrable matter placed before him.

Theologians dispute whether droplets of wine adhering to the sides of the chalice, within or without, are consecrated. Droplets adhering to the **outside** of the chalice are not considered consecrated, because no priest is presumed to have such an intention and to act so irreverently against the Most Holy Sacrament. There is not, however, sufficient reason for doubting the consecration of the droplets adhering **within**. For they are certainly present and can licitly be consecrated. It seems better if the priest forms the intention of consecrating whatever is consecrable in the chalice, nor is there any reason why he should restrict his intention to the **continuous** quantity of wine. For it easily happens that, because of the movement of the chalice, droplets adhere to its inner side. But if he did not wish to consecrate these droplets, he would have to wipe them away carefully immediately before the consecration, which would be quite burdensome.

It likewise does not appear why small crumbs which, having been separated from the hosts during the consecration, are found in the ciborium should not be consecrated, unless the priest has formed a special intention concerning them. Some theologians counsel excluding such crumbs from the consecration in order to avoid irreverence; but other authors counsel rather that whatever consecrable matter is found in the ciborium be consecrated, because otherwise unconsecrated crumbs are mixed with consecrated crumbs, namely, with those which later fall from the consecrated hosts through friction. The second opinion pleases us more, because according to the first manner of acting that irreverent mingling of unconsecrated and consecrated crumbs is always present; but in the second manner no irreverence occurs if the priest diligently gathers and consumes all the crumbs in the purification of the ciborium.

176. 2. For licit consecration it is required that the consecrable matter be: a) upon an altar, whether consecrated or portable; b) upon the corporal;[53] c) held in the hands of the priest or contained in an open vessel; d) that the consecration take place in Mass and that the thing to be consecrated be upon the altar at least before the offertory.[54]

a) If the altar is **consecrated**, let the priest take care that all the consecrable matter be upon the corporal; but if it is a **portable altar**, it is not enough that the matter to be consecrated be found upon the corporal, but it is also required that it be upon the **sacred stone**. Nevertheless, if because of the narrowness of this stone the chalice and ciborium cannot stand upon it at the same time, it seems sufficient that at least some **part of the base** be upon the stone during the consecration. Yet stones so narrow are to be rejected insofar as this is possible.

b) To celebrate Mass without a corporal (or upon a corporal not blessed) cannot be excused from grave sin unless a grave necessity of celebrating urges.[55]

c) Both at the offertory and at the consecration, the lid of the ciborium is to be removed. This binds under venial sin. The host which pertains to the essence of the Mass, as likewise the chalice in which the wine to be consecrated is contained, must be held by the priest in his hands during the consecration.

d) Consecration can never be licitly performed outside Mass. Likewise, it is absolutely never lawful to consecrate one species alone. Thus all teach, and expressly the Code of Canon Law, c. 817, which calls such a manner of acting *nefas*. Indeed, a consecration performed **outside Mass** is probably invalid. For "the priest, speaking in the person of Christ, confects this sacrament."[56] But a priest acts neither in the person of Christ nor according to the intention of the Church when he wishes to consecrate outside Mass. For the power of consecrating is nothing other than the power of celebrating Mass. Hence, in the ordination of a priest it is said:

"Receive the power to offer sacrifice." Since this is so, the consecration would probably be invalid if, for example, a wicked priest pronounced the words of consecration over loaves kept in a baker's shop,[57] unless, however, he wished such a most criminal consecration to be called a Mass.

Hosts to be consecrated (in a ciborium) are to be placed upon the corporal at the beginning of Mass or at least **before the offertory**. For a reasonable cause, hosts brought in a ciborium after the offertory can licitly be consecrated, provided that their oblation is then supplied mentally. A greater cause is required in order that hosts brought after the preface but before the Canon may be consecrated. But a grave cause is required (for example, if otherwise a great multitude of the faithful would have to depart without the Communion requested, or would have to wait too long) in order that it be lawful to consecrate hosts brought after the Canon has already begun. The reason for this precept is deduced from the order of the Mass, in which the liturgical act of oblation, which begins at the offertory and ends with the secret prayers, is distinguished from the act of consecration, which begins with the preface. Hence this order is inverted if particles to be consecrated are brought after the offertory has already been made; but a greater inversion is present if the liturgical act of consecration has already begun in the preface.[58] Yet if only one person is to communicate, a particle from the priest's host can be given to him. **It is never lawful to consecrate particles after the consecration of the Mass has already been completed**, for this would be sacrilegiously to repeat an essential part of the Mass.

Consecrated hosts must remain upon the altar until after the Communion of the celebrating priest.[59]

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[53] Cf. Roman Missal, *De defect. Miss.*, tit. 10.

[54] Cf. Roman Missal, *Ritus celebrandi Missam*, tit. 7, n. 3.

[55] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 386.

[56] Eugene IV, Decree for the Armenians (Denz., n. 698).

[57] St. Alphonsus, *Theol. mor.*, l. 6, n. 196, dub. 3. St. Thomas cannot be alleged as certainly contrary to this opinion, because he does not speak of the valid consecration of one species except in Mass.

[58] Cf. St. Alphonsus, ibid., n. 217; Noldin, *De sacr.*, n. 115.

[59] Cf. below, n. 230.

177. Scholion. Whether the consecration is valid if, through forgetfulness or inadvertence, the consecrating priest has not observed some grave liturgical precept. This case occurs quite frequently; for example, the consecrable matter is not upon the corporal, the chalice has not been duly consecrated, water was not mixed with the wine, etc. Some authors think such a consecration invalid, because the priest is not considered to have the intention of consecrating if the consecration, considered objectively, would be a grave sin. Thus, for example, St. Alphonsus[60] calls common and more probable the opinion which holds that a ciborium left outside the corporal through forgetfulness is not consecrated. The solution to this controversy depends **upon the intention of the priest**. For it seems beyond solid doubt that matter validly consecrable is present in these cases sufficiently physically and determinately. Every difficulty indeed vanishes if the priest once and for all forms a determinate intention, for example, of consecrating nothing except the consecrable matter found upon the corporal or in the chalice; or, what seems better, of consecrating all the consecrable matter which is found upon the altar and which at the beginning of Mass he wished to consecrate. In practice, it is to be counseled that every priest form one or the other intention. But if such an intention has not been formed, then a distinction must be made. Either the consecration pertains **to completing the sacrifice itself**, and then it is valid, notwithstanding any defect whatsoever introduced by ecclesiastical law. For the intention

not to leave the sacrifice mutilated must prevail. Hence, for example, a consecration made in a chalice not consecrated, upon a corporal not blessed, in leavened bread, etc., is valid. Or the consecration of such matter does not pertain to completing the sacrifice, since it is **accidental matter**, for example, a ciborium left outside the corporal through forgetfulness; and then nevertheless it seems to be truly consecrated, insofar as it is consecrable matter and physically present, provided that at the beginning of Mass or at least immediately before Mass the priest had the intention of consecrating this determinate matter. The reason is that all things required for valid consecration seem to be present, namely, consecrable matter physically present and determined, and the intention of the minister, which is by no means considered revoked because some rubric (although in itself gravely binding) was not observed through inculpable inadvertence.[61]

Note. Hosts doubtfully consecrated can never be proposed for adoration or distributed to the people for Communion because of the danger of material idolatry; rather, they are either to be consumed before the ablution, or conditionally consecrated again in another Mass (not in the same Mass).

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[60] Ibid., n. 217.

[61] Thus also Göpfert, *Moraltheol.*[7] III, 54; Ballerini in notes to Gury, *Comp. theol. mor.* II, n. 283; and *American Ecclesiastical Review* (1912), 660-674, where this question is treated with a lively pen.

Article III. The Form of the Eucharist

178. The form of consecration consists in the words which the priest pronounces **in the name of Christ** (assertively and not merely historically); for Eugene IV says:[62] "The form of this sacrament is the words of the Savior by which He effected this sacrament; for the priest, speaking in the person of Christ, effects this sacrament."

The **form in the consecration of the bread** is: "For this is My Body." All these words are essential except the word "for," the omission of which would constitute a venial sin. This form is taken from the Gospel of St. Matthew.[63]

The **form in the consecration of the wine** is: "For this is the chalice of My Blood, of the new and eternal testament, the mystery of faith, which shall be shed for you and for many unto the remission of sins."[64] These words indeed are taken from diverse places of Sacred Scripture, except the words "eternal" and "the mystery of faith," which must be said to have come from Christ to the Church. In this form the essential words are: "This is the chalice of My Blood," or, "This is My Blood." Concerning the word "for," the same holds as was said above concerning the consecration of the bread. The remaining words must indeed be added under grave obligation, but they do not seem to pertain to the essence. Thus the common opinion, which is not opposed by the precept of the Church that, if a priest fails after pronouncing the words, "For this is the chalice of My Blood," another priest must repeat the whole form. For if the celebrating priest suddenly fails, it is morally impossible to know which words of the form he duly pronounced. Therefore the Church, lest the sacrifice of the Mass remain incomplete, chooses the safer course. Nor does St. Thomas in fact contradict this opinion, because his words[65] can and should be understood in a correct sense.[66]

If anyone through negligence or bad usage were to pronounce "oc, ic, es, copus, calis, meus, sanguis," he would indeed sin, but he would consecrate validly, because such mutations are accidental, at least if the intention of the priest was right. In practice, the words of consecration are to be pronounced with the greatest diligence (yet in a human manner), without the least mutation. For the dignity of so great a sacrament requires this.

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[62] Decree for the Armenians (Denz., n. 698).

[63] Chapter 26, verse 26.

[64] The form according to the Greek rite is: "Take and eat: this is My Body, which is broken for you unto the remission of sins"; and: "Drink of this, all of you: for this is My Blood of the New Testament, which is shed for you and for many unto the remission of sins." Thus it is given in the First Provincial Council of Alba Iulia and Făgăraș, p. 78.

[65] *In IV*, dist. 8, q. 2, a. 2, and *S. theol.* 3, q. 78, a. 3.

[66] Cf. Billuart, *De euchar.*, diss. 5, a. 3, § 2, and Cajetan, *Commentary on S. theol.*, q. 78, a. 1.

179. Scholion. On errors concerning the form of the Eucharist. Concerning the form of the Eucharist, the Protestants taught falsely, saying that the words are not so necessary, or that the words ought to be pronounced only for arousing faith. The **schismatic Greeks** say that the Eucharist is confected through the so-called "epiclesis," or in the prayers which, after the words "This is My Body," etc., have been pronounced, they pour forth according to their liturgies in this manner: "We beseech You, Father, that You send Your Spirit upon us and upon these gifts set before You, and make this bread the precious Body of Your Son and that which is in the chalice the precious Blood of Your Son." The **united Greeks**, however, have a form not essentially diverse from the form of the Latin rite. Innocent III[67] (as a private author) judged that Christ consecrated without words and by a blessing alone.[68] Ambrose Catharinus and a few others defended the same opinion. Scotus[69] thought that from the necessity of the sacrament the form must begin with the words "Who, the day before," etc., so that the consecration would be doubtful if these words were omitted. This opinion, as also the practice of the schismatic Greeks, was proscribed by Pius VII on May 8, 1822, who in letters to the Melkite Greek Patriarch of Antioch forbids all persons in every way to hold and defend that "opinion promoted by schismatic men, that the consecration does not consist solely in the words of Christ, which both the Western and Eastern Church use, but that for the perfect and consummated consecration it is necessary to add the formula of prayer which in the Western liturgy precedes and in the Eastern follows." Hence it is false what certain moderns teach; for example, Schell,[70] that the valid form of the Eucharist in the Greek Church is the epiclesis. Rauschen also erred in this matter, saying: "The moment of consecration depends upon the intention of the priest ... the consecration is completed in the epiclesis."[71] For how does something pertain to the essence of the sacrament which can be present or absent? Yet Rauschen himself teaches that the epiclesis can be present or absent in the consecration.[72] Finally, the heretics of the first centuries (Ebionites, Marcionites, Apostolics, etc.), who taught that pure water was to be consecrated in place of wine and therefore were called "Aquarians," also erred concerning the form of the Eucharist.[73]

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[67] *De myst. Missae*, l. 4, c. 6.

[68] Cf. *S. theol.* 3, q. 78, a. 1 ad 1.

[69] *In IV*, dist. 8, q. 2.

[70] *Dogmatik* III (1893), 539.

[71] *Euchar. und Bußsakram.*, § 6, p. 100.

[72] Cf. J. Höller, *Die Epiklese der griech.-orient. Liturgien* (Vienna, 1912), 74-134.

[73] Cf. St. Cyprian, Epistle 63 to Caecilius (*Migne, Patr. lat.* 4, 384 sqq.).

Chapter III. The Effects of the Eucharist

180. The nourishing sacrament of the Eucharist, just as it is the most worthy, so also is the most efficacious. Its efficacy proceeds especially from a threefold source: 1. **from union with Christ**; 2. **from its spiritual nourishment**; 3. **from its special signification of the Passion of Christ**.

1. In the reception of the Eucharist there is had a perfect union with Christ, God and man.

For the Lord says: "He who eats My flesh and drinks My blood abides in Me, and I in him."[74] From this union a great increase of sanctifying grace is spontaneously produced. For just as Christ, coming visibly into this world, conferred grace upon it according to the saying, "Grace and truth came through Jesus Christ,"[75] so, coming sacramentally into man, He effects the life of grace.[76] But since the Eucharist is a sacrament of the living, it already presupposes sanctifying grace in the soul and increases it; accidentally, however, when one has neither consciousness nor affection of a mortal sin committed, or if one approaches Holy Communion both in good faith and with attrition, the Eucharist causes first grace.[77]

[74] John 6:57.

[75] John 1:17.

[76] Cf. *S. theol.* 3, q. 79, a. 1.

[77] Ibid., a. 3.

181. 2. The Eucharist is the most perfect food of the soul; indeed, it is a sacred banquet at which all Christians are invited to recline.

Therefore it produces all the effects of good food and of a most delightful banquet, as the Council of Florence teaches: "Every effect which material food and drink produce with respect to bodily life, by sustaining, increasing, repairing, and delighting, this sacrament produces with respect to spiritual life."[78] Hence the Eucharist:

a) **Sustains spiritual life**, insofar as it guards against mortal and venial sins. For just as good bodily food guards against disease, so the Eucharistic food strengthens the soul against all temptations to sin, and especially against dangers to chastity; for it is that wine which "brings forth virgins."[79] The tinder of sin is not indeed diminished directly, but indirectly through charity greatly increased by the Eucharist.[80] It is established from the experience of all confessors that no more efficacious remedy against temptations is given than the frequent and devout reception of the Eucharist.

b) **Together with grace, it increases the fervor of all the virtues.** Through this sacrament, insofar as concerns its own power, not only is the habit of grace and virtue increased, but it is also excited into act according to the saying, "The charity of Christ urges us."[81] Therefore, not rarely, through the Eucharist devoutly received the virtues are exercised in a truly heroic degree.

[78] Decree for the Armenians (Denz., n. 698).

[79] Cf. Zechariah 9:17.

[80] Cf. *S. theol.* 3, q. 79, a. 6 ad 3.

[81] 2 Corinthians 5:14.

182. c) It remits venial faults and temporal punishments. Hence the Council of Trent[82] teaches that the Eucharist is "an antidote by which we may be freed from daily faults and preserved from mortal sins." The reason why the Eucharist destroys venial sins is the increased fervor of charity, and this not only *ex opere operantis*, but also *ex opere operato*, that is, by the power of the sacrament itself. For venial sin and the fervor of charity destroy one another. The more venial sins are committed, the more the fervor of charity is diminished. But the more the fervor of charity is increased, the more venial sins are taken away. Concerning the remission

of **temporal punishment**, the Angelic Doctor teaches:[83] The Eucharist "has an effect in two ways: in one way directly from the power of the sacrament; in another way, as it were, from a certain concomitance.... From the power of the sacrament, indeed, it directly has that effect for which it was instituted. But it was not instituted for making satisfaction, but for nourishing spiritually through union with Christ and with His members, just as nourishment is united to the one nourished. But because this unity is made through charity, from the fervor of which one obtains remission not only of fault but also of punishment, it follows from this that, through a certain concomitance with the principal effect, a man obtains remission of punishment, not indeed of the whole, but according to the measure of his devotion and fervor." From these things it is understood why Holy Communion is the best disposition for gaining a plenary indulgence, and why the Church is accustomed to prescribe Holy Communion as a condition required for gaining an indulgence.

d) **It delights**, because it increases charity, unites with Christ, and repairs both fault and punishments, as has been explained. Hence it is deservedly said in the Office of Corpus Christi: "You have given them bread from heaven, having in itself all delight"; and many saints after Communion were rapt into ecstasy.

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[82] Session 13, c. 2 (Denz., n. 875).

[83] *Loc. cit.*, a. 5.

183. 3. The Eucharist specially signifies the Passion of Christ.

For the sacrifice of the Mass, in which the sacrament is consecrated, is an unbloody renewal of the sacrifice of the Cross. Because of this close conjunction with the Passion of Christ, the Eucharist is a precious pledge of future glory and a strong shield against diabolical temptations. The first effect is produced because Christ through His Passion opened for us the approach to eternal life. The Eucharist is prefigured by that miraculous food which Elijah "ate and drank, and walked in the strength of that food forty days and forty nights, unto the mount of God, Horeb."[84] But since the power of the devil was broken through the Passion of Christ, the Eucharist makes us strong also in the struggle with the demon. Hence St. John Chrysostom says: "As lions breathing fire, so we depart from that table, having been made terrible to the devil."[85]

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[84] 3 Kings 19:8.

[85] Homily 46 (45), n. 3. Cf. *S. theol.* 3, q. 79, a. 6.

184. Scholion. On the human cooperation necessary for obtaining the Eucharistic effects. The admirable effects of the Eucharist depend in part upon the cooperation of the recipient. For just as food does not produce all its effects unless it is well digested by the nutritive power, so also the Eucharistic food does not exert its whole efficacy if the tepidity, negligence, and distractions of man stand in the way. Hence it happens that men, even after innumerable Holy Communions received, still remain very imperfect.

St. Thomas notes,[86] however, that past venial sins, whose affection is no longer retained by a man, in no way impede the effect of the Eucharist, since it takes them away, as has been said. Therefore, only venial sins actually pleasing impede the fervor of charity and the refreshment of spiritual sweetness arising from Holy Communion.

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[86] *Loc. cit.*, a. 8.

185. You ask: 1. At what moment does the sacrament of the Eucharist produce its effect *ex opere operato*? The response which seems to us alone true says: At that moment at which true eating or reception is had. For this sacrament was instituted after the manner of food and drink. But eating or reception is had not at

that moment at which the Eucharistic species are placed in the mouth, but when they pass into the stomach. Therefore, if the species are dissolved in the mouth or removed from the mouth, the effect of the Eucharist is not produced. Likewise, the Eucharistic species do not operate *ex opere operato* for as long as they remain undissolved, as Cajetan with certain others wished, but at the moment at which they arrive in the stomach. Otherwise, he who, because of a weaker digestive power, preserves the undissolved species longer in the stomach, or who received a great quantity of consecrated hosts or wine, would be in a better condition than one who quickly digests small quantities of the species. These things indeed seem absurd. For as long as the Eucharistic species are not dissolved, the Body of Christ is present, and therefore it is highly expedient that a man, after receiving the Eucharist, elicit fervent acts of charity.

2. Whether the Eucharist produces its effects if a host is transferred artificially through a tube into the stomach in a case in which a man cannot receive it in the natural manner? The affirmative opinion seems probable, because even then the Eucharist is received after the manner of food, although not after the manner of eating. The Holy Office, however, on January 27, 1886, is said to have prohibited such a manner of administering it, even though it concerns Viaticum, because the sacrament can then be exposed in some measure to irreverence.[87]

The Angelic Doctor treats broadly, profoundly, and clearly of the effects of the Eucharist in *S. theol.* 3, throughout question 79, from which we have briefly drawn the things said above.

[87] Cf. Noldin, *De sacr.*, n. 100, and *Linzer Quartalschrift* (1915), 128 sqq.

Chapter IV. The Subject of the Eucharist

Since this chapter contains such ample matter, we divide it into four articles: 1. on the person of the subject; 2. on the dispositions required; 3. on the obligation of receiving the Eucharist; 4. on frequent Communion.

Article I. The Person of the Subject Himself

186. Principle. The subject capable of receiving the Eucharist with fruit is every living baptized human being, provided that he does not voluntarily place an obstacle to grace through mortal sin.

It is said, 1. **every living baptized human being**, for a dead man cannot receive any sacrament. Hence several Councils[88] prohibited the dead from receiving the Eucharist in the mouth and being buried thus. But without prior valid Baptism no sacrament can be received, as is evident from what was said above.

It is said, 2. **provided that a man does not voluntarily place an obstacle to grace through mortal sin**. For the Eucharist is a sacrament of the living and, according to what was said above in n. 42, can never revive if it was received with consciousness of mortal sin or even without attrition for it.

From what has been said, it follows that the following are capable of the Eucharist:

[88] Carthage, A.D. 397, can. 6 (*Mansi* 3, 881); Hippo, A.D. 393, can. 4; Council in Trullo, A.D. 692, can. 83.

187. 1. Infants.

Because of the words of Christ expressed generally and without limitation: "Unless you eat the flesh of the Son of Man and drink His Blood, you shall not have life in you,"[89] Communion was given to infants in the Latin Church until the twelfth century and is given in the Eastern Church even to the present day; hence they successively receive three sacraments, namely, Baptism, Confirmation, and the Eucharist. In the thirteenth

century St. Thomas[90] taught simply that the Eucharist was not to be given to children before they begin to have some use of reason, so that they can conceive devotion toward this sacrament. The same was established by the Fourth Lateran Council,[91] the Council of Trent,[92] and the Code of Canon Law, c. 854, §§ 1 and 2: "The Eucharist is not to be administered to children who, because of the weakness of their age, do not yet have knowledge and taste of this sacrament; in danger of death, in order that the Most Holy Eucharist may and ought to be administered to children, it is sufficient that they know how to distinguish the Body of Christ from ordinary food and reverently adore It." The age of those to be admitted to first Eucharistic Communion will be discussed again below in n. 211. But the words of Christ cited above are customarily explained either of the desire for sacramental Communion or of spiritual communion with the Mystical Body of Christ.[93]

[89] John 6:54.

[90] *S. theol.* 3, q. 80, a. 9 ad 3.

[91] Can. 21 (Denz., n. 437).

[92] Session 13, can. 9 on the Eucharist (Denz., n. 891).

[93] Cf. *S. theol.*, loc. cit., and q. 73, a. 3.

188. 2. The insane.

Nevertheless, according to the discipline in force, Communion is not given to those who have been **perpetually insane**, because they are equated with infants[94] and because otherwise the sacrament is exposed to the danger of irreverence, while sufficient provision is made for their salvation through Baptism and conditional absolution. But to those who have not been perpetually insane, the Eucharist can be given at the point of death, provided that an interpretative intention may be presumed from their previous life and the sacrament is not exposed to irreverence. But in order to test whether such an insane person can communicate without irreverence, an unconsecrated host should first be given to him; if he swallows it properly, a consecrated host can also be given to him. Concerning this matter St. Thomas[95] teaches: "If previously, when [the insane] were in possession of their mind, devotion toward this sacrament appeared in them, this sacrament ought to be given to them at the point of death, unless perhaps there is fear of the danger of vomiting or spitting it out." Moreover, it happens not rarely that those who were insane during life have lucid intervals as death approaches and thus are able to receive Viaticum. In practice, it is sometimes rather difficult to discern whether a man is perfectly insane or rather feeble-minded. Such a man can then receive Viaticum if this can be done without grave danger of irreverence. But outside the point of death, it is better to deny him Communion.

Dying persons deprived of their senses or delirious persons are nearly equated with the insane; they can and ought to receive Viaticum if this is possible without irreverence. To test this possibility, it is useful first to give them a small unconsecrated particle, as was just said concerning the insane. Moreover, it is necessary that from their previous Christian life an intention here and now to receive Viaticum can rightly be presumed in them. Hence a dying person deprived of his senses who previously led a life that was scarcely Christian can indeed be absolved conditionally and receive Extreme Unction; but it is better that Communion not be given to him.

[94] Code of Canon Law, c. 88, § 3.

[95] *S. theol.*, loc. cit., and q. 80, a. 9.

189. 3. The feeble-minded,[96] old persons becoming childlike again, deaf-mutes, etc., can and ought to receive the Eucharist at the point of death, provided that there is no danger of irreverence. Indeed, it is preferable that they communicate sometimes during the year, provided that they can in some measure distinguish the Eucharistic Bread from ordinary bread.

Certain ancient and modern authors speak more harshly concerning **deaf-mutes**. Certainly, if they have no use of reason at all, they are to be treated like the perpetually insane, concerning whom it was said above; but now they are customarily instructed in special schools and arrive at sufficient instruction, and therefore they can receive the Eucharist like other men.

Scholion. On those who labor under a continual cough or vomiting. Such sick persons are excluded from Communion only if there is a grave danger of vomiting the Communion received. Whether such a danger is truly present can be judged if the vomiting has already ceased for some hours or if an unconsecrated particle previously given was not vomited. If a serious doubt remains, a consecrated host is not to be given to such a sick person. Otherwise, irreverence would easily follow.

[96] German: *Geistesschwache* (the mentally weak).

Article II. The Dispositions Required for Receiving the Eucharist

190. Note. A twofold reception of the Eucharist is customarily distinguished: one sacramental, the other spiritual. **Sacramental reception** is the eating or drinking of the Eucharistic species. **Spiritual reception** is the desire for sacramental reception when the latter is in fact impossible because of reasons standing in the way. All ascetical authors earnestly commend the exercise of spiritual Communion as very fruitful *ex opere operantis* through charity. This exercise is fittingly performed by eliciting the following acts: 1. an act of living faith in the real presence of Christ in the Eucharist; 2. fervent thanksgiving for the institution of this sacrament; 3. contrition for all sins committed; 4. an ardent desire for union with the Eucharistic Christ. In what follows we shall no longer speak of spiritual Communion, but of sacramental Communion, in the reception of which dispositions both of soul and of body are required; these are to be treated separately.

§ 1. The Disposition of the Soul

191. Requirements. For receiving the Eucharist with fruit there are required: 1. freedom from two censures; 2. freedom from mortal sins; 3. actual devotion.

1. **Freedom from two censures**, namely, from excommunication (can. 2260, § 1) and personal interdict (can. 2275, n. 2), is required before Communion, as will be explained more fully in the treatise on censures.
2. **Freedom from mortal sin** is altogether necessary, since the Eucharist is a sacrament of the living, and spiritual food, such as Communion, is not given to a corpse, that is, to a sinner spiritually dead. But freedom from venial sin, or rather from affection for venial sin, is not indeed altogether required for the efficacy of this sacrament, but it is very useful for receiving more abundant fruits.

The Council of Trent[97] says: "If it is not fitting for anyone to approach any sacred functions except holily, certainly the more the holiness and divinity of this heavenly sacrament are known to a Christian man, the more diligently must he beware lest he approach to receive it without great reverence and holiness, especially since we read those words full of terror in the Apostle: 'He who eats and drinks unworthily eats and drinks

judgment to himself, not discerning the Body of the Lord.' Therefore, the precept, 'Let a man prove himself,' is to be recalled to the memory of one wishing to communicate. But ecclesiastical custom declares that this proving is necessary, so that no one conscious to himself of mortal sin, however contrite he may seem to himself, ought to approach the Holy Eucharist without prior sacramental confession. This holy Synod has decreed that this is perpetually to be observed by all Christians, even by those priests upon whom it is incumbent by office to celebrate, provided that access to a confessor is not lacking to them; but if, necessity urging, a priest has celebrated without prior confession, let him confess as soon as possible." From this law the following two principles are deduced:

[97] Session 13, c. 7 on the Eucharist (Denz., n. 880); cf. Code of Canon Law, cc. 807 and 856.

192. Principle 1. For worthily receiving Holy Communion, contrition does not suffice, but confession is required if anyone is conscious of a mortal sin committed and not yet remitted by absolution, unless, however, a) a confessor is lacking, and b) at the same time the necessity of communicating is urgent.

Theologians dispute whether this precept of prior confession is of divine law or ecclesiastical law. St. Alphonsus says: "The common and true opinion ... teaches that this precept is **divine**,"[98] because by the precept of Christ a proving is to precede Communion, and this proving, as the Council of Trent declares, is sacramental confession. Moreover, already in the most ancient times (for example, those of St. Cyprian), confession was prescribed before Holy Communion.[99] Other authors, such as John Medina and, among moderns, Noldin,[100] Génicot,[101] etc., think that this precept is indeed grave but was introduced by the Church to guard against many sacrilegious Communions. Génicot endeavors to demonstrate that such was the mind of the Council of Trent from the history of the Council written by Cardinal Pallavicini and from the acts edited by Theiner.[102] For practice this controversy is of little importance, since, against Cajetan[103] and certain others, all theologians now teach that there exists a strict and grave precept of confessing mortal sins before receiving Communion. "But if anyone shall presume to teach, preach, or pertinaciously assert the contrary, or even to defend it by public disputation, let him be excommunicated by that very fact."[104] This excommunication indeed is no longer in force in our days, since it was not renewed in the Code of Canon Law. That this precept is of **divine law** can be proved indirectly in two ways. For if it were of ecclesiastical law, a) the Pope could dispense from it; b) contrary custom could abolish it. But both are most commonly denied. Therefore, that precept pertains to divine law.

There is no grave obligation of prior confession unless the sin was certainly committed and is certainly mortal.[105] The reason is that otherwise a man is not, in the strict sense, conscious to himself of mortal sin, since consciousness is certain knowledge. Nevertheless, unless it concerns a very scrupulous man, even in the case of a doubtfully mortal and doubtfully committed sin, confession is greatly to be counseled, lest the Eucharist be deprived of its effect. But if anyone, after confession duly performed, remembers an omitted mortal sin, he is not bound to confess again before Communion; yet he must accuse himself of it in the following confession. The reason is that a sin of this kind is not indeed remitted because of **contrition alone**, which the Council of Trent declared to be insufficient, but through sacramental absolution, which indirectly remitted this sin also. Nevertheless, if this omitted sin can easily be accused **before Communion**, it is better to do this.

[98] *Theol. mor.*, l. 6, n. 256.

[99] Cf. Schanz, *Die Lehre von den Sakramenten* I, § 33.

[100] *De sacr.*, n. 140.

[101] *Theol. mor.* II, n. 192.

[102] *Acta gen.* I, 489.

[103] *Commentary on S. theol.* 3, q. 80, a. 4.

[104] Council of Trent, sess. 13, can. 11 on the Eucharist (Denz., n. 893).

[105] Cf. below, on doubtful sins to be confessed, n. 375.

193. The precept of prior confession does not bind, provided that these two conditions are present cumulatively, that is, at the same time: the lack of a confessor and the necessity of Communion.

a) **The lack of a confessor** signifies the absence of any suitable confessor. Therefore, access to a confessor is not considered lacking if only the customary confessor or another to whom confession could be made more easily is absent. Hence confession must be made before Communion whenever anyone can confess without a **grave inconvenience extrinsic to confession itself**.[106] Such an inconvenience would be present, for example, if someone had to make a journey of two hours in order to make his confession; if scandal for the people would arise from the confession, as if a pastor already prepared for Mass had to confess before others, who would therefore conceive sinister suspicions; if the confessor would learn from the confession the name of an accomplice; if the pastor had to confess a very shameful sin to his young vicar and consequently rightly feared that the vicar would experience grave temptations or violate the seal,[107] etc. But no inconvenience intrinsic to confession, such as great and even extraordinary shame, excuses from confession.

Theologians disputed whether one who has a **reserved sin**, when a confessor endowed with the faculty is lacking, is bound to confess to a simple confessor before Communion; but today this controversy is ended. For in more urgent cases any confessor can directly absolve from all reserved sins, as will be said more fully below in n. 425 sqq.

b) **The necessity of Communion** is present, for example, if Viaticum must be administered to a dying person by a priest burdened with sins, who must first celebrate in order to obtain the Eucharistic species; if a priest cannot omit Mass without grave infamy or scandal of the people; if someone already standing at the Communion rail remembers a mortal sin and cannot withdraw without infamy, etc. But there is not sufficient necessity of communicating (with contrition alone elicited) in order to satisfy the Easter precept. For the Easter Communion can then be deferred. There are nevertheless several authors who think that even such necessity is sufficient.[108] Likewise, there is not sufficient necessity for celebrating Mass without prior confession of mortal sin, even if he himself or even several others must then be without Mass on a Sunday or feast day. If, however, infamy for the priest would arise in this case, which indeed easily happens, or if the priest is bound by office to celebrate Mass, sufficient necessity is present.

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[106] Cf. below, n. 380.

[107] Thus also Génicot, *Cas. consc.*, *De subi. euch.*, cas. 2.

[108] Cf. Marc, *Instit. mor.* II, n. 1550.

194. Principle 2. A priest who, with a confessor thus lacking and necessity compelling, has celebrated Mass with contrition alone must confess as soon as possible, that is, within three days.

The precept of confessing as soon as possible does not bind the laity, but priests. For the Council of Trent and the Code of Canon Law, c. 807, name priests alone, and the law is not to be extended beyond its proper terms.

The reason for this law is that the necessity of communicating without confession can occur more frequently in priests than in the laity. But the Church wishes to guard against priests celebrating repeatedly without confession under the pretext of necessity. "The command of Trent made to a priest sacrificing from necessity while in mortal sin, to confess as soon as possible, is a counsel, not a precept."[109] This proposition (38) was condemned by Alexander VII, and therefore confession to be made as soon as possible is truly commanded under grave obligation for those priests who celebrated in necessity and with a confessor lacking. The obligation of confessing as soon as possible is to be understood in such a way that confession is made at least **within three days**, since the term "as soon as possible" in laws is customarily taken morally for a space of three days. By the same Alexander VII proposition (39) was condemned: "That phrase 'as soon as possible' is understood as when the priest shall confess in his own time."[110] This obligation of confessing is urgent even if the priest is not going to celebrate within this period of three days or for a longer time. Accidentally, a priest is bound to confession on the same or the following day if he foresees that in the subsequent days no opportunity of confessing will be present, and if he is going to celebrate Mass on the following day. But if confession is impossible within three days, for example, in mission territories, the priest can celebrate repeatedly until he can confess.

Theologians commonly teach that this Tridentine precept of confessing as soon as possible does not exist for priests sacrilegiously celebrating in the state of mortal sin, if the necessity of celebrating is absent or access to a confessor is present, because the Council wished to guard against priests deferring confession under the pretext of the necessity of celebrating. But those priests who knowingly celebrate sacrilegiously do not care much about making confession as soon as possible, since they neglect it even apart from necessity; nor, nevertheless, are these priests who celebrate sacrilegiously for that reason in a better condition, because they multiply sacrileges.

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[109] Denz., n. 1138.

[110] Denz., n. 1139.

195. 3. Actual devotion is required because of the reverence due to so great a sacrament.[111] Therefore, not only are all distractions to be avoided in Communion itself as impeding more abundant grace, but also diligent preparation and fervent thanksgiving are to be made.

Nothing certain has been determined concerning how long both preparation and thanksgiving ought to last. St. Alphonsus[112] says: "Let thanksgiving be made for at least half an hour"; indeed, he admonishes those who aspire to Christian perfection and are not occupied by other affairs that they ordinarily devote a whole hour to this exercise. Nevertheless, in present times let a confessor ordinarily require no more than that the faithful and priests truly and fervently give thanks for a quarter of an hour after Communion has been received. Except in a case of necessity, however, no briefer time is to be spent. The same holds for preparation for Holy Communion. Alas! That saying, "Things of every day grow cheap," is manifested even in the reception of the Most Holy Eucharist. Therefore, tepidity and negligence are to be fought with all diligence and fortitude in preparation and thanksgiving for Communion. Ascetical writers indicate the individual acts of piety which are to be elicited in the reception of this sacrament.

It remains to be noted that after receiving Communion a man should take care not immediately or shortly afterward to spit or blow his nose, lest perhaps the smallest particles of the sacred species, not yet transmitted into the stomach, be spat out or expelled through the nose.

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[111] Cf. Billuart, *De sacr. in gen.*, diss. 3, a. 4, § 2.

[112] *Praxis confess.*, n. 155.

§ 2. The Disposition of the Body

Requirements. A threefold bodily disposition is required: 1. decency of attire; 2. cleanliness of body; and 3. the natural fast.

196. 1. Decency of attire is required because of the reverence due to so great a sacrament; but it is violated both by deficiency and by disordered luxury. Provided, however, that the attire is clean and not torn, its cheapness is no obstacle.

Hence the poor can approach the sacred table in cheap but clean and intact attire. He commits no small irreverence toward the Eucharist in whose attire disordered and altogether worldly luxury appears. For one ought not to go in the same attire to a dance and to Holy Communion. Therefore, women especially sin who by immodest attire give scandal to sensible members of the faithful. But if the immodesty of the attire is excessive, and especially if it is scandalous, such women, as publicly unworthy, are to be excluded from Holy Communion. It is fitting that gloves be removed before Communion, and likewise that soldiers approaching the sacred table first lay aside their arms. Priests communicating after the manner of laymen must, according to the prescription of the Ritual,[113] put on a stole. This rubric indeed seems to bind also if the priest is going to communicate in sickness.[114] Deacons approaching privately to Holy Communion must wear over the cotta (surplice) a transverse stole, white or of the same color as that of the priest who administers.[115]

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[113] Tit. 4, c. 2, n. 4.

[114] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 276.

[115] *Decr. auth.*, n. 3499, dub. 2; Roman Ritual, tit. 4, c. 2, rubr. 4.

197. 2. Cleanliness of body is likewise required of one receiving this nourishing sacrament. Now the body is considered unclean: a) because of adhering dirt; b) because of illnesses outwardly disfiguring; c) because of the flow of semen or menstrual blood.

a) Adhering and visible dirt is to be washed away before the reception of Communion. Hence one who approaches the sacred table with very dirty hands, face, and head sins; but a priest can or ought only very rarely to repel someone from Communion for this reason.[116]

b) Illnesses outwardly disfiguring, such as a grave inflammation of the eye, eczema, psoriasis, etc., do not of themselves impede the reception of the Eucharist, since they are involuntary, cannot be removed at will, and do not affect the purity of the soul itself. Accidentally, however, namely, if such blemishes strike horror into those who see them and will cease shortly, it is better either to abstain from Communion for a brief time or to receive it privately without outsiders assisting.

c) A **flow of semen which was joined with mortal sin** impedes the reception of Communion on the same day, even if the sin has been erased through a good confession. Thus the rubric of the Missal.[117] Nevertheless, if a just cause exists, it is lawful to receive Communion in this case after the sin has been erased. But a flow of semen which occurs **without any sin**, namely, in an involuntary emission (or in the conjugal act), does not of itself impede the reception of Communion or even the celebration of Mass.[118] The reason is that otherwise a great inconvenience would arise. For according to physiologists, involuntary emissions are sometimes something altogether natural in those who do not exercise carnal intercourse. Similarly, the conjugal act is sometimes necessary and strictly due. But it would be harsh if, because of an unavoidable natural act or one

strictly due, a man were excluded from the table of the Lord. The same is to be said of the flow of menstrual blood and of purification after childbirth in women. Accidentally, it is sometimes counseled in these cases to abstain from Communion or the celebration of Mass because of the disturbance of mind which follows therefrom and the carnal movements still existing. If a flow of semen was joined with **venial sin**, for example, if marital intercourse was had from pleasure and without necessity, or if an emission occurred from a venially evil cause, then it is a venial sin to approach Holy Communion **without necessity**, unless, however, this venial sin was previously erased through confession or in another manner. The reason is that then there are both bodily uncleanness and a stain of the soul, which two things are contrary to the reverence due to so great a sacrament.[119] It belongs to the confessor to judge in individual cases what is more expedient after all the circumstances have been considered. Ancient authors were often excessively severe in this matter.

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[116] Cf. Gasparri, *De S. euchar.*, n. 1132.

[117] *De defect. Missae*, tit. 9, n. 5; cf. *S. theol.* 3, q. 80, a. 7 ad 4.

[118] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 272.

[119] *S. theol.*, loc. cit., a. 7.

198. 3. The natural fast (that is, abstinence from all food and drink from the preceding midnight) is required by a grave precept of the Church for licitly receiving Communion. Thus it is from the most ancient universal custom, which has been confirmed in several Councils[120] and in the Code of Canon Law, c. 858.

Thus the Council of Constance says: "Although Christ instituted and administered to His disciples after supper ... this venerable sacrament, nevertheless, notwithstanding this, the authority of the sacred canons and the laudable and approved custom of the Church has observed and observes that a sacrament of this kind ought not to be confected after supper, nor received by the faithful when they are not fasting, except in a case of sickness or another necessity conceded or admitted by law or by the Church."[121] These things were indeed approved by Martin V through the Bull *In eminentis* in 1418.

Christ, indeed, wishing to conform Himself to the Mosaic law, administered the Eucharist after the celebration of the Pasch; in the times of the Apostles also, an agape was not rarely placed before Holy Communion. But already St. Augustine[122] said that this natural fast was "observed throughout the whole world." The day of the Lord's Supper was nevertheless excepted, on which Communion was received in the evening after supper. The reason why the Church introduced the natural fast before Communion is the reverence due to so great a sacrament. For it is not fitting that the Eucharistic food be received after another food has shortly before filled the stomach. Therefore, it is also fitting that one who communicates shortly after midnight (as is customarily done on the Nativity of the Lord) should have taken no food for some hours. Nothing indeed has been established in this matter by general law, but abstinence for several hours has sometimes been sanctioned by particular law. Thus, for example, Leo XIII[123] granted the privilege of celebrating Mass in the church at Lourdes immediately after midnight under this restriction: that priests then celebrating had abstained from food and drink for four hours beforehand.

This ecclesiastical law of the natural fast altogether **admits no parvity of matter**, either on the part of the time or on the part of the thing consumed; therefore, even the least thing which is consumed after the manner of food and drink violates it and constitutes a grave sin unless there is an excuse, concerning which below. The reason is that it is not so much a precept of approaching the Eucharist fasting as rather of **not approaching** after food or drink has been consumed. But one who communicates after any smallest portion

has been consumed already communicates after food or drink.[124] It is very becoming that even **after Communion** (for at least a quarter of an hour) no food or drink be consumed; nevertheless, a cause excusing and rendering it honorable can easily be present. For example, if a priest immediately after Mass must carry Viaticum to a very distant place, he can licitly take some food or drink beforehand. The old discipline in this matter was much more severe.[125]

For the sake of greater clarity, the extension of this law is first to be explained, and then exemption from it.

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[120] For example, Council of Hippo, A.D. 393, can. 28; Council in Trullo, can. 29; Council of Constance, A.D. 1415, sess. 13.

[121] Denz., n. 626.

[122] Epistle 54 (otherwise 118), n. 8 (*Migne, Patr. lat.* 33, 203).

[123] February 26, 1885.

[124] St. Alphonsus, loc. cit., n. 278.

[125] Cf. *S. theol.* 3, q. 80, a. 8 ad 6.

199. The extension of the law of fasting concerns its object and its time.

The **object** of this law is total abstinence from all food and drink before Communion, as has been said. I say: **before Communion**, for the fast does not seem to be violated if, together with the consecrated species or immediately afterward, water or wine is given which perhaps passes into the stomach before the consecrated species itself. For it is one reception. Thus, according to the liturgical prescription, water is given to a sick person to drink after Communion has been received; wine is given to clerics communicating on the Lord's Supper; but on Good Friday a consecrated host is placed into unconsecrated wine and is consumed together with it.[126]

Three things are required for the notion of food and drink:

a) That the thing consumed be **digestible**. Hence, if someone were to swallow metal, a small stone, a silken or woolen thread, fingernails, etc., he would not violate the natural fast; the contrary is to be said of straw, grass, etc.

b) That the thing come **from outside**, because that which comes from within is not properly eaten or drunk. Therefore, one who swallows saliva or blood flowing from the teeth or even the nostrils does not violate the fast. The same seems to be said of remnants of food which adhere between the teeth. There are indeed some authors who deny this or distinguish, saying: If such remnants are swallowed accidentally, the fast is not broken; but otherwise if they are swallowed with full will. This distinction indeed seems insufficiently solid, since the violation of the fast is a physical thing altogether independent of the will. For if water is poured into someone, however much he resists, he is already not fasting and cannot communicate. Therefore, no one is to be troubled if before Communion he has swallowed remnants of food adhering between the teeth.[127] The matter is otherwise if someone in the evening placed sugar or other lozenges in his mouth and, after midnight, swallows them while they are still present in the mouth. For then there is true food or drink, and the fast is violated.

c) That it be consumed after the manner of **eating or drinking**. Therefore, the fast is not broken by those things which pass into the stomach: 1. **after the manner of saliva**, such as droplets of water with which the teeth, mouth, or throat are washed; droplets of blood which adhere to a slightly wounded finger; or tobacco which is chewed, provided that the juice is spat out. Although chewing tobacco in this manner does not break

the natural fast, it is nevertheless very indecent before Communion and is not excused from venial sin.[128] 2. **After the manner of inhalation**, as if someone smokes tobacco or swallows tobacco placed in the nostrils, or if someone swallows a drop of rain, a fly, or dust accidentally flying into the mouth. If, however, someone deliberately ate flies or similar things, he would violate the fast. One who, in order to wash out the stomach,[129] draws in water by means of an instrument and casts it out again, as is now often done by a physician's prescription, probably does not violate the fast, even if perhaps a small part of the water remains in the stomach, because nothing is consumed after the manner of drink.[130]

[126] Cf. Roman Missal, *De defect. Missae*, tit. 9, n. 3, and *S. theol.* 3, q. 80, a. 8 ad 4.

[127] Thus also teaches the rubric *De defect. Missae*, loc. cit.

[128] St. Alphonsus, *Theol. mor.*, l. 6, n. 280.

[129] German: *Den Magen auspumpen* (to pump out the stomach); French: *laver l'estomac* (to wash the stomach).

[130] Cf. *Monitore ecclesiastico* IX, 184. Today physicians often employ so-called "artificial nutrition," namely, by means of a tube which passes nourishment into the stomach or by means of an injection into the rectum. This latter manner does not seem to violate the natural fast, since gastric digestion is not had there; it is otherwise with the first manner.

200. The time of midnight is to be computed from the first stroke of a clock correctly indicating the twelfth hour. Theologians commonly teach that one who hears the first stroke of a clock correctly announcing midnight must **immediately cease** eating and drinking, but need not spit out food or drink already present in the mouth but not yet swallowed. Certain old authors thought that eating or drinking could be continued until the final stroke of the clock, but in practice the first opinion is better followed.[131] It is necessary to follow a clock correctly indicating the time; hence, if several clocks indicating differently are present, the clock which seems to be more correct is to be followed. Nevertheless, excessive scruples are to be avoided in these cases, since it concerns only a positive ecclesiastical law, and therefore in a case of doubt it is lawful to follow any clock which is probably correct.

At present, in almost all places, true or solar time is distinguished from mean or legal time. Solar time is diverse in diverse places according to the apparent movement of the sun. Mean or legal time is the same in all places of the same country. Now the faithful can, but are not bound to, follow either solar or legal time in observing the natural fast and in reciting the Divine Office.[132] A difficulty can arise if someone at night passes from one place where one legal time is in force to another place where a greatly different legal time is in force. For example, at Brussels someone eats supper at 11:45 in the evening and then departs for Aachen, where on the following day he receives Holy Communion. But since 11:45 at Brussels is 12:45 at Aachen, it can be doubted whether such a man is still fasting. With deference to a better opinion, it seems more conformable to the mind of the law if midnight is always computed according to the clocks of that place **in which Communion is received**. For the fast exists on account of Communion. Therefore, it is to be measured according to the latter. Nevertheless, one who ate supper at Brussels at 11:45 in the evening and communicated the following day at Aachen is not to be troubled, because the prohibition is not certain, nor has the Church determined anything concerning this matter.

[131] Cf. St. Alphonsus, loc. cit., n. 282.

[132] Code of Canon Law, c. 33, § 1.

201. Exemption from the natural or Eucharistic fast is granted in six cases:

1. For completing the sacrifice of the Mass.

For the divine obligation not to leave the sacrifice incomplete is greater than the ecclesiastical obligation of the sacramental fast. This case can occur in diverse ways:

a) If the priest consumed water in place of the species of wine and notices this while he has it in his mouth, it is not to be spat out because of the danger of casting out a particle of the Host previously consumed, but is to be swallowed. The rubric of the Missal then prescribes that the oblation and consecration be made again, a new host being taken and wine being poured into the chalice; if, however, "Mass is celebrated in a public place where several persons are present, in order to avoid scandal he will be able to add wine with water, and, the oblation having been made, consecrate and immediately consume it and proceed with the rest."[133]

b) If, after the consecration of one or both species, the priest is seized by a sudden illness and cannot complete the sacrifice. Then, if a fasting priest is lacking, the sacrifice must be completed by another who is not fasting. But the priest thus completing the sacrifice cannot celebrate another Mass on the same day,[134] unless, however, he has the faculty of bination.

c) If, after the consecration of one or both species, the priest remembers that he is not fasting, he must nevertheless complete the sacrifice. But if he notices the same thing **before the consecration**, then "I would consider it safer ... that he abandon the Mass begun, unless grave scandal were feared." Thus St. Thomas.[135] Such grave scandal is almost always present if the priest celebrates in a public chapel.

d) If, after already consuming the ablution, the priest finds upon the corporal a host or particle of a host which he can neither replace in the tabernacle nor preserve becomingly in another manner, then let him consume such consecrated remains, "whether they are small or large, because they pertain to the **same sacrifice**." Thus the Missal.[136] But fragments of **another** sacrifice are not to be consumed after the ablution has been consumed unless a danger of grave irreverence has arisen.

2. For avoiding the profanation of the Eucharist.[137]

This can occur in diverse ways; for example, when a fire is imminent or heretics are breaking in and threatening sacrilegious violation, even a priest who is not fasting could distribute consecrated hosts to himself and to others not fasting, lest they be violated. Indeed, a layman could then, if a priest or deacon is lacking, save the hosts with his own hands. The reason is evident. For an intrinsically licit means is employed to avoid a great evil.

3. For avoiding public scandal.

For the natural law of avoiding scandal prevails over the ecclesiastical law of observing the sacramental fast. Older theologians speak more severely in this matter. Thus, for example, Busembaum:[138] "Some nevertheless think that this can scarcely occur, because the scandal can be met by saying that the priest accidentally consumed something and is therefore impeded." Certainly, the sole reason that the people should not have to be without Mass on a feast day of precept does not excuse from the law of fasting, which seems to bind more gravely than the precept of hearing Mass; but scandal or sinister detractions by the people are almost always rightly feared if the priest must declare to the people prepared to hear Mass on feast days that he cannot celebrate because the fast was violated. Moreover, it is often to be feared that several persons will then culpably neglect to hear Mass elsewhere, even if this is possible for them. Since these things are so, the ecclesiastical law of fasting is not to be exaggerated, and therefore, if scandal is feared in some measure but truly, a priest who is not fasting can say Mass. If a priest having the faculty of bination, that is, of saying two Masses on Sundays and feast days, has through forgetfulness consumed the ablution in the first Mass or has otherwise broken the fast after Mass, he can no longer say the second Mass, even if wonder or scandal among

the people would arise therefrom. Thus the Holy Office on December 2, 1874. For in this case the scandal is pharisaical and is to be despised, since all can easily know that the priest omits Mass for no other reason than the broken fast. Nevertheless, if even in this case **grave scandal** would arise, the priest could say the second Mass, because today the discipline of the Eucharistic fast has been made milder than it was in the year 1874. But if without scandal the priest can declare that he cannot celebrate because of the violated fast, and the people cannot conveniently hear Mass elsewhere, it is preferable that another sacred function then be held in the church in place of Mass.

[133] *De defect. Missae*, tit. 4, n. 5.

[134] Thus Leo XII through the Sacred Congregation of Rites, December 16, 1823 (*Decr. auth.*, n. 2630).

[135] *S. theol.* 3, q. 83, a. 6 ad 2.

[136] *De defect. Missae*, tit. 7, n. 2.

[137] Code of Canon Law, c. 858, § 1.

[138] In St. Alphonsus, *Theol. mor.*, l. 6, n. 287.

202. 4. For receiving Viaticum.

Viaticum is Communion received in danger of death. In a probable danger of death which arises from any cause whatsoever (from a wound, poison, illness, an impending dangerous surgical operation, or a sentence of a judge), the Eucharist can licitly be received by one who is not fasting. Thus it is from universal custom, from the Council of Constance cited above, and from the Code of Canon Law, c. 858, § 1. This indult, however, does not seem to be understood as if someone in danger of death could communicate when not fasting from mere whim. This indeed seems certain if someone who is not gravely ill receives Viaticum, for example, soldiers before battle, a man before a very dangerous surgical operation, or one condemned to death before execution. But not even the sick can receive Viaticum when not fasting entirely at will, without any excusing reason. For the Council of Constance requires some necessity; therefore, some reasonable cause must be present, even if it is not so grave. But any reasonable inconvenience on the part either of the sick person, of those serving him, or of the priest himself suffices for Viaticum to be given to one who is not fasting. Hence St. Alphonsus, after the Salamancans, rightly notes that one must not proceed scrupulously in this matter.[139]

Concerning the repetition of Viaticum, the Roman Ritual establishes:[140] "While the danger of death continues, it is both lawful and fitting that Holy Viaticum be administered several times, on distinct days, according to the prudent counsel of the confessor." The reason is that this sacrament is given to the sick not solely to satisfy the precept, but also for consolation and protection against temptations. The opinion already held probable by St. Alphonsus,[141] and which is almost certain (cf. Code of Canon Law, c. 864, § 3), teaches that a sick person in danger of death can receive Viaticum even **every day**.

Theologians, especially the older ones, also ask here whether a priest who is not fasting can and ought to celebrate Mass in order to confect the Eucharist which he is to give after Mass to a man in danger of death. This case is certainly very rare, but if it truly occurred, then neither would Mass be to be prohibited nor would the ecclesiastical law of fasting be to be urged to the detriment of the divine law of receiving Viaticum and to the spiritual harm of the dying man.[142]

[139] Loc. cit., n. 285.

[140] Tit. 4, c. 4, n. 1.

[141] Loc. cit. Thus also the Code of Canon Law, c. 864, § 3.

[142] St. Alphonsus, loc. cit., n. 286.

203. 5. Sick persons who have now been confined to bed for a month (for thirty days), without certain hope that they will recover quickly (that is, within a few days), can, on the prudent counsel of a confessor, receive the Most Holy Eucharist once or twice in the week, even if they have previously taken some medicine or something after the manner of drink.

Thus the Code of Canon Law, c. 858, § 2. All those things which are drunk or can be drunk, even if they nourish, are consumed **after the manner of drink**, for example, coffee, tea, chocolate, milk even mixed with a liquefied egg, wine, etc.[143] Nothing prevents even solid medicine from being taken, for example, pills. It is required, however, a) that the prudent counsel of a confessor precede; b) that such a sick person be confined to bed, although not for the whole day and night. Therefore, sick persons who can leave the house and receive Communion in an outside oratory or church do not seem able to use this indult.[144]

Note. a) Although those sick persons who can rise from bed for several hours can also use this indult, nevertheless priests who are sick in this manner cannot say **Mass**, even in a private oratory, if they cannot observe the natural fast. For the indult does not seem to have force except for lay Communion, but not for saying Mass.[145]

b) A confessor indeed cannot concede that such sick persons communicate **without fasting** more than twice in a week; nothing, however, prevents the same sick persons from receiving Communion **fasting** on other days of the week also.

6. "Although the fast seems to be broken by the salt tasted beforehand by catechumens in the conferral of Baptism, nevertheless there is still no doubt that, after Baptism has been received, they can, indeed ought to, be admitted to Holy Communion." Thus the Sacred Congregation for the Propagation of the Faith, February 16, 1806.

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[143] Cf. Holy Office, September 7, 1897.

[144] Thus teaches the common opinion, which is nevertheless opposed by Cappello (*De sacr.*, n. 506) and Vermeersch (*Commentar.*, n. 57 [1922]).

[145] Thus also Göpfert, *Moraltheol.*[*7] III, 67; cf. Code of Canon Law, c. 808.

204. Scholion. On dispensation from the Eucharistic fast. In the law of the sacramental fast, no one by his own authority can dispense except the Supreme Pontiff. Examples of dispensations of this kind are not lacking. Thus Julius III is said to have dispensed Emperor Charles V, and Pius IV the missionaries in the Indies, according to the circumstances of affairs.[146] In our days this dispensation can be obtained without such great difficulty from the Sacred Congregation of the Sacraments for the faithful, from the Holy Office for priests celebrating Mass, and from the Sacred Congregation of Religious for religious communicating, if reasonable causes are present; indeed, for priests in a more urgent case, from the local Ordinary.[147]

But is it lawful to employ *epikeia* in this law if someone otherwise cannot receive Easter Communion? Several affirm it, for example, Toletus,[148] Gasparri,[149] D'Annibale,[150] Génicot,[151] Berardi,[152] Lehmkuhl,[153] and Noldin.[154] The reason is that Easter Communion is commanded by a quasi-divine precept which prevails over the ecclesiastical law of fasting. This opinion indeed seems probable, but in practice scandal is to be guarded against; indeed, if it is possible, Communion should rather be administered to such sick persons shortly after midnight. Moreover, the case is exceedingly rare in which throughout the entire Easter season someone is so

sick that he cannot receive Communion either as Viaticum, or according to the indult of Pius X explained above, or while fasting.

Similarly, according to some authors (for example, Génicot, Cappello, and Cornelisse), with *epikeia* employed, it is lawful, in order to avoid the gravest inconveniences, that a newly ordained priest who involuntarily and secretly is not fasting celebrate his solemn first Mass; likewise, that a child not fasting receive solemn First Communion.

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[146] See Benedict XIV, *De syn. dioec.*, l. 6, c. 8, n. 19.

[147] Cf. Holy Office, March 22, 1923 (*Acta Ap. Sed.* XV, 151).

[148] *Summa casuum consc.*, l. 2, c. 28.

[149] *De euchar.* II, n. 1129.

[150] *Summula Theol. mor.* III, n. 411.

[151] *Theol. mor.* II, n. 202.

[152] *Exam. confess.* I, n. 764.

[153] *Theol. mor.* II, n. 221.

[154] *De sacr.*, n. 157.

Article III. The Obligation of Receiving the Eucharist

205. Existence of the obligation. Principle 1. The actual reception (*in re*) of the Eucharist is necessary to no one by necessity of means.

This proposition is of defined faith against several Greeks and Calvinists. For the Council of Trent says: "If anyone says that Eucharistic Communion is necessary for little children before they have arrived at the years of discretion, let him be anathema."[155] But what is defined here for little children holds also for adults. For by necessity of means nothing is necessary for salvation except sanctifying grace and those things which God has prescribed as absolutely necessary. But sanctifying grace is not given by the Eucharist; rather, it is presupposed as already given, since the Eucharist is a sacrament of the living. Moreover, it cannot be proved that God absolutely prescribed the actual reception of the Eucharist, as, for example, He prescribed actual faith for adults. Hence, without any doubt, one would be saved, for example, an adult pagan, who, rightly disposed, received Baptism and, after receiving it, died suddenly before he could receive the Eucharist.

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[155] Session 21, can. 4 (Denz., n. 937).

206. Principle 2. The reception of the Eucharist in desire (*in voto*), at least implicit, is necessary by necessity of means, so that without it salvation cannot be obtained.

Thus St. Thomas[156] seems to teach: "Through Baptism a man is ordered to the Eucharist; and therefore, from the very fact that children are baptized, they are ordered to the Eucharist through the Church; and thus, just as they believe through the faith of the Church, so through the faith of the Church they desire the Eucharist." The Angelic Doctor elsewhere[157] confirms this doctrine, saying: "This sacrament [of the Eucharist] of itself has the power of conferring grace; nor does anyone have grace before receiving this sacrament except from some desire for it, either through himself, as adults, or through the desire of the Church, as little children." The reason for this doctrine is that the Eucharist is: a) the immolated Flesh of Christ, which is at once the price of our redemption and the principle of our sanctification; b) the end of all the sacraments, since they tend toward

union with Christ, which union is greatest in the Eucharist; c) a necessary means for persevering in the state of sanctifying grace. The desire to receive the Eucharist must be **explicit** in an adult who knows the Eucharist and the precept of Christ: "Unless you eat the Flesh of the Son of Man and drink His Blood, you shall not have life in you."[158] But in infants an **implicit** desire suffices, just as implicit faith also suffices in them.

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[156] *S. theol.* 3, q. 73, a. 3. St. Alphonsus (*Theol. mor.*, l. 6, n. 192), John Nicolussi, *Die Notwendigkeit der Eucharistie* (Bozen, 1917), and the Roman Catechism, p. 2, c. 4, q. 41, think in the same manner. But Cajetan (*Commentary on S. theol.* 3, q. 80, a. 12; q. 1, a. 6) and many moderns, such as Bucceroni, Génicot, Pesch, Cappello, etc., teach the contrary.

[157] Q. 79, a. 1 ad 1; cf. also q. 80, a. 11.

[158] John 6:54.

207. Principle 3. The actual reception (*in re*) of the Eucharist is necessary for all who have the use of reason by necessity of precept, both divine and ecclesiastical.

a) The **divine precept** of receiving the Eucharist is manifestly gathered both from the words cited above, "Unless you eat...," and from the words of Christ uttered after the institution of the Eucharist: "Do this in commemoration of Me."[159] St. Paul indeed applies these words not only to priests, but also to all the faithful.[160] The Council of Trent[161] acknowledges this divine precept: "But the Savior wished this sacrament to be received as the spiritual food of souls, by which those living by the life of Him who says, 'He who eats Me, he also shall live because of Me,' may be nourished and strengthened." St. Thomas[162] says: "It is manifest that a man is bound to receive this sacrament not only from the statute of the Church, but from the command of the Lord."

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[159] Luke 22:19.

[160] 1 Corinthians 11:26.

[161] Session 13, c. 2 on the Eucharist (Denz., n. 875).

[162] *S. theol.*, loc. cit.

208. Time of the obligation. If it is now asked when this divine precept binds, nothing else can be said except that it binds: 1. sometimes in life after the use of reason has been attained; 2. most probably also at the point of death.[163]

1. That the Eucharist must be received by divine law sometimes in life is altogether certain and is manifestly gathered from the texts of Sacred Scripture cited above. Christ did not determine how many times in life the Eucharist is to be received, but left this to be determined by the Church.
2. That Viaticum is to be received at the point of death by divine law can be known from the universal practice of the Church. Reason is added. For if the Eucharistic food ought ever to strengthen the soul, certainly it ought at the point of death. Nor does it stand in the way that in ancient times the Eucharist was sometimes denied even at the point of death to certain great sinners and to those condemned to death. For such a usage never existed in the universal Church, but only in certain places. But when bishops or provincial councils established something similar, especially through the excommunication called "anathema maranatha," they nevertheless customarily added, "unless he shall repent."[164]

The point of death at which Holy Communion is to be received as Viaticum ought not to be understood in a strict sense, namely, when death is now inevitably imminent, but more broadly for any grave danger of death. Thus Viaticum ought to be given, for example, before a dangerous surgical operation; during a raging plague,

if the danger of contagion and death is very imminent; to soldiers before battle; before childbirth which is extraordinarily dangerous; to those condemned to death before execution, etc. It is expedient that Viaticum be given to those condemned persons at least **one hour** before death, so that at the execution the Eucharistic species may already be dissolved.

When someone has received Viaticum sacrilegiously, he has not satisfied the divine precept; therefore, he must receive the Holy Eucharist again, at least if this can be done without infamy. It belongs to a prudent confessor to judge what is to be done in a case of sacrilegious Viaticum. Before all else, the dying person must worthily receive sacramental absolution; then care is to be taken that he receive Communion again on the following day. Nevertheless, lest wonder arise, the dying person can request Communion for the sake of devotion. But if for a reasonable cause not even this can be done, there seems to be a sufficient reason for carrying Viaticum secretly, which even a religious confessor can do, lest he disclose the sick person's sacrilege. Thus Noldin[165] and Aertnys.[166] I think, however, that this last course is rarely expedient, because the matter would easily be discovered, the seal of confession would be endangered, and other inconveniences would arise.

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[163] Cf. St. Alphonsus, *Theol. mor.*, l. 6, nn. 290 and 295.

[164] Cf. Synod of Rheims, A.D. 900 (in Hardouin VI, 1, 467); Billuart, *De euchar.*, diss. 6, a. 3, dico 6.

[165] *De sacr.*, n. 137.

[166] *Theol. mor.* II, n. 91, q. 9.

209. You ask: Since, according to the most probable opinion, Viaticum must be received by divine precept, is one who received Communion out of devotion a short time before or even on the same day bound to receive Viaticum when a sudden danger of death overtakes him? For example, is a priest who said Mass in the morning and, having been struck by apoplexy in the afternoon, is in danger of death, bound to receive Viaticum?

That Viaticum **can** be received in such a case is today beyond doubt and is manifestly gathered from the Code of Canon Law, cc. 857 and 864, § 2; for the reason which some authors oppose, that no one can receive Communion twice in one day, is futile. Do not so many priests who celebrate two Masses on every Sunday and feast day receive Communion twice in one day? But that Viaticum **must** be received in such a case cannot be proved either from divine or from ecclesiastical law. Certainly, every adult is bound under grave sin to receive Viaticum at the point of death; but one who received Holy Communion a short time before seems to have had the interpretative intention of receiving Viaticum, since everyone is presumed to wish to fulfill a grave precept which he could fulfill through his act. And this is safe in practice, at least if the person received Holy Communion during an illness which, having suddenly grown worse, brings on the point of death. Nevertheless, repeated reception of the Holy Eucharist is strongly to be counseled, as it is most efficacious for overcoming the dangers of the final agony.[167]

Therefore, in practice it seems that the matter should be stated briefly thus: One who worthily received Communion within the preceding week is not strictly bound, when danger of death is imminent, to receive the Holy Eucharist again as Viaticum; but one who received Communion even on the same day is strongly advised to receive Viaticum when a sudden danger of death overtakes him.[168]

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[167] Thus also the Code of Canon Law, c. 864, § 2.

[168] Code of Canon Law, c. 864, § 2. Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 258, doubts 2 and 3.

210. b) The ecclesiastical precept of receiving the Eucharist.

The reception of the Eucharist is also prescribed and determined by ecclesiastical law. The Fourth Lateran Council (1215) established that "every faithful person of either sex, after he has arrived at the years of discretion, shall confess all his sins alone at least once a year ... reverently receiving the sacrament of the Eucharist at least at Easter."[169] The Council of Trent defined the same: "If anyone denies that each and every one of Christ's faithful of either sex, when they have arrived at the years of discretion, are bound to receive Communion every year, at least at Easter, according to the precept of holy Mother Church, let him be anathema."[170] The Code of Canon Law, c. 859, prescribes the same.

[169] Denz., n. 437.

[170] Session 13, can. 9 on the Eucharist (Denz., n. 891).

211. First Communion is to be received after a person has arrived at the years of discretion, but not before.[171] When the sufficient use of reason required for this sacrament begins cannot be mathematically defined, since it depends upon the maturity of intellect and the instruction received by each person. As a general rule, the teaching of the Angelic Doctor can be held: "When children now begin to have some use of reason, so that they can conceive devotion toward this sacrament, then this sacrament can be conferred upon them."[172] These words are indeed cited and approved by the Sacred Congregation of the Sacraments on August 8, 1910,[173] which further declared that the age of discretion required for Confession and Communion is the same. "But the knowledge of religion which is required in a child, that he may suitably prepare himself for First Communion, is that by which he perceives, according to his capacity, the mysteries of faith necessary by necessity of means, and distinguishes Eucharistic bread from common and bodily bread, so that he may approach the Most Holy Eucharist with that devotion of which his age is capable."[174]

Bishops of each region are generally accustomed to determine at what age children may be admitted to First Communion; nevertheless, to judge whether a particular child is sufficiently disposed to receive Holy Communion belongs to the parents (and those who take their place) and to the confessor.[175] "But it is the duty of the pastor to watch (even by an examination, if he shall prudently judge it opportune) that children do not approach the sacred banquet before attaining the use of reason or without sufficient disposition; and likewise to take care that those who have attained the use of reason and are sufficiently disposed are refreshed with this divine food as soon as possible." Thus the Code of Canon Law, c. 854, § 5. In northern regions, the suitable age for receiving solemn First Communion has been fixed by some bishops as the ninth year; but in southern regions a younger age can suffice.

It is to be noted that the right of admitting children to First Communion is by no means a parochial right.[176] Therefore, any confessor can privately admit a child to First Communion. Nevertheless, it is strongly to be counseled that children ordinarily be admitted to First Communion either by the pastor or by him to whom their religious instruction has been entrusted. But if a child before the time established for First Communion falls into danger of death, there is a grave obligation to give Communion by way of Viaticum to that child who has sufficient use of reason, after a brief instruction has first been given.[177]

[171] Code of Canon Law, c. 854, § 1.

[172] *S. theol.* 3, q. 80, a. 9 ad 3. The Angelic Doctor says: it **can** be conferred; but he does not say: it **must** be conferred. Hence some speak incorrectly when they say: Immediately after attaining the use of reason, everyone must by divine law receive the Most Holy Eucharist.

[173] *Acta Ap. Sedis* II, 581 (Denz., nn. 2137–2144).

[174] Ibid., n. 3 (Denz., n. 2139), and Code of Canon Law, c. 854, § 3.

[175] Roman Catechism, p. 2, c. 4, q. 49, and Code of Canon Law, c. 854, § 4.

[176] Cf. Sacred Congregation of Bishops and Regulars, March 14, 1908 (*Analecta ecclesiastica* XVI [1908], 142); Code of Canon Law, c. 854, § 4.

[177] Cf. decree of the Sacred Congregation of the Sacraments cited above (Denz., n. 2144); Code of Canon Law, c. 854, § 2.

212. Easter Communion is prescribed partly by divine law and partly by ecclesiastical law: by divine law, insofar as it includes the Lord's precept of receiving the Eucharist sometimes; but by ecclesiastical law, insofar as the time of this reception is determined.

Concerning the ecclesiastical precept of Easter Communion, it is useful to note the following briefly:

1. The Easter season extends from Palm Sunday through Low Sunday; nevertheless, it can be extended generally by local Ordinaries for their territory from the Fourth Sunday of Lent through the feast of the Most Holy Trinity.[178] Pastors and confessors can, when a legitimate impediment exists, prolong the Easter season for an individual person.[179] Since the prolongation of the Easter season in force in most regions is a **local** privilege, all those having a quasi-domicile, or vagrants, or travelers, who licitly receive Communion outside their own parish, participate in this privilege, even if it is not in force in the place of their domicile.

One who without a grave cause delays Communion even by one day beyond the Easter season sins gravely. Thus the common opinion, which teaches that this precept does not admit parvity of matter.[180] One who did not receive Communion during the Easter season is afterward bound to approach the sacred table as soon as possible and cannot wait until the following Easter season. Thus the more probable opinion. For the Easter precept was imposed not to terminate but to urge the obligation of receiving Communion. Hence the Code of Canon Law, c. 859, § 4, establishes: "The precept of Easter Communion still urges if anyone for any cause has not fulfilled it within the prescribed time."

Easter Communion is not satisfied by a sacrilegious Communion. This is certain from proposition 55 condemned by Innocent XI,[181] and from the Code of Canon Law, c. 861.

2. The place of Easter Communion is one's own parish.

Thus it is from various decrees of the Supreme Pontiffs.[182] The end of this law is twofold, namely: a) that the pastor may be able to know his own sheep; and b) that the faithful may profess their subjection toward him. This circumstance of place indeed no longer binds strictly; nevertheless, the faithful are to be advised that each fulfill the Easter precept in his own parish; and those who have fulfilled it in another parish should take care to inform their own pastor that the precept has been fulfilled.[183] Easter Communion can licitly be received in any oratory or church situated within the boundaries of the parish.

One who during the Easter season has received Viaticum from the pastor or his delegate is considered to have satisfied the precept of annual Communion.

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[178] Code of Canon Law, c. 859, § 2.

[179] Thus from the Fourth Lateran Council (Denz., n. 437) and from c. 859, § 1.

[180] Lehmkuhl, *Theol. mor.* II, n. 1452; Noldin, *De praecept.*, n. 695; Marc, *Inst. mor.* II, n. 1570.

[181] Denz., n. 1205.

[182] For example, Benedict XIV, constitution *Magno cum animi*, § 21, June 2, 1751.

[183] Code of Canon Law, c. 859, § 3.

213. Exceptions. The following are exempt from the obligation or counsel of receiving Easter Communion in the parish church:

a) A priest, who satisfies it everywhere through the celebration of Mass.[184]

b) Religious of either sex and the members of their household who share their table, who can receive Communion in their own chapels. The same holds for men or women living in common without vows.

c) Soldiers, prisoners, students residing in colleges, and others who by particular law or legitimate custom can satisfy the precept in their own chapels.

d) Travelers absent from their own parish during the Easter season, and likewise vagrants, can receive Easter Communion in any church or oratory.[185]

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[184] St. Alphonsus, *Theol. mor.*, l. 6, n. 300.

[185] Ibid.

214. Scholion. On Communion under both species. In the Latin rite Communion is to be given entirely under the species of bread alone.[186] Communion under both species is necessary only for him who celebrates Mass. The contrary is taught by the Hussites (especially those who were called Utraquists or Calixtines), Luther, Calvin, and the Eastern schismatics. For in the ancient Church Communion was often given under one species only; especially the faithful who carried the Eucharist into their own homes did this under the species of consecrated bread. The Eucharist was given to infants under the species of wine alone.[187] From the most ancient times, on Friday in Parasceve, in the Mass of the Presanctified, the priest received Communion under one species. Therefore, the Council of Trent rightly defined: "If anyone says that, by the precept of God or by necessity of salvation, each and every one of Christ's faithful ought to receive both species of the sacrament of the Most Holy Eucharist, let him be anathema."[188]

The reasons why the Church introduced the discipline of Communion for the laity under one species, namely bread, are, for example: the danger of spilling if the chalice is distributed to a great multitude; the danger of contagion if someone drinks from a chalice from which another infected with a contagious disease has drunk; a natural aversion to drinking with others from the same chalice; the difficulty of obtaining pure wine in certain regions; and so forth. These reasons are altogether sufficient for the laity to receive the Eucharist under the species of bread alone, in which they receive the whole Christ in an equally perfect manner as if they received Communion under both species.

But Communion under both species is permitted to the united Easterners. Leo XIII[189] permitted that even laymen of the Latin rite could receive Communion according to the rite of the Easterners in those places where, because of the remoteness of the distance, they cannot without grave inconvenience go to a church of their own rite.[190] Pius X further extended this permission, establishing that even **for the sake of devotion** all the faithful of any rite may receive the Eucharistic sacrament confected in any rite.[191]

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[186] Code of Canon Law, c. 852.

[187] Cf. St. Cyprian, *De lapsis*, c. 25 (Migne, *Patr. lat.* 4, 500).

[188] Session 21, can. 1 on Communion (Denz., n. 934).

[189] Constitution *Orientalium dignitas*, November 30, 1894.

[190] Cf. Drouven, *De re sacr.* I, 432 ff., concerning Communion under both species.

[191] Constitution *Tradita ab antiquis*, September 14, 1912 (*Acta Ap. Sedis* IV, 616). Cf. Sacred Congregation for the Propagation of the Faith, March 27, 1916 (*Acta Ap. Sedis* VIII, 106); Code of Canon Law, c. 851, § 2.

Article IV. On Frequent Communion

215. Notion. By the name frequent Communion is properly understood Communion received several times in the week, or even daily Communion. Therefore weekly Communion, and *a fortiori* Communion from fortnight to fortnight, is not properly frequent Communion.[192] According to the present discipline of the Church, it is no longer lawful to receive Communion several times in one day. Cf., however, what was said above in n. 209 concerning Viaticum and what is to be said below in n. 285 concerning several Masses celebrated on the same day.

Concerning frequent Communion, or rather concerning the dispositions required for it, the rules formerly handed down, especially by St. Alphonsus,[193] St. Francis de Sales,[194] and others, have been abolished. Now the statutes issued by the Sacred Congregation of the Council and approved by Pius X on December 20, 1905,[195] must be observed altogether. Since the whole doctrine and discipline are found in these statutes, we append them here with brief commentaries.

Rules. 1. "Frequent and daily Communion,[196] as something most desired by Christ the Lord and by the Catholic Church, is to be open to all Christ's faithful of whatever order or condition, so that no one who is in the state of grace and approaches the sacred table with a right and pious mind can be prevented from it." Nearly the essence of the entire decree is contained in these words. Innocent XI[197] had already determined that no one should be barred from frequent Communion solely because of the lay, married, or commercial state, and that the frequency of Communion should be determined by a prudent confessor. But the decree of Pius X adds that no other condition is strictly required for such frequent Communion except: a) the state of grace; and b) a right and pious mind.

2. "A right mind, moreover, consists in this: that he who approaches the sacred table not indulge custom, vanity, or human motives, but wish to satisfy the good pleasure of God, to be more closely united to Him by charity, and to meet his infirmities and defects with that divine medicine." This statute must be attended to altogether, especially in colleges of boys and girls, where several sometimes approach the sacred table more frequently, not from a right mind or from a supernatural motive, but either to please their teachers or solely because they see others doing so. These ends, if they are the principal ones, entirely bar one from Holy Communion, since it ought not serve earthly advantages.

3. "Although it is most expedient that those who use frequent and daily Communion be free from venial sins, at least fully deliberate ones, and from affection for them, it nevertheless suffices that they be free from mortal sins, with the resolution never to sin in the future; with which sincere resolution of mind it cannot happen that daily communicants will not gradually free themselves even from venial sins and from affection for them." By this statute the greater severity of the ancients was indeed abolished, but even now what St. Alphonsus says seems to remain valid:[198] "But if it is afterward recognized that, notwithstanding the frequency of Communion, the soul advances nothing in the way of perfection and does not amend itself of deliberate faults, even venial ones, as if it clings also to pleasures of the senses in seeing, hearing, and eating, and in dressing with some vanity, then certainly the use of Communion is prudently to be restricted, so that it may also begin to think seriously about its amendment and to take counsel for its spiritual perfection." This discipline should indeed also be applied to priests celebrating Mass; but because the sacrifice of the Mass *ex opere operato* brings

such immense fruits to the whole world, a priest, according to the present discipline, is not to be barred from celebrating Mass unless he lives scandalously.

4. "But since the sacraments of the New Law, although they obtain their effect *ex opere operato*, nevertheless produce a greater effect in proportion as greater dispositions are employed in receiving them, therefore care is to be taken that diligent preparation for Holy Communion precede and fitting thanksgiving follow from it, according to the powers, condition, and duties of each person." It is not indeed necessary that the whole preparation or thanksgiving be made in a church or oratory, but the confessor should diligently insist that the faithful occupy themselves with pious affections before and after Communion and that they avoid all voluntary distractions.

5. "That frequent and daily Communion may be made with greater prudence and be increased with more abundant merit, the counsel of the confessor ought to intervene. Nevertheless, confessors should take care not to turn anyone away from frequent or daily Communion who is found in the state of grace and approaches with a right mind." But the confessor should prudently judge whether frequent Communion is accidentally joined with grave inconveniences, for example, with disturbance of peace in the family, with detriment to the obligations of one's state, and so forth.

6. "But since it is evident that from the frequent or daily reception of the Holy Eucharist union with Christ is increased, the spiritual life is more abundantly nourished, the soul is more copiously furnished with virtues, and an even firmer pledge of eternal happiness is given to the recipient, therefore pastors, confessors, and preachers, according to the approved teaching of the Roman Catechism,[199] should exhort the Christian people to this so pious and so salutary practice by frequent admonitions and with much zeal."

7. "Frequent and daily Communion is especially to be promoted in religious institutes of every kind,[200] for which, however, the decree *Quemadmodum*, issued by the Sacred Congregation of Bishops and Regulars on December 17, 1890, is to remain in force. It is likewise to be promoted most earnestly in seminaries of clerics, whose students aspire to the service of the altar; likewise in other Christian institutions for young persons of every kind."

8. "If there are any institutes, whether of solemn or simple vows, in whose rules, constitutions, or even calendars Communions are found assigned to and commanded on certain days, these norms are to be regarded as merely directive, not as preceptive. But the prescribed number of Communions must be regarded as a minimum for the piety of religious. Therefore, more frequent or daily access to the Eucharistic table must always be freely open to them according to the norms handed down above in this decree. But that all religious of either sex may be able rightly to know the provisions of this decree, the superiors of the individual houses shall take care that it is read in common every year in the vernacular language within the octave of the feast of Corpus Christi."

9. "Finally, after the promulgation of this decree, all ecclesiastical writers are to abstain from every contentious dispute concerning the dispositions for frequent and daily Communion." By this final statute it does not seem to be prohibited at all that theologians discuss the required dispositions; only the contentions and controversies which formerly existed concerning this matter are forbidden.

Note. Although weekly Confession is ordinarily to be recommended to those who receive Communion frequently, it is nevertheless not necessary for them, not even for gaining indulgences.[200a] Hence they can defer Confession for a fortnight or three weeks or longer, if a sufficient cause is present, for example, lack of time either on their part or on the part of the confessor. Nevertheless, let this delay not be excessive.

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[192] Communion received more frequently and at regular intervals, for example, every month or every two months, is greatly to be commended to pious societies existing in a parish. As experience testifies, Communions of this kind received at regular intervals are accustomed to produce most abundant fruits.

[193] *Praxis confess.*, n. 148 ff.

[194] *Philothea*, l. 2, c. 20.

[195] Denz., nn. 1985–1990.

[196] The Angelic Doctor, who is not undeservedly called the Doctor of the Eucharist, says concerning daily Communion: "This sacrament is spiritual food; hence, just as bodily food is taken daily, so also it is praiseworthy to receive this sacrament daily" (*S. theol.* 3, q. 80, a. 10 ad 1).

[197] Decree *Cum ad aures*, February 12, 1679 (Denz., n. 1147 sq.).

[198] *Praxis confess.*, n. 155.

[199] P. 2, c. 4, n. 60 or q. 47.

[200] Cf. Code of Canon Law, c. 595, § 2 ff.

[200a] Ibid., c. 931.

Chapter V. On the Minister of the Eucharist

The minister of the Eucharist must consecrate, distribute, and reserve it. Hence we divide this chapter into three articles: 1. on the consecration of the Eucharist; 2. on its distribution; 3. on its reservation.

Article I. On the Consecration of the Eucharist

216. Principle. Every priest, and only a priest, can validly consecrate the Eucharist.

The Albigensians and the Innovators of the sixteenth century taught the contrary. The Fourth Lateran Council (1215) had already defined: "Certainly no one can confect this sacrament except a priest who has been rightly ordained."[201] The reason is that Christ said only to priests: "Do this in commemoration of Me." The power of consecrating so inheres in the priestly character that it can never be taken away from him. Therefore even a heretical, schismatic, and apostate priest validly consecrates, provided that he employs the right matter, form, and intention. For licitly consecrating the Eucharist, very many conditions are required, which will be explained below in the treatise on the sacrifice of the Mass. If several priests consecrate the same matter at the same time (as happens in the ordination of new priests and in more solemn Masses according to the Greek rite), all must take care to pronounce the form of consecration at the same time; for if one pronounced the form before the others, then he alone consecrated and the form of the others is rendered ineffective. For the rest, one should not proceed here with excessive anxiety, since it suffices that all the concelebrants have the intention of consecrating together.

[201] Denz., n. 430.

Article II. On the Distribution of the Eucharist

217. 1. The power of distributing. One minister of distribution is ordinary, another extraordinary.

The **ordinary minister** of distributing the Eucharist is the priest alone.

For the Council of Trent declared:[202] "It was always the custom in the Church of God that laymen should receive Communion from priests, but that priests celebrating should communicate themselves."

The **extraordinary minister** of distributing the Eucharist is "the deacon, with the permission of the local Ordinary or of the pastor, to be granted for a grave cause, which in a case of necessity is legitimately presumed."[203]

Already **in the primitive Church**, deacons, by commission either of the bishop or of the priest, distributed the Eucharist by presenting the consecrated chalice and carrying the consecrated bread to the sick. Such power belongs to the deacon from his ordination itself, since he ought to assist the priest in all things pertaining to the Holy Eucharist. But the distribution of the Eucharist is among the principal duties of the priest.

According to the **discipline now in force**, a deacon cannot licitly distribute Communion except by legitimate delegation, which is customarily granted either by the local Ordinary, by the pastor or his substitute, or probably by a religious superior, by the rector of a clerical seminary, or by the rector of any church.[203a] This delegation requires a grave cause, such as is present, for example, when a priest is prevented from distributing Communion because he is occupied with other necessary works, such as hearing Confessions, performing ecclesiastical functions, preaching a sermon, and so forth. In grave necessity, for example, of ministering Viaticum to a dying person, the deacon can presume this delegation; indeed, several authors rightly permit that, in the absence of a priest and deacon, not only a subdeacon or cleric, but even a layman, can licitly carry Viaticum to a dying person in extreme necessity. For Viaticum is commanded to be received by divine law and brings great assistance to the dying person, while merely ecclesiastical law (which did not yet exist in the first centuries of the Church) prohibits a layman from touching and distributing the Eucharist. Hence "where particular dexterity is required in communicating a sick person, a priest can entrust to a woman, for example, a Sister of Charity ministering to the sick person, that she give Viaticum with a spoon." Thus rightly Noldin and others.[204] This case can occur, for example, if the sick person suffers from cancer of the throat, so that swallowing is exceedingly difficult. The reason why this manner is lawful is the same as that just stated. Viaticum obliges by divine law. No one is present who can administer it except a layman. Therefore this is lawful.

A deacon distributing Communion by legitimate delegation wears the stole crosswise. According to the Roman Ritual, tit. 4, c. 10, the deacon ministers Communion as does a priest. Even at the end of the distribution he can and ought to impart a blessing with his hand, as the Pontifical Commission declared on July 19, 1930 (*Acta Ap. Sed.* XXII, 365). In the administration of Viaticum, if a priest is lacking, the deacon can bless the sick person and the assistants with his hand or with the pyx.[205]

A deacon who without a grave cause and without due permission administers Communion seems to sin gravely, because he gravely violates both the right of the legitimate pastor and a grave precept of the Church; but he does not incur an irregularity, just as he likewise does not incur an irregularity if he illegitimately administers solemn Baptism, as was said above in n. 121.

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[202] Session 13, c. 8 on the Eucharist (Denz., n. 881).

[203] Code of Canon Law, c. 845, § 2.

[203a] Thus also Cappello, *De sacr.*, n. 329.

[204] *De sacr.*, n. 124.

[205] Cf. Sacred Congregation of Rites, August 14, 1858 (*Decr. auth.*, n. 3074); Code of Canon Law, c. 1274, § 2.

218. No one can administer the Eucharist to himself except in two cases, namely: a) a priest in his own Mass; b) in a case of necessity. In the absence of another priest and with scandal removed, a priest can probably administer Communion to himself even for the sake of devotion alone. Some say the same[206] of a deacon; this, however, does not seem lawful today without special permission. But a layman cannot do this except because of the necessity of receiving Viaticum, namely, when a priest or deacon is lacking.[207]

2. Requisites for lawful distribution. For licitly distributing the Eucharist, the following are further required: a) due jurisdiction; b) due time; c) a due place; d) a due rite.

[206] St. Alphonsus, *Theol. mor.*, l. 6, n. 238.

[207] St. Alphonsus, ibid., n. 237.

219. a) Due jurisdiction. Since the Eucharist is the spiritual food of the soul, while feeding the flock of Christ is the proper office of pastors, only those to whom the care of souls has been entrusted can distribute Holy Communion. Therefore, to distribute Communion is a parochial right. Thus at least according to the old law, which, however, has been somewhat diminished in the course of time. According to the discipline now in force, the following have been established:

α) Any priest can administer Holy Communion within Mass and also (if he celebrates privately) immediately before and immediately after it; and this even in a private oratory, unless the local Ordinary, for just causes, has prohibited it in particular cases.[208] Therefore, even those who do not satisfy the precept of hearing Sunday Mass in a private oratory can receive Holy Communion there for the sake of devotion.

β) To carry Holy Communion by way of Viaticum, whether publicly or privately, to the sick belongs to the pastor[209] and his delegate. There are, however, three exceptions: 1. **In a case of necessity**, when the pastor is lacking, those things hold which were said above in n. 217 concerning the extraordinary minister of distributing the Eucharist. 2. The right and duty of administering Viaticum to the diocesan bishop belongs to the dignitaries and canons of the chapter.[210] 3. In every clerical religious institute, superiors have the right and duty, either personally or through another, of administering Viaticum (and Extreme Unction), not only to sick professed religious, but also to novices and others remaining day and night in the religious house for the sake of service, education, hospitality, or ill health.[211] In a house of nuns, the ordinary confessor or the one who takes his place has the same right and duty.[212] In another, lay religious institute, this right and duty pertains to the pastor of the place or to a chaplain whom the Ordinary has substituted for the pastor.[213] To carry Communion **privately** to the sick for the sake of devotion is not a parochial right, and therefore any priest can do it.[214] The matter is otherwise with **public** carrying, which belongs to the pastor in his own parish.[215]

[208] Code of Canon Law, cc. 846 and 869.

[209] Ibid., c. 850.

[210] Ibid., c. 397, n. 3.

[211] Code of Canon Law, c. 514, § 1. Cf. Pontifical Commission, June 16, 1931 (*Acta Ap. Sed.* XXIII, 353).

[212] Code of Canon Law, c. 514, § 2.

[213] Ibid., § 3.

[214] Ibid., c. 849, § 1.

[215] Ibid., c. 462, n. 2, and c. 848, § 1.

220. Easter Communion had to be received by common law in the parish church, as was already said above. As a testimony of this law, religious were prohibited from administering Communion in their churches to laypersons who were not members of their household on Easter Day itself (and at Rome also on Holy Thursday). But by a decree of the Sacred Congregation of the Council on November 28, 1912, Pius X abrogated this law, wishing to render daily Communion easier. Therefore, religious can give Communion in their churches even on Easter Day, and the following can be held as a general rule: **Except in the case of ministering Viaticum, according to the discipline of the Church now in force, any priest who licitly says Mass somewhere can also licitly distribute Communion to anyone.**

221. b) Due time. α) As regards days, according to the present discipline of the Church, Communion as Viaticum can be distributed on all days, but other Communion can be given on those days on which it is lawful to consecrate the Eucharist. Hence it is lawful to distribute Communion on Holy Thursday, even in churches and oratories in which solemn Mass is not sung. It is expedient, however, that all receive Communion only before or within the solemn or conventual Mass. Likewise, it is lawful to distribute Communion on Holy Saturday, but only during the solemnities of the Masses or immediately after they have been completed;[216] and therefore not in churches or oratories where the solemnities of the Masses are not celebrated. It is not lawful to distribute Communion on Good Friday, because the Eucharist is not then consecrated. Nevertheless, in certain places a custom is already gaining force of giving Communion even on Good Friday, since this day is now in those regions a feast of precept.[217] But when such a custom does not exist, or if special permission has not been granted, Communion is not to be distributed at all on Good Friday except by way of Viaticum, which can licitly be given on all days and at all hours of the entire year.[218]

β) **As regards hours.** When a just cause exists, the faithful who are fasting can receive Communion not only in the morning hours, but also **in the afternoon**, provided, however, that scandal or wonder among the people does not arise from it.[219] Therefore, the prohibition against celebrating Mass after midday does not extend so strictly to the distribution of Communion. At night it is lawful to administer Viaticum; but to distribute Communion for the sake of devotion is not lawful by common law except on the night of the Nativity of the Lord for all religious institutes, pious places, and seminaries of clerics where the Most Holy Sacrament is reserved, provided this is done with the doors closed. In churches or public oratories which serve for the public use of the faithful, it is not lawful on the night of the Nativity to distribute Communion to the faithful unless there is a reasonable cause for doing it, at least in the judgment of the Ordinary.[220] Irreverence toward the Most Holy Sacrament, which can easily arise because of worldly festivities customarily celebrated on that night, must be avoided.

For the sick staying in houses where the Most Holy Sacrament is reserved, it is lawful to carry Communion even shortly after midnight if they cannot remain fasting. Before the decree of Pius X (December 7, 1906), a bishop, and indeed even a pastor, could give permission that Communion be carried at night to those sick persons who could not observe the fast any longer; but now the fast no longer binds them so strictly, as was explained above, and therefore Communion is not to be carried through the streets at night (except by way of Viaticum).

It is indeed fitting that the faithful receive Communion **within Mass** after the Communion of the priest, because thus there is a greater union with the sacrifice of the Mass. Today, however, the faithful can receive Communion both before and after Mass (even a Requiem Mass), and indeed at all daytime hours, as was said above. But a priest vested in the **sacred vestments of the sacrifice** is not to distribute Communion before or after a **solemn, sung, or even conventual Mass**;[221] therefore, the priest must distribute Communion either before he puts on the chasuble or after he has taken it off.

[216] Ibid., c. 867, § 3.

[217] In ancient times there was a fairly universal custom of receiving Communion even on Good Friday (cf. Martène, *De antiq. Eccles. rit.*, l. 4, c. 23, n. 25). In our days such a custom, approved by the Holy See, exists in the parish of Delbrück in the Diocese of Paderborn, where on that day a particle of the true Cross is exposed for public veneration and people come from the entire region to receive the Eucharist.

[218] Code of Canon Law, c. 867, § 5.

[219] Code of Canon Law, c. 867, § 4, establishes: "Holy Communion is to be distributed only at those hours at which the sacrifice of the Mass can be offered, unless a reasonable cause counsels otherwise."

[220] "Whether (by force of canon 867), without an Apostolic Indult, Holy Communion can be distributed to those requesting it at a Mass celebrated on the night of the Nativity of the Lord in parish and conventual churches, whenever, at least in the judgment of the Ordinary, a reasonable cause for doing it is present? Reply: Affirmative." Thus Cardinal Gasparri, President of the Pontifical Commission (cf. *Monitore Ecclesiastico*, 1922, p. 371).

[221] Sacred Congregation of Rites, January 19, 1906 (*Decr. auth.*, n. 4177, ad 3).

222. c) A suitable place for administering the Eucharist is every place in which it is lawful to celebrate Mass or to reserve the Most Holy Sacrament; nevertheless, for a just cause the Ordinary can in a particular case prohibit Communion in a private oratory[222] or permit it in another becoming place. But Viaticum and the Communion of bedridden sick persons can be distributed in any place when necessity requires it.

[222] Code of Canon Law, c. 869.

223. d) The due rite is to be observed in the administration of the Eucharist, as the Roman Ritual or another approved Ritual prescribes.[223] According to the present discipline in force in the Latin Church, the principal statutes are these:

1. It is a grave sin of irreverence to distribute or carry the Eucharist in churches or oratories without any sacred vestment, unless necessity excuses. The sacred vestments to be worn are the surplice and stole,[224] unless Communion is given at Mass or immediately before or after it, in which case Communion is administered in the vestments worn for Mass. Two candles are to be lighted, and the prayers before and after the distribution are to be said. St. Alphonsus thinks that this precept obliges only under venial sin.[225] The prayers to be said after Communion has been distributed (outside Mass) are: the antiphon "O sacrum convivium" and the versicles "Panem de caelo," etc.; and the prayer with the longer conclusion. During Easter time, "Alleluia" is added, and a special prayer is said, likewise with the longer conclusion.[226] When Communion has been given in black vestments, neither is "Alleluia" added to the prayers, nor is a blessing given.

2. The priest must administer the Eucharist with the thumb and index finger of the right hand. But Lehmkuhl rightly says:[227] "If [the priest] has those fingers impeded, it is better to use others than to deprive the people or individual dying persons of Holy Communion." For although only the first fingers are anointed, nevertheless the whole hand is consecrated. St. Alphonsus[228] maintains a more severe opinion in this matter, saying: "If someone had a thumb so infirm that he could not break the host with it, he could not indeed celebrate.... The general rule is: that which is an impediment to receiving an order impedes the exercise of the order after its reception." This rule seems too harsh, for the Church more readily bars someone from receiving an order than from exercising an order rightly received. Therefore, the first opinion seems safe in practice,

provided that external decorum is preserved and scandal is avoided. If, however, these fingers suffer from a lasting disease, then permission to celebrate Mass is to be sought from the Sacred Congregation of Rites.

3. In the Latin rite it is not lawful to give the Eucharist to a layman under the species of wine,[229] not even in the necessity of receiving Viaticum. Thus the common opinion.[230] For the rest, such a necessity can almost never occur; for a sick person who can swallow wine can also take water in which a particle of a consecrated host has been immersed. In necessity it is lawful to give the host in this manner.[231]

4. All the faithful, even for the sake of devotion, can receive Communion in a rite other than their own. When a priest of their own rite is lacking in a case of necessity, an Eastern priest can distribute to the faithful the Eucharist confected in unleavened bread, and conversely it is lawful for a Latin priest to give the Eucharist confected in leavened bread. "But each one shall preserve his own rite of ministering."[232]

5. It is not lawful to give laypersons a larger host, such as the priest employs at Mass, or even several small hosts. Thus Innocent XI established,[233] who nevertheless prohibited this lest anyone foster a false devotion by thinking that he obtains greater graces if he consumes a larger host or several hosts. Hence nothing seems to prevent several hosts from being given to a lay communicant for a reasonable cause (for example, if the celebrating priest cannot consume all the particles which remain).[234] For a reasonable cause it is lawful to divide small hosts into two or three parts, provided, however, that the parts thus divided are not too small; likewise, for a reasonable cause a celebrating priest can give to some communicant a particle of the larger host consecrated by him at Mass.

6. If in the distribution of Holy Communion any species has fallen to the ground, that place is to be covered and afterward washed. But the water of ablution is to be poured into the sacrarium. This law, however, does not bind under grave sin.[235] Hence, for example, if a consecrated host has fallen into a man's beard, that beard is by no means to be washed and the water of ablution poured into the sacrarium. But when a host has fallen into a woman's garments and cannot easily and without scandal be extracted thence by the priest, the woman is to be led into the sacristy, so that she herself may seek the sacred species and give it to the priest. The woman must then wash the hand with which she touched the host. If someone vomits the host and cannot consume it again, the host is to be placed in a vessel of water in the tabernacle. But when the host has dissolved, the water is to be poured into the sacrarium. If a drop of consecrated Blood has fallen, those things prescribed in the Missal are to be observed.[236]

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[223] For the rites used in the ancient Church, see Wetzer and Welte, *Kirchenlexikon*, s.v. "Kommunion."

[224] The color of this stole can always be white; it can, however, also conform to the color of the Office of that day. Sacred Congregation of Rites, March 12, 1836 (*Decr. auth.*, n. 2740 ad XII). On the Commemoration of All the Faithful Departed, let the color be white or violet. Sacred Congregation of Rites, April 19, 1912, ad X.

[225] *Theol. mor.*, l. 6, n. 241.

[226] Thus from the Roman Ritual, tit. 4, c. 2 (typical edition). Therefore, the ancient custom seems to have been changed, and the response of the Sacred Congregation of Rites, August 30, 1892, ad 10 (*Decr. auth.*, n. 3792), is to be interpreted according to the new text of the Ritual.

[227] *Theol. mor.* II, n. 187.

[228] Loc. cit., n. 244.

[229] Code of Canon Law, c. 852.

[230] St. Alphonsus, *Theol. mor.*, l. 6, n. 245.

[231] Cf. ibid., n. 244.

[232] Cf. above, n. 214.

[233] Decree *Cum ad aures*, February 12, 1679.

[234] Cf. Benedict XIV, *De sacrif. Miss.*, l. 3, c. 20, n. 1; Noldin, *De sacr.*, n. 130.

[235] Cf. St. Alphonsus, loc. cit., n. 250.

[236] *De defect. Missae*, tit. 10, nn. 12 ff.

224. 7. The Eucharist is to be carried to the sick openly and honorably, as the Roman Ritual, tit. 4, c. 4, prescribes, unless a just and reasonable cause counsels otherwise.[237] With regard to the words "unless a just and reasonable cause is present," the Sacred Congregation of the Sacraments declared that the judge of a just and reasonable cause is the Ordinary, but he is admonished "that, through rules too narrowly predetermined or general rules commanding public carrying, or through a reservation made to himself of granting permission in individual cases to carry the Sacrament of the Eucharist privately, sick persons not be impeded from the consolation even of daily Communion" (Sacred Congregation of the Sacraments, January 5, 1928: *Acta Ap. Sed.* XX, 81). Thus a bishop can permit the Holy Eucharist to be carried in a concealed manner to those sick faithful who wish to receive Communion several times for the sake of devotion (Benedict XIV, decree *Inter omnigenas*, February 2, 1744). "The priest shall always have the stole covered by his own garments; he shall enclose the pyx in a small bag or burse, which, suspended from his neck by cords, he shall place in his breast; and he shall never proceed alone, but shall be accompanied at least by a faithful person when a cleric is lacking" (Sacred Congregation of the Sacraments, December 23, 1912).[238] For the rest, diocesan statutes are to be observed.

When the Eucharist is carried **publicly** to the house of a sick person, the priest must be vested in a surplice and stole and proceed with his head uncovered. Nevertheless, by an Apostolic indult it is not rarely permitted that the priest proceed with his head covered if the inclemency of the weather so requires. Thus, for example, on November 13, 1862, the Congregation of Rites gave the priests of Cologne permission "to proceed, especially in wintry weather, with the head covered by a woolen cap which, when necessity requires, can be of such size that it also covers the ears."[239] In a case of necessity, namely, if danger to health is greatly feared (whether from the heat of the sun or from cold) and permission cannot be sought from the bishop, a priest, by employing *epikeia*, can carry the Eucharist to a sick person with his head covered, provided, however, that scandal is forestalled. Nothing prevents a priest carrying the Eucharist from wearing a wig (commonly *Perücke*) or even an artificial covering against rain or snow.[240] For it would be more irreverent if the sacred vestments and the vessel itself containing the Holy Eucharist were made wet by rain or snow. For a reasonable cause, for example, because of the length of the journey, it is lawful to carry the Eucharist publicly while seated in some carriage or even on a horse, if danger of irreverence is absent. But it is not becoming that the Eucharist be carried while seated on a two-wheeled machine (commonly a velocipede), unless a grave necessity is present.

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[237] Code of Canon Law, c. 847.

[238] *Acta Ap. Sed.* IV, 725.

[239] A similar privilege was granted for the Diocese of Orihuela (Alicante in Spain) on April 22, 1871 (*Decr. auth.*, n. 3246).

[240] Commonly *Regenschirm* (umbrella), *parapluie* (umbrella), *ombrello* (umbrella), umbrella.

Article III. On the Reservation of the Eucharist

225. Place of reservation. In ancient times the Eucharist was not rarely reserved among ordinary faithful persons, and especially among monks and virgins consecrated to God.[241] In our age special indults in this matter are sometimes granted, especially to missionaries.[242] According to the common law now in force:

The Eucharist **must be reserved**: 1. in the cathedral church and in the principal church of an Abbey or Prelature *nullius*, an Apostolic Vicariate, and an Apostolic Prefecture; 2. in every parish or quasi-parish church; 3. in a church attached to a house of exempt religious, whether of men or of women.

The Eucharist **can be reserved with the permission of the local Ordinary**: 1. in a collegiate church; 2. in churches having the care of souls which, although not strictly parochial, are subsidiary;[243] 3. in the principal oratory (whether public or semi-public) both of a pious or religious house and of an ecclesiastical college which is governed by secular clerics or by religious.

For it to be reserved in other churches or oratories, an Apostolic indult is necessary; but the local Ordinary cannot grant this permission except to public churches or oratories, and this for a just cause and by way of an act, that is, not permanently.[244] In a place where the Most Holy Eucharist is reserved, ordinarily some priest must celebrate Mass at least once a week.[245]

The ancient practice of traveling priests carrying the Eucharist suspended from the neck has long since been prohibited.[246] The Supreme Pontiff alone has the Eucharist with him while traveling.

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[241] Cf. Martène, *De antiq. Eccl. rit.*, l. 1, c. 5, a. 1.

[242] Cf. Sacred Congregation for the Propagation of the Faith, August 23, 1850.

[243] Pontifical Commission, May 20, 1923 (*Acta Ap. Sed.* XVI, 115).

[244] Code of Canon Law, c. 1265. If any religious or pious house has an attached public church and uses it for performing ordinary and daily exercises of piety, the Eucharist can be reserved in that church alone; otherwise, in the principal oratory alone of the same religious or pious house. Sometimes, however, it happens that in the same material building there are distinct and separate religious or pious families, for example, a religious community and a seminary of clerics; then each distinct family can reserve the Eucharist in its principal oratory (cf. *Acta Ap. Sed.* X, 347).

[245] Code of Canon Law, c. 1265, § 1.

[246] Benedict XIV, constitution *Etsi pastoralis*, May 26, 1742, § 6, n. 7; cf. Code of Canon Law, c. 1265, § 5.

226. Manner of reservation. Concerning the manner of reserving the Eucharist, the following things especially are to be noted:

a) The custody of the Eucharist belongs to the pastor or another priest.

The key of the tabernacle is to be guarded most diligently by a priest, but not by a lay sacristan or by a nun. Thus the Sacred Congregation of Rites has decreed several times. But the rector of a church can retain the key of the tabernacle in the sacristy or in another safely locked place, the key of which it is lawful to entrust to a faithful lay sacristan or to a religious woman. This practice indeed prevails in several regions, because it can happen that, in the absence of the rector of the church himself, the key of the tabernacle must necessarily be employed by another priest.

b) The Eucharist is to be reserved in a becoming tabernacle upon the altar.

In ancient times the Eucharist was not reserved upon the altar, but in some side cupboard,[247] or in some tower,[248] or in some suspended bronze dove. But now the Code of Canon Law, c. 1269, § 1, establishes: "The Most Holy Eucharist must be kept in an immovable tabernacle placed in the middle part of the altar." The tabernacle can be made of wood, stone, metal, or another worthy material. Today, to forestall sacrilegious thefts, it is preferable that within it there be a bronze safe to be locked with an ingenious key,[249] so that it cannot be opened by thieves or destroyed by fire. Prudently, and for the same reason, in some places the Most Holy Eucharist is carried every evening from the tabernacle of the church into the sacristy or another becoming place, where it is then reserved during the night in a most solid repository, and in the morning it is again carried to the tabernacle. This manner of acting is lawful, provided that a lamp shines throughout the whole night before this repository and provided that the suitability of the place is known by the competent ecclesiastical superior, namely, by the local Ordinary or his delegate.[250]

Let the tabernacle be blessed and let its interior either be lined with white silk cloth or be gilded;[251] externally let it be gilded or artistically ornamented and veiled with a canopy.[252] Let the color of this canopy be white or, better still, be changed according to the seasons and feasts. Violet is to be employed in place of black. Nothing may be kept in the tabernacle except the Eucharist.[253] Therefore, the abuse of reserving the holy oils, sacred relics, and so forth in the same tabernacle is to be removed.

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[247] *Pastophorium.*

[248] *Sakramentshäuschen* (little sacrament house).

[249] Commonly *coffre-fort* (strongbox).

[250] Code of Canon Law, c. 1269, § 3.

[251] Sacred Congregation of Rites, June 20, 1899 (*Decr. auth.*, n. 4035 ad 4).

[252] Sacred Congregation of Rites, July 1, 1904 (*Decr. auth.*, n. 437).

[253] Code of Canon Law, c. 1269, § 2.

227. Before the tabernacle several lamps, or at least one, are to shine perpetually by day and night. This precept indeed binds under grave sin, so that according to Busembaum and St. Alphonsus[254] it is a mortal sin if through negligence the light of the lamp has been extinguished for an entire day, that is, for the space of twenty-four hours. To supply the lamp, olive oil or beeswax is generally to be used; if these cannot be obtained without great difficulty, the local Ordinary can permit other oils, but, insofar as possible, vegetable oils,[255] and in the last place even electric light.[256] But the sole reason of reducing ordinary expenses does not suffice for petroleum to be employed, since because of its cheapness and odor it seems to be a material lacking in becomingness. When there are several lamps, they must be odd in number, both for ornament and for mystical meaning. Thus the Ceremonial of Bishops.[257] The Eucharist cannot be reserved continuously upon two altars at the same time in the same church,[258] nor upon an altar when immediately above it (although ornamented with a canopy) there is a dwelling with a bed.[259]

In cathedral, collegiate, and conventual churches in which the choral office is recited, it is better and more becoming if the Eucharist is not reserved upon the high altar, but upon a side altar.[260]

c) The sacred particles are to be kept "in a pyx of solid and becoming material, clean and well closed with its own lid, covered with a white veil." Thus the Roman Ritual and the Code of Canon Law.[261]

It is indeed very becoming (although not prescribed by common law) that the pyx be of copper or silver and gilded within. But material of brass, glass, wood, and so forth is excluded.[262] What has been said of the pyx

holds also of the lunette of the monstrance. Both the pyx and the lunette are not to be consecrated, but only **blessed**. Many authors, whose opinion St. Alphonsus[263] thinks not improbable, judge that this blessing is only a matter of fittingness. Nevertheless, in practice the pyx and lunette, and indeed also the monstrance, are to be blessed, because they enclose and immediately touch the Most Holy Eucharist.[264] The pyx must be closed with a lid; hence it does not suffice to place a pall or something similar over it. If a host is left in the lunette of the monstrance, it is very becoming that it be placed in some special vessel which is called a "custodia." A pyx containing the Eucharist is to be surrounded with a white silk veil, and a corporal is to be placed beneath it.

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[254] *Theol. mor.*, l. 6, n. 248. Electric light cannot be employed in place of candles at Mass, but it is lawful to use it to illuminate a church in a becoming manner, every theatrical appearance being excluded. Sacred Congregation of Rites, June 4, 1895. From other decisions of the Sacred Congregation of Rites, namely, those of May 16, 1902; November 22, 1907; and June 24, 1914, it follows that electric light is prohibited: 1. upon the table and steps of the altar; 2. as a light before images or relics of saints; 3. within a monstrance (or throne where the Eucharist is exposed); 4. when electric lamps of various colors are arranged in a manner which does not befit the sanctity of the place (*Acta Ap. Sed.* VI, 353).

[255] Code of Canon Law, c. 1271.

[256] Sacred Congregation of Rites, February 23, 1916 (*Acta Ap. Sed.* VIII, 72). Cf. Cappello, loc. cit., n. 403.

[257] L. 1, c. 12, n. 17.

[258] Code of Canon Law, c. 1268, § 1.

[259] Sacred Congregation of Rites, January 24, 1908 (*Decr. auth.*, n. 4213).

[260] Code of Canon Law, c. 1268, § 3.

[261] Tit. 4, c. 1, n. 5; cf. Code of Canon Law, c. 1270.

[262] Sacred Congregation of Rites, January 30, 1880 (*Decr. auth.*, n. 3511).

[263] *Theol. mor.*, l. 6, n. 385.

[264] It seems that the blessing for a vessel for reserving the Most Holy Eucharist is to be employed (Roman Ritual, tit. VIII, c. 23). For the blessing of a monstrance, a special blessing is contained in the first Appendix of the new edition of the Roman Ritual.

228. Scholion. On the exposition of the Eucharist. By way of a conclusion, a few things concerning the exposition of the Eucharist are appended. Public and private exposition are distinguished. **Public exposition** is had if the Eucharist is taken from the tabernacle and elevated in a monstrance upon a throne. On the feast of Corpus Christi and within its octave, this can be done in all churches during the solemnities of the Masses and at Vespers; but at other times only with the permission of the local Ordinary, even if the church belongs to an exempt religious institute. **Private exposition**, or exposition with the pyx, can be made for any just cause without the permission of the Ordinary.[265] After private exposition, Benediction can be given with the veiled pyx.[266]

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[265] Code of Canon Law, c. 1274, § 1.

[266] Sacred Congregation of Rites, November 30, 1895 (*Decr. auth.*, n. 3875 ad 3).

Section II. On the Eucharist Insofar as It Is a Sacrifice

We divide this section into three chapters: 1. on the nature and effects of the sacrifice of the Mass; 2. on the obligation of celebrating Mass; 3. on the requisites for celebrating Mass.

Chapter I. On the Nature and Effects of the Sacrifice of the Mass

We divide this chapter into three articles: 1. on the nature of the sacrifice of the Mass; 2. on its value, effects, and fruits; 3. on the application of the Mass.

Article I. On the Nature of the Sacrifice of the Mass

Preliminary note. Concerning the nature of the sacrifice of the Mass, we touch upon only those heads of doctrine which are necessary for resolving moral questions; we leave the rest to be treated in Dogmatic Theology.

229. Notion of sacrifice in general. Sacrifice is an external act of the virtue of religion; for it serves to render to God the worship due to Him. Sacrifice is taken either in a broad or in a strict sense. In a broad sense, sacrifice is any good act which in any manner pertains to the worship of God. Hence that saying: "A contrite spirit is a sacrifice to God."[267] But sacrifice accepted in the strict sense is distinguished from the other acts of religion. For it is **a legitimately instituted offering of a sensible thing, by which, through a certain destruction of that same thing (whether physical or moral), men profess the supreme excellence of God and His supreme dominion over the life and death of every creature.** This definition belongs to no other act of religion, whether internal or external, because in no other act is the destruction of the offered thing necessarily required.

Certain modern authors[268] place the genuine notion of sacrifice either in banquets, by which man is, as it were, united with God (the banquet theory), or in the representation of the one true bloody sacrifice accomplished by Christ, or in praises and thanksgivings rendered to God. But these new theories, as Lehmkuhl[269] rightly says, gain for themselves a certain appearance of truth from very few and obscure sayings of the early Fathers, but are refuted by the most abundant and clearest sayings of the other Fathers and by the authentic doctrine of the Church itself. Therefore, the notion of sacrifice most commonly handed down by all authors is to be retained.[270]

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[267] Psalm 50:19.

[268] G. Renz, *Gesch. des Meßopferbegriffes* (Freising, 1901); Wieland, *Mensa und Confessio* (Munich, 1906); Götsmann, *Das euchar. Opfer* (Freiburg, 1901); Jac. Belford, *The Eccl. Review* (Philadelphia, 1903).

[269] *Theol. mor.* II, n. 236, note.

[270] Cf. Rauschen, *Eucharistie u. Bußsakr.*, § 5.

230. The conditions required for a true sacrifice are four:

1. On the part of the matter, the sacrifice must be a sensible substance over which man has dominion, for a sacrifice is a sensible sign.

2. On the part of the form, it is required that the offered thing be destroyed or at least changed. For through sacrifice the supreme dominion of God over all created things is acknowledged, and this acknowledgment and signification are most fittingly manifested by the destruction of the thing, since thus we profess that God can at will reduce all things to nothing. The destruction or change of the thing can be physical, as, for example, the killing of an animal; or moral, that is, by taking away its native use, as, for example, the pouring out of wine or oil. Certain authors[271] teach that the destruction of the matter is not required for the essence of sacrifice, but that consecration suffices. This opinion indeed is little probable, since in consecration alone perfect subjection toward the divine majesty is not sufficiently signified.[272]

3. On the part of the minister, it is required that he be a man legitimately deputed, namely, a priest. In the law of nature, that is, from Adam to Moses, such persons were deputed by a special divine instinct or by tradition, such as fathers of families and Melchizedek; in the Mosaic law Aaron and his sons were deputed for sacrificing, and therefore King Oseas, since he was not a priest, was rebuked when he wished to sacrifice and was punished by infection with leprosy.[273] In the New Law priests alone can sacrifice. Hence the Apostle admonishes: "Neither does anyone take the honor [of the priesthood] to himself, but he who is called by God, as Aaron was."[274]

4. On the part of the end, it is required that it be offered to God alone in testimony of His supreme dominion over our life and death. Sacrifice, therefore, is in the genus of a sign, for it signifies the supreme dominion of God,[275] while the sacraments principally signify grace. Sacrifice is the most proper act of *latria*, or adoration.

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[271] Suarez, *De relig.*, disp. 73, sect. 5, n. 5; Viva, *Curs. theol.*, disp. 5, q. 1, a. 2.

[272] Billuart, *De relig.*, diss. 3, a. 2.

[273] 2 Chronicles 26:18. Authors think in diverse manners concerning the immolation of the paschal lamb; cf. Billuart, loc. cit.

[274] Hebrews 5:4.

[275] St. Thomas, *S. theol.* 2, 2, q. 85, a. 2 ad 2.

231. Thesis. The Mass is a) a true sacrifice and b) a real, unbloody presentation of the bloody sacrifice of the Cross.

a) This is defined against the Reformers of the sixteenth century by the Council of Trent,[276] and is established from the prophecies of the Old Testament[277] and from the words of the institution of the Eucharist in the New Testament.[278] The reason is that in the Mass all the conditions required for a true sacrifice are present. For:

1. On the part of the **matter**, there is the offering of a sensible thing, namely, of the Body and Blood of Christ under the species of bread and wine. 2. On the part of the **form**, there exists a destruction, both mystical and real. For by force of the words, under the species of bread the Body of Christ alone is placed, and under the species of wine the Blood of Christ alone, and thus there occurs a certain mystical separation of the Blood from the Body, or destruction, although the whole Christ is really present under each species. Moreover, by the consecration in the Mass Christ receives a new being, namely, sacramental being, which He loses again in Communion when the species have been dissolved. 3. On the part of the **minister**, only a rightly ordained priest can offer the sacrifice of the Mass. 4. On the part of the **end**, the Mass testifies to the supreme dominion of God and is offered to Him alone. Hence the Council of Trent says:[279] "Although the Church has sometimes been accustomed to celebrate some Masses in honor and memory of the saints, nevertheless she does not teach that sacrifice is offered to them, but to God alone, who crowned them; hence neither is the priest accustomed to say: I offer sacrifice to thee, Peter or Paul; but, giving thanks to God for their victories, he implores their patronage, that those whose memory we keep on earth may deign to intercede for us in heaven."

b) The Mass, from the institution of Christ, is essentially a sacrifice **representative of the sacrifice of the Cross**. Therefore Christ, instituting the sacrifice of the Mass, says: "Do this in commemoration of Me,"[280] and St. Paul says: "For as often as you shall eat this bread and drink the chalice, you shall announce the death of the Lord until He comes."[281] This representation pertains to the essence of the Mass, and therefore it can and must rightly be said that the sacrifice of the Cross and the sacrifice of the Mass do not differ essentially. For

"one and the same is the Victim, the same now offering by the ministry of priests who then offered Himself on the Cross, the manner of offering alone being different."[282]

But the Mass differs **accidentally** from the sacrifice of the Cross: 1. because on the Cross Christ was offered mortal and passible, but in the Mass immortal and impassible; 2. on the Cross the sacrifice was bloody, but in the Mass unbloody; 3. on the Cross Christ offered Himself, but in the Mass He offers through the ministry of priests; 4. on the Cross the price of our redemption was paid, but in the Mass that price is applied and communicated to us.

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[276] Session 22, cann. 1 and 2 on the sacrifice of the Mass (Denz., n. 948 sq.). "If anyone says that in the Mass a true and proper sacrifice is not offered to God ... let him be anathema."

[277] Genesis 14:18; Psalm 109:1.

[278] Matthew 26:26; Mark 14:22; Luke 22:19; 1 Corinthians 11:24 ff.

[279] Session 22, c. 3 on the sacrifice of the Mass (Denz., n. 941).

[280] Luke 22:19.

[281] 1 Corinthians 11:26.

[282] Council of Trent, session 22, c. 2 on the sacrifice of the Mass (Denz., n. 940).

232. The essence of the Mass. Theologians do not agree in precisely which action the essence of the sacrifice of the Mass is situated. The essence of the sacrifice of the Mass does not consist: a) in an oblation either preceding or following the consecration; nor b) in the elevation of the host; nor c) in the fraction and commingling of the species; nor d) in distribution; nor e) in either one of the consecrations; but in the consecration **of both species**, with an order, however, to consumption as to an integral part. Thus the more common and truer opinion.[283] The reason is that in the consecration of both species alone the four conditions required for the essence of sacrifice are verified. Nor should anyone object against this opinion: Therefore, if someone on Sundays was present at both consecrations alone, he satisfied the Sunday precept; which is false. For this precept obliges one to hear the **entire Mass**, and not its essence alone. From this doctrine concerning the essence of the Mass certain very practical conclusions follow.

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[283] Cf. Billuart, *De euchar.*, diss. 8, a. 2.

233. You resolve:

1. It is not lawful to make or change the application of the Mass after both consecrations have been completed. For the essence of the sacrifice has then already been completed.

2. Particles consecrated in the pyx must remain upon the altar until after the Communion of the celebrating priest. The reason is that the Communion of the priest is not indeed of the essence of the Mass, but is an integral part of it. Therefore, a priest cannot consume a host consecrated in another Mass and place the host alone consecrated by him in this Mass in the monstrance; likewise, he must not replace the consecrated particles in the tabernacle, nor even hand them over to another distributing the Eucharist, until after his own Communion.[284] Nevertheless, several authors rightly judge this last thing lawful if some necessity is present, for example, of administering Viaticum.

3. One who perceives at Communion that water is in the chalice and is unable to consecrate wine anew cannot receive a stipend for a Mass celebrated in this manner. Likewise, one who in good faith celebrated Masses with falsified wine unfit for consecration does not seem to have satisfied the stipends

accepted for these Masses. Hence he must say them again or obtain a remission from the Holy See. There are, however, authors, for example, Gury,[285] Berardi,[286] and Génicot,[287] who think that in this case the priest satisfied his obligation. For the opinion placing the essence of the Mass in one consecration is still in some measure probable. Therefore, the priest probably satisfied and consequently is bound to nothing according to the principles of pure probabilism. They add another reason: Since the stipend is given for the support of the priest, it can be presumed that he who gave it demands nothing more than that the priest celebrate a certain number of Masses, ordinary diligence being employed that all things be performed validly. Nevertheless, this opinion does not seem safe in practice, because: a) the arguments adduced are very weak; and b) the contrary practice exists. Hence even Génicot himself[288] says: "Nevertheless, it is to be advised that, if few Masses have been said in this manner, they be repeated; if many, compensation be sought from the Holy See."

4. Because in the Mass of the Presanctified no consecration is had, a priest cannot receive a stipend for this Mass.

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[284] Cf. Sacred Congregation of Rites, May 11, 1878 (*Decr. auth.*, n. 3448 ad VIII).

[285] *Cas. consc.* II, n. 236.

[286] *Praxis confess.*, n. 3529.

[287] *Theol. mor.* II, n. 234.

[288] Ibid.

234. Scholion. On the word Mass. The word Mass is derived neither from the Hebrew word *Missah*, which signifies an offering, nor from the Greek word μύησις (blessing), but from the Latin word *mittere*. It is called Mass for a threefold reason, because: a) through the Mass our offerings and prayers are sent to God; b) Christ is sent to us; c) at the end the people are dismissed with the words: *Ite, missa est*. St. Thomas writes to the point:[289] "For this reason it is called Mass, because through an angel the priest sends prayers to God, as the people do through the priest; or because Christ is the Victim sent to us by God; hence also at the end of Mass on feast days the deacon dismisses the people, saying: *Ite, missa est*, namely, the Victim [has been sent] to God through the angel, namely, that it may be acceptable to God."

The Mass is called by the Greeks by diverse names, for example: μυσταγωγία, initiation, the accomplishment of the mystery; σύναξις, assembly; λατρεία, worship; εὐλογία, blessing; ἱερουργία, sacrifice; θυσία, victim; λειτουργία, the office of public worship. The name Mass was employed already from the most ancient times,[290] but not always in the same sense; thus, for example, it was sometimes taken also for the Canonical Hours.[291]

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[289] *S. theol.* 3, q. 83, a. 4 ad 9.

[290] Cf. St. Ambrose, Ep. 20 and Sermon 25.

[291] Cf. above, II, n. 360.

Article II. On the Value, Effects, and Fruits of the Mass

Since the matter of this article is sufficiently extensive, we divide it into two paragraphs, namely: 1. on the value and effects of the Mass in general; 2. on the fruits of the Mass in particular, insofar as they are participated.

§ 1. On the Value and Effects of the Mass in General

Notions. For the sake of clarity, it must first be explained what is meant by these terms: the value, dignity, effects, and fruits of the Mass, lest confusion arise, especially since these terms are not understood in one manner by diverse authors. Then it must be said briefly who the diverse offerers are in the sacrifice of the Mass.

235. The value of the Mass includes two things: dignity and efficacy (power); or, as St. Alphonsus says:[292] "Value is that efficacy which the Mass has from the dignity of the offerer and of the thing offered for conferring goods upon the offerer and upon those for whom it is offered."

[292] *Theol. mor.* l. 6, n. 312.

236. The effects of the Mass are all those things which are actually produced by it with respect both to God and to the world.

The effects of the Mass are five, namely: 1. the **latreutic effect**: for the Mass produces adoration and the most excellent worship of God; 2. the **eucharistic effect**, insofar as the Mass renders thanks to God for benefits received; 3. the **impetratory effect**, because the Mass most efficaciously obtains goods, both temporal and spiritual; 4. the **propitiatory effect**, because the Mass renders God propitious to us, so that He remits sins;[293] 5. the **satisfactory effect**, because the Mass causes the remission of the punishments due for sins.

It must be noted that a meritorious effect does not belong to the Mass insofar as it is a sacrifice accomplished in the person of Christ or in the name of the Church. For Christ merits nothing further through the Eucharistic sacrifice, since He Himself is outside the state of meriting and the redemption was completed on the Cross; neither does the Church merit anything through the sacrifice of the Mass, since every merit supposes a personal act. But if the Mass is considered as a personal good act of the priest, then he certainly merits *ex opere operantis* an increase of grace and glory. Moreover, since not only the celebrating priest, but also the faithful who assist or who give the stipend for the Mass offer the Mass, all of them merit an increase of grace and glory, provided, however, that they place no obstacle. For all who are in the state of mortal sin can properly merit no good, as was said above in I, n. 139. Therefore, a priest offering Mass in the state of mortal sin merits nothing and obtains no good effect; on the contrary, he commits a grave sacrilege. But the faithful who are in the state of mortal sin and who offer Mass with the priest indeed merit nothing, but they can obtain other good fruits, for example, impetratory and propitiatory fruits.

[293] Council of Trent, session 22, c. 2 and can. 3 (Denz., nn. 940 and 950).

237. The fruits of the Mass are taken indiscriminately by some theologians for the effects of the Mass, but they are better understood as only those effects which the Mass produces for men (and not for God). For we call the fruits of a thing those effects which we enjoy. Therefore, the fruits of the Mass are only a determinate part of the effects of the Mass, namely, the propitiatory, satisfactory, and impetratory effects.

238. There are several offerers in the Mass, who nevertheless do not all properly sacrifice, since priestly order is required for sacrificing, whereas a moral conjunction with the sacrificing priest suffices for offering. Now the following offer:

1. **Christ**, who is the principal offerer, not only because He Himself instituted the sacrifice of the Mass, but also because He offers through priests as through His vicars, who therefore pronounce the words of consecration in the person of Christ: "For this is My Body, etc."

2. **The Church**, which has appointed the priest to offer the Mass to God.
3. **The priest himself**, who indeed sacrifices in the name of Christ and of the Church, but also offers the Mass as a private person.
4. **All the faithful**, but especially those who serve at or assist at the Mass, or who have given a stipend. Hence these words also are recited in the Canon: "This oblation, therefore, of our service and also of Thy whole family"; and: "Remember, O Lord, Thy servants ... for whom we offer unto Thee, or who offer unto Thee, this sacrifice of praise."

239. Principle 1. The dignity of the sacrifice of the Mass is infinite.

The reason is that in the sacrifice of the Mass both the principal offerer and the victim itself (namely, Christ God) are of infinite dignity. Moreover, the sacrifice of the Mass is the same as the sacrifice of the Cross, which certainly is of infinite dignity.

Principle 2. The value of the Mass (that is, its efficacy or power) is infinite: a) as regards sufficiency; b) as regards the latreutic, eucharistic, and propitiatory effects; c) as regards the so-called special fruits.

The first part of this principle is clear from the fact that the sacrifice of the Mass is the same as the sacrifice of the Cross, which certainly is sufficient for conferring infinite graces because of the infinite dignity of the offerer and of the victim.

The second part is evident from the fact that the principal offerer in the Mass is Christ, who by sacrificing causes an infinite act of adoration, thanksgiving, and propitiation. For such worship is exhibited to God through the Mass that no greater worship can be exhibited absolutely.

The third part is easily understood from the notion of the special fruits, which - as will be explained more fully below - are those which all who assist at the sacrifice of the Mass receive. Now this fruit is received by all, however many assist, and it is not diminished even if innumerable men are present at the same Mass and participate in its fruit.

240. Principle 3. The fruits of the Mass actually produced are limited; this limitation seems to arise both from the disposition of the man receiving and from the will of Christ instituting.

All theologians indeed teach that the fruits of the Mass (taken in the strict sense explained above) are actually finite, because otherwise it would follow that one Mass would suffice for the salvation of the whole world and would empty all purgatory, and that it would not be lawful to say several Masses for one and the same deceased person. But the difficult question arises: whence does this limitation of the fruits of the Mass arise, when the Mass in itself is of infinite value? There are two opinions.

The first asserts that this limitation arises from the will of Christ alone, who so established it. The reason for this will is that Christ commanded that this sacrifice be celebrated not once but repeatedly. Therefore, He did not will an infinite effect. Hence it is also the practice of the Church that several Masses are celebrated for one deceased person. Moreover, it is not apparent why the Church permits stipends to be accepted for the offering of Masses, and indeed one for each individual Mass, if those who do not give stipends have an equally great share of the fruit. This opinion, which Noldin[294] calls altogether to be held, is commonly held by modern authors of the Society of Jesus, for example, Chr. Pesch,[295] Lehmkuhl,[296] Génicot,[297] and also by several others.[298] Among the ancients, St. Bonaventure,[299] Suarez,[300] and Lugo[301] are cited for this opinion.

The other opinion teaches that the limitation of the fruits of the Mass arises principally from the condition of the man offering or receiving, but that in itself the value of the Mass is extensively and intensively infinite. Hence, according to this opinion, one Mass applied for several persons profits them equally as much as if it were applied for one. For if the value is infinite and the fruit is measured according to the capacity of the man, nothing is taken away from one if it is also bestowed upon others; for an infinite treasury cannot be exhausted. St. Thomas seems to favor this opinion, saying: "Although ... this oblation from its quantity suffices to satisfy for every punishment, nevertheless it becomes satisfactory for those for whom it is offered, or also for the offerers, according to the measure of their devotion, and not for the whole punishment."[302] According to this text must be explained the words which St. Thomas wrote when younger: "Although the power of Christ, which is contained under the sacrament of the Eucharist, is infinite, nevertheless the effect to which that sacrament is ordained is determinate";[303] and: "If, therefore, a suffrage made for many were of as much value to each individual as if it were made for one alone, it would seem that the Church ought not to have instituted that Mass or prayer be made for someone individually, but that it should always be said for all the faithful departed; which is manifestly false."[304] For in that entire question the Angelic Doctor is not treating specially of the Mass, but of the suffrages of the Church in general. Moreover, it is readily conceded that even the Mass, insofar as it is a suffrage instituted by the Church, has a finite effect, and therefore, the more persons to whom it is applied, the less it assists each individual. For the Wycliffite proposition (19) was condemned: "Special prayers applied to one person by prelates or religious profit that person no more than general prayers, other things being equal."[305]

The foundation of this opinion is the infinite efficacy not only of the thing offered but especially of Christ, the principal offerer, which ought not to be limited by the finite oblation of the priest. St. Alphonsus[306] calls this opinion, speculatively speaking, the more probable,[307] and cites for it Gonet, Cajetan, the Salamancans, Cano, Concina, Wigandt, Holzmann, etc. Among the moderns, the disciples of St. Alphonsus hold it, such as Marc, Aertnys, etc. Billuart writes of this controversy:[308] "Each [opinion] is probable; and although I seem to incline toward the second, nevertheless I acknowledge that neither is certain, but that each suffers its own difficulties. Hence, for practice, it is advisable that the celebrant offer specially, insofar as he can and ought, for those for whom he is bound to offer from justice; but for those for whom he offers at the same time from charity, piety, friendship, or another gratuitous title, let him offer as much as he can."

From all that has been said it seems to follow that the fruit of the Mass is indeed limited in fact, but that the principal proximate cause of this limitation is unknown. For the rest, it is not unfittingly said that the fruit of the Mass is limited because Christ, knowing the insufficient disposition of the recipient, so established it.

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[294] *De sacr.*, n. 173.

[295] *Prael. dogm.* VI, n. 934.

[296] *Theol. mor.* II, n. 251.

[297] *Theol. mor.* II, n. 218.

[298] Cf. Gihr, *Das hl. Meßopfer*, § 17, p. 118 ff.

[299] *In 4*, dist. 45, a. 2, q. 3 ad 4. The mind of the Holy Doctor seems to be doubtful.

[300] *De relig.*, disp. 79, sect. 12, n. 7.

[301] *De sacr. euchar.*, disp. 19, n. 246.

[302] *S. theol.* 3, q. 79, a. 5.

[303] *In 4*, dist. 45, q. 2, a. 4, sol. 3 ad 2.

[304] Loc. cit., quaestiunc. 2, arg. "Sed contra."

[305] Denz., n. 599.

[306] *Theol. mor.* l. 6, n. 312.

[307] Gaudé (in the new edition of St. Alphonsus, note on loc. cit.) says: "Later, however, namely in the year 1769, both in the little work *De caerem. Missae*, part 3, *De abus. in accipiendis Missis*, n. 26-28, and in his work on Trent, session 22, n. 22, the Holy Doctor called the former opinion the more common and defended it."

[308] *De euchar.*, diss. 8, a. 5.

241. The manner of producing the effects. 1. The latreutic and eucharistic effects are produced *ex opere operato*. For Christ Himself adores God the Father and renders thanks to Him in the sacrifice of the Mass.

2. The impetratory effect or fruit of the Mass proceeds: a) *ex opere operato*, insofar as Christ Himself obtains for us by offering His merits to the Father; b) from the action of the Church, which sacrifices and supplicates; c) *ex opere operantis* on the part of the priests or the faithful. Any good whatsoever, whether temporal or spiritual, can be obtained through the sacrifice of the Mass. For the Mass is a most efficacious prayer; nevertheless, the good petitioned is obtained neither immediately nor always, because an obstacle can be present on the part of the recipient, just as other prayers also are not heard immediately and always.

3. The propitiatory effect or fruit renders God, who is angered because of our sins, propitious to us. And this in a twofold manner: a) Since in the sacrifice of the Mass the merits of the sacrifice of the Cross are applied to us, God is appeased, granting more abundant graces so that man can elicit acts of charity and contrition necessary for obtaining the remission of sins. This propitiatory fruit is indeed produced *ex opere operato*, but not infallibly, because God never remits actual sins without the conversion of man, which is sometimes lacking. b) Because of the prayers of the Church and of the sacrificing priest. Nothing occurs so frequently in the prayers of the Mass as: Be propitious, O Lord; Be appeased, O Lord; etc. This second manner is almost referred to the impetratory fruit. For the first object of prayers to be presented to God ought to be the remission of every fault. For what profit are other goods if God is offended with us because of our sins? Therefore, the propitiatory effect seems to precede the impetratory effect. For as long as God is hostile to us and not yet propitious or appeased, we obtain no graces, or few graces (ordinarily at least).

It is self-evident that the sacrifice of the Mass does not directly and immediately destroy mortal sins, since this remission is reserved to the sacraments. For the sacrifice was instituted directly for the worship of God and not for the remission of sins. But neither are venial sins remitted directly through the Mass insofar as it is a sacrifice. Thus holds the far more probable opinion. The reason is the same. It remains, therefore, that mortal and venial sins are said to be remitted through the sacrifice of the Mass insofar as more abundant actual graces are granted for eliciting contrition or for worthily receiving the sacraments.

242. 4. The satisfactory effect or fruit of the Mass is the remission of the temporal punishment due for sins committed and not yet discharged. Hence the Council of Trent[309] teaches that souls detained in purgatory are assisted chiefly by the sacrifice of the altar. The reason for this fruit is the sacrifice of the Cross itself, which is renewed and applied in the Mass and which washes away not only sins but also the punishment of sin. The satisfactory fruit is produced *ex opere operato*, as is evident, and that infallibly and immediately; but it does not always destroy the whole punishment, but only such a part of it as the faithful are

worthy to receive. Therefore, if the Mass is offered for some deceased person, it is certain that he draws some relief from it. Nevertheless, it does not follow from this that wealthier deceased persons, for whom very many Masses are offered, are in a better condition than the poor, for whom no Mass is specially applied; for the poor, if God so disposes, perhaps participate more in all the other Masses, since in each of them prayer is made for all the departed; but the wealthy, on account of their incapacity and unworthiness, are perhaps greatly limited in receiving the fruits.

[309] Session 25, on purgatory (Denz., n. 938).

§ 2. On the Fruits of the Mass in Particular, Insofar as They Are Participated

243. All the fruits enumerated up to this point are customarily distinguished fourfold according to the persons to whom they accrue: 1. the general fruit; 2. the special fruit; 3. the most special fruit; 4. the ministerial fruit. Some authors, however, distinguish only three fruits: the general, the special or ministerial, and the personal. The dispute is about words, since all theologians agree on the matter itself.

1. **The general fruit of the Mass accrues to the whole Church, that is, to all the faithful, living and deceased, provided they place no obstacle.** For the priest offers the sacrifice of the Mass in the name of Christ and of the Church; and just as Christ and the Church pray for all, so also the priest must apply this general fruit to all, without being able to make any other disposition of it. All theologians concede that this general fruit is propitiatory and impetratory; but some doubt whether it is also satisfactory, since it seems incredible that each just person always receives the remission of temporal punishment from so many thousands of sacrifices offered daily.[310] For the rest, the matter is entirely hidden from us. Certainly, not all always receive the satisfactory fruit, since some most holy men do not need it, inasmuch as they have already satisfied in another manner for the punishments due.

2. **The special fruit is that which is received by the faithful who assist at Mass, who, as it were, co-sacrifice with the celebrating priest.** Hence it is said of them in the Canon: "who offer unto Thee ... for themselves and all their own." This fruit arises both *ex opere operato* and *ex opere operantis*, and nothing prevents the faithful from assigning this fruit to others. In this sense one can say to another: I will hear Mass for you. It is self-evident that such an application produces excellent fruits. If someone is present in a church in which several Masses are being said at the same time, and if he then joins himself spiritually with each of the celebrating priests, he seems to receive the special fruits of all those Masses.

3. **The most special fruit (which is also sometimes called personal) is that which the celebrating priest himself receives.** For it seems equitable that the priest who bears the person of Christ and accomplishes the sacrifice should acquire a special fruit for himself. Whether the priest can apply this personal fruit to another is not certain, nor do theologians agree.[311] Nevertheless, no solid reason is adduced why this should be impossible or unlawful. Moreover, nothing concerning this matter is found in Sacred Scripture, in tradition, or in the definitions of the Church. Alexander VII, on September 24, 1665, indeed condemned the proposition: "A priest can licitly accept a double stipend for the same Mass by applying to the petitioner also the most special part of the fruit corresponding to the celebrant himself, and this even after the decree of Urban VIII."[312] But from this condemnation it follows only that the priest cannot accept a stipend for the application of the personal fruit; it by no means follows that the priest cannot apply this fruit gratuitously to another. For a stipend is not the price of any fruit

whatsoever of the Mass, since this would be putrid simony, but it is a contribution for the support of the priest, as will be said below.

4. **The ministerial fruit (which is called special or intermediate by others) is intermediate between the general and the personal fruit and accrues to those for whom the Mass is applied.** For just as it is lawful to pray for a determinate man or for a special intention, so also nothing prevents the Mass from being efficaciously offered for a special intention. This ministerial fruit seems to have a threefold effect, namely, propitiatory, satisfactory, and impetratory.

[310] Cf. Noldin, *De sacr.*, n. 173.

[311] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 318.

[312] Denz., n. 1108.

244. Scholion. On the value of a Mass celebrated by a bad priest. Theologians ask whether the Mass of a bad priest produces lesser effects than that of a good priest. The answer is: If the Mass is considered insofar as it is celebrated in the name of Christ or of the Church, it produces fruits *ex opere operato*, and accordingly is independent of the goodness of the priest. But if the Mass is regarded as a personal work of the priest, then a good priest can communicate more abundant fruits than a bad one.[313] Since, however, the fruit of the Mass proceeding *ex opere operato* is principal, it does not matter so greatly by which priest the Mass is said for the faithful.

[313] Cf. St. Thomas, *In 4*, dist. 13, q. 1, a. 1, solut. 5, and *S. theol.* 3, q. 82, a. 6.

Article III. On the Application of the Mass

For the sake of clarity, this article is divided into two paragraphs: 1. on the manner of application; 2. on those for whom the Mass can be applied.

§ 1. On the Manner of Application

245. Notion. The application of the Mass is the intention or will of the priest to determine the ministerial fruit for a special end, for example, for certain deceased persons. Therefore, application, as we now speak of it, does not touch the three other fruits, nor even the Mass insofar as it is a personal good act. These things must indeed be kept before the eyes to avoid confusions. It must especially be noted that it is not the same thing to ask for whom the Mass can be applied and for whom it can be useful. The fruits of the Mass are in some measure useful to the whole world, just as is the sacrifice of the Cross; but the Mass cannot be applied for just anyone in the whole world.

246. The power of applying. It is certain that the Mass can truly be specially applied, and the contrary opinion of the Synod of Pistoia was condemned by Pius VII.[314] The application of the Mass (that is, its ministerial fruit) belongs to the celebrating priest alone, who is constituted the dispenser of the mysteries of God and in his ordination received the power of offering the sacrifice of the Mass, that is, of applying the ministerial fruit both for the living and for the deceased. The priest must make this application, because otherwise this fruit remains in the treasury of the Church, as the theologians say.

For the rest, every priest is judged to have a habitual intention of applying the Mass either for himself or for those to whom he is obligated from justice or from another title. But when a priest has forgotten to make the application of some Mass, then the ministerial fruit probably returns to the celebrant himself. But when a

priest, having accepted a stipend, applied the Mass for some deceased person who is already in heaven or who is in hell, then the fruit of the Mass probably accrues to the one who gave the stipend, since he is judged to have the intention that the offered Mass profit either the deceased person or himself. In practice it is advisable that the priest once and for all make an express intention: of applying the ministerial fruit to himself if perhaps he has forgotten to make an application, or if by a gratuitous title he has applied the Mass to someone incapable of receiving it; but of applying the ministerial fruit to those giving the stipend if, by an onerous title, he was bound to make an application which was ineffective because of the incapacity of the person receiving.

[314] Prop. 30 (Denz., n. 1530).

247. The manner of applying. 1. **The application must be made for a certain end.** For the priest must determine at least in some manner to whom the ministerial fruit ought to accrue; otherwise the application is thereby destroyed. Nevertheless, it is not required that this determination be entirely singular and that the priest know the intended end perfectly. Hence it suffices to apply the Mass: according to the intention of the person giving the stipend, or of the superior; according to the intention noted in a booklet; according to the order in which the stipends were given; for fulfilling endowed Masses; for the greatest sinner; for the most abandoned soul; etc. But it is not lawful to apply the Mass according to the intention of one who will request the application after offering an alms, but has not yet requested it, and then to retain the alms afterward given for the Mass previously applied.[315]

When a priest through error celebrated Mass for a deceased man, whereas the stipend was given for a deceased woman, he nevertheless satisfied the obligation. For the error is accidental, since the prevailing intention was to celebrate according to the intention of the person giving the stipend. To avoid difficulties which can easily occur, it is better that a priest celebrating a Mass for a stipend elicit no other principal intention than that of applying the Mass according to the intention of the person giving the stipend.

But if several persons have offered stipends, then the Masses can be celebrated either according to the order in which the stipends were offered, or each Mass can be celebrated according to the intention of all who offered stipends; for then from each Mass each offerer receives a part of the fruits. But when all the Masses have been discharged, each has received all the fruits to which he had a right. This second manner ought to be preferred by those who hold that the limitation of the fruits of the Mass arises not from the will of Christ but from the incapacity of the recipient. For then each of all those who offered stipends receives, each time the Mass is thus applied, the whole fruit of which he is capable.[316]

Here authors pose a curious question: whether it is lawful to apply the Mass according to the intention of the Blessed Virgin Mary? If the Blessed Virgin truly intends that the Mass be celebrated for a determinate end, this application is valid; otherwise it is not. In practice it is much better that the priest add another, more determinate intention besides this intention.

2. **The application must be made at least before the second consecration.** The reason is that the essence of the Mass consists in both consecrations, as was said above in n. 229. Therefore, as long as both consecrations have not been completed, the fruit of the Mass can be applied. But when the second consecration has been completed, the application also has been completed and accordingly can no longer be changed. An application made between the two consecrations is more probably valid, because the essence of the sacrifice has not yet been completed. In practice, however, it is advisable that the application be made before Mass. Nevertheless, it is not required that it be made immediately before

Mass, but it can also be made some time beforehand. Thus, for example, a priest can arrange the Masses to be applied for the whole coming month.

[315] Code of Canon Law, c. 825, n. 1.

[316] Thus also Ballerini in the note to Gury II, n. 356.

248. Scholion. On a conflict of two intentions in the application of the Mass. What must be done if a priest, forgetful of a prior intention, has intended a second application of the Mass was already said above in n. 66 in the treatise on the intention of the minister of the sacraments. The general rule is: **The stronger intention prevails.** But which intention is stronger, whether the first or the second, is often impossible to discern. In practice it is better and safer that the priest once and for all establish for himself a rule according to which, in similar cases, the prevailing intention is to be discerned. But if in a particular case it truly is not established which application was made, nothing remains except that on another day a Mass be celebrated according to that intention which God knows has not yet been satisfied.

§ 2. On Those for Whom the Mass Can Be Applied

249. Preliminary note. Some theologians distinguish a threefold application of the Mass: public, if it is publicly announced for whom the Mass is applied; semi-public, if the priest and the one offering the stipend know the application; occult, if the priest alone knows the application of the Mass.

Principle. a) By divine law the Mass (or rather, the ministerial fruit) can be applied to all those whom it is capable of benefiting; b) by ecclesiastical law, however, the application of the Mass is affected by few limitations.

The first part of this principle is evident. For the Mass is nothing other than the application of the fruits of the sacrifice of the Cross. But Christ died for all, and the fruits of the sacrifice of the Cross can accrue to all who are capable of grace. Therefore the same must be said of the application of the Mass. Hence the Mass cannot be applied to the damned in hell, nor to infants who have died with original sin alone. The reason is that all these are incapable of grace and glory. Therefore it is not lawful to accept a stipend for celebrating Mass for an infant who has died without baptism. Some authors[317] teach that the Mass can be offered not only in honor of the saints, but also for them, namely, so that their cult on earth may be increased, and thus an advantage may accrue indirectly to the faithful on earth. It is better, however, and more true to say that the Mass cannot be offered for the saints, because even their accidental beatitude does not seem mutable on account of human prayers. Nothing prevents someone, however, from offering Mass to obtain the canonization of one who has already been solemnly beatified by the Church. For by such a canonization not only is the accidental glory of the blessed person himself increased, but the devotion of the Christian people is also fostered. The fruit of the Mass can benefit all other men, whether living or deceased, and accordingly can be applied to them, unless the Church has prohibited it.

[317] For example, Lehmkuhl, *Theol. mor.* II, n. 245.

250. Ecclesiastical law, according to the discipline now in force, permits the Mass to be applied for any persons whatsoever, both living and deceased in purgatory; for excommunicated persons, however, only privately and with scandal removed.

It is not lawful to apply the Mass for an excommunicated person *vitandus*, except to obtain his conversion.[318] Previous statutes, therefore, if any existed, have now been revoked, and the Mass can be applied even for

living and deceased non-Catholics, provided this is done privately and scandal is removed.

For deceased persons to whom ecclesiastical burial has been denied, for example, for those who ordered that their body be delivered for cremation, not only the funeral Mass but also the anniversary Mass is prohibited, at least if the application is made publicly.

[318] Code of Canon Law, cc. 809 and 2262, § 2, n. 2.

Chapter II. On the Obligation of Celebrating Mass

The obligation of celebrating Mass can arise from a sixfold title, namely: 1. from the priestly order received; 2. from office; 3. from a benefice; 4. from a stipend; 5. from a promise; 6. from obedience.

Article I. On the Obligation by Reason of the Priesthood Received

251. Principle. Every priest is bound to celebrate Mass several times a year, unless he is legitimately impeded.

Thus holds the opinion which today is common and certain;[319] theologians disagree, however, whether this obligation is grave for each priest and whether it arises from divine law or from ecclesiastical law.

a) Concerning the existence of this obligation, St. Thomas argues in this manner:[320] "Some have said that a priest can licitly abstain altogether from consecrating, unless he is bound, by reason of the care committed to him, to celebrate and to furnish the sacraments to the people.[321] But this is said irrationally, because each one is bound to use the grace given to him when it is opportune, according to the saying: 'We exhort you not to receive the grace of God in vain.'[322] But the opportunity of offering sacrifice is considered not only in comparison with the faithful of Christ, to whom it is necessary that the sacraments be ministered, but principally in comparison with God, to whom sacrifice is offered in the consecration of this sacrament. Hence it is not lawful for a priest, even if he does not have the care of souls, to cease altogether from celebrating; but it seems at least that he is bound to celebrate on the principal feasts."

[319] The Code of Canon Law, c. 805, establishes: "All priests are held by the obligation of offering the Sacred Mysteries several times a year; the bishop or religious superior, however, is to take care that they perform the divine rites at least on each Sunday and on the other feasts of precept."

[320] *S. theol.* 3, q. 82, a. 10.

[321] This seems to be the opinion of St. Bonaventure, *In 4*, dist. 12, part 2, a. 2, q. 1, but the Seraphic Doctor does not speak so clearly in this place, and elsewhere he seems to intimate quite the contrary (*De praep. ad Miss.* c. 5).

[322] 2 Cor. 6:1.

252. b) Concerning the gravity of this obligation, nearly all authors, at least the moderns, agree, teaching that every priest who is not legitimately excused is bound under grave sin to celebrate Mass sometimes. For it concerns a grave matter. Certain older theologians, however, held the contrary, especially Cajetan[323] and Lugo.[324] St. Alphonsus[325] teaches that every priest is bound under grave sin to celebrate Mass at least three or four times a year on the more solemn feasts, unless he is legitimately impeded. Therefore, those priests who are reported to have lived in the desert for a long time, or who for some other reason abstained from celebrating for an entire year, as did St. Ignatius Loyola, must be said to have done this with due ecclesiastical permission. Per accidens, for example, because of scandal arising therefrom or because

of contempt for the sacrifice, a priest who does not celebrate Mass for a long time sins gravely without any doubt.

[323] Commentary on *S. theol.* 3, q. 82, a. 10.

[324] *De euchar.*, disp. 20, n. 2.

[325] *Theol. mor.* l. 6, n. 313.

253. c) Concerning the source of this grave obligation, namely, whether it arises from divine law or from ecclesiastical law, it is not established. Without prejudice to the Catholic faith, it cannot be denied that Christ imposed upon the whole priestly order the command of celebrating Mass.[326] This indeed manifestly follows from the words of the Savior: "Do this in commemoration of Me"; but it is uncertain whether this divine command binds each priest under grave sin. The negative opinion, which is held by Lugo,[327] St. Bonaventure,[328] Ballerini-Palmieri,[329] and others, seems probable, because the Church can permit a priest or even a bishop to be reduced to lay Communion and never again to celebrate Mass.[330] But if every priest were bound by divine law under grave sin to celebrate Mass, such an indult would not be so easily explained.

Today there exists throughout the world the laudable custom that every priest celebrate Mass daily, unless he is legitimately impeded. Wherefore a priest who rather frequently omits Mass without an urgent cause can scarcely avoid scandal. St. Bonaventure[331] says fittingly: "A priest who does not celebrate, insofar as lies in him, deprives the Trinity of praise and glory; those existing in purgatory of refreshment; the Church of Christ of a special benefit; and himself of medicine and a remedy against daily sins and infirmities." Similar words are found in the book *The Imitation of Christ*:[332] "When a priest celebrates, he honors God, gladdens the angels, edifies the Church, assists the living, affords rest to the deceased, and makes himself a participant in all good things."

[326] Thus Benedict XIV, *De sacrif. Missae*, sect. 2, n. 3.

[327] *De euchar.*, disp. 20, n. 2.

[328] *In 4*, dist. 12, part 2, a. 2, q. 1.

[329] IV, n. 1005.

[330] Cf. the example of Talleyrand and the Code of Canon Law, c. 211 ff.

[331] *De praep. ad Miss.*, c. 5.

[332] Book 4, c. 5.

Article II. On the Obligation by Reason of Office

254. Principle. All pastors of souls are bound by divine law to apply Mass for their subjects sometimes, and by ecclesiastical law on certain days.

Explanation: **1. Who are pastors of souls.** All those are considered pastors of souls upon whom, by reason of their office, the care of souls is incumbent, such as the Supreme Pontiff, residential bishops, abbots *nullius*, superiors of an exempt clerical religious institute, pastors, quasi-pastors, and any who are deputed by competent authority to discharge by office the function of a bishop or pastor, such as the administrator of a diocese (but not the vicar general), or the administrator of a parish when the pastor is deceased or impeded. Since religious superiors are true pastors of their subjects, and this in a more perfect manner than pastors,

there seems to be no doubt that they are bound by divine law to apply Mass for their subjects sometimes. But even today common ecclesiastical law has not determined the days on which they are obliged to apply Mass. Since titular bishops do not have a flock committed to them, they are not indeed strictly bound to the application, "but nevertheless, if account is taken of episcopal equity and charity, it cannot but seem fitting that they also sometimes offer sacrifice, so that God may look upon the miserable condition of those Churches by whose title and name they themselves are honored."[333] What has been said of titular bishops does not apply to vicars apostolic and prefects of missions, since they are true Ordinaries. Therefore these are sometimes bound to apply Mass for the flock committed to them, as will be said below. Whether so-called military pastors, or pastors of soldiers, are bound depends upon particular law. In Spain the military clergy are not bound.[334] In the Eastern Church pastors of souls are indeed obliged to apply Mass for the people, but they are not strictly bound to the days determined in the Western Church.[335]

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[333] Thus Leo XIII, Constitution *In suprema*, June 10, 1882; cf. Code of Canon Law, c. 348, § 2.

[334] Sacred Congregation of the Council, May 22, 1909 (*Acta Apostolicae Sedis* I, 554).

[335] Cf. Sacred Congregation for the Propagation of the Faith, March 23, 1863, and November 8, 1882.

255. 2. Obligation by divine law. Divine law binds all pastors of souls sometimes to say and apply Mass for the flock committed to them.

"For every high priest taken from among men is appointed for men in those things that pertain to God, that he may offer gifts and sacrifices for sins."[336] Wherefore the Council of Trent[337] says in express words: "Since by divine precept it has been commanded to all to whom the care of souls is committed to know their sheep, to offer sacrifice for them...." Indeed, even the natural law itself commands that a pastor of souls, by force of the contract entered upon and the office received, foster and procure to the extent of his powers the spiritual salvation of his sheep. But this seems to be impossible unless the faithful from time to time assist at the sacrifice of the Mass and receive not only its general fruits but also its ministerial fruits. Therefore a pastor of souls, from the very nature of his office, is bound sometimes to say Mass for the flock committed to him. Although pastors of souls are bound by divine law to apply Mass sometimes for their faithful, nevertheless it has been established by ecclesiastical law alone when this application is to be made and under what conditions this obligation is incumbent.

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[336] Heb. 5:1.

[337] Session 23, c. 1, on reform.

256. 3. Obligation by ecclesiastical law. Ecclesiastical law has issued particular statutes concerning pastors of souls, who are: 1. residential bishops and capitular vicars;[338] 2. abbots *nullius*;[339] 3. vicars and prefects apostolic;[340] 4. pastors;[341] 5. quasi-pastors.[342]

Days of application. a) The days on which residential bishops, capitular vicars, abbots *nullius*, and pastors must apply Mass for the people are all Sundays and the following feast days:[343] 1. the Nativity of the Lord; 2. the Circumcision; 3. the Epiphany; 4. the Resurrection of the Lord, with the two following days; 5. the Ascension; 6. Pentecost, with the two following days; 7. the Most Holy Trinity; 8. Corpus Christi; 9. the Finding of the Cross; 10-14. the Purification, Annunciation, Assumption, Nativity, and Immaculate Conception of the Blessed Virgin Mary; 15. the Dedication of St. Michael; 16. the Nativity of St. John the Baptist; 17. Saints Peter and Paul; 18. St. Andrew; 19. St. James; 20. St. John the Evangelist; 21. St. Thomas the Apostle; 22. Saints Philip and James; 23. St. Bartholomew; 24. St. Matthew; 25. Saints Simon and Jude; 26. St. Matthias; 27. St.

Stephen the Protomartyr; 28. the Holy Innocents; 29. St. Lawrence, Martyr; 30. St. Sylvester, Pope; 31. St. Joseph; 32. St. Anne, Mother of Mary; 33. All Saints; 34. the patron of the kingdom; 35. the patron of the place.

Since many of these feasts are suppressed today, if any of them, impeded by a feast of higher rite, is transferred to another day, the application is then no longer obligatory on the day of transfer.[344] Hence, for example, if the feast of St. Matthias, falling on the First Sunday of Lent, is transferred to another day, the pastor is not bound to apply Mass for the people on this other day. If these feast days are celebrated on a Sunday, the pastor can then satisfy the twofold obligation with one Mass; likewise if these feasts are transferred by pontifical indult to a Sunday, as, for example, in Germany the feast of the Nativity of the Blessed Virgin Mary is always transferred to the following Sunday. But if only the external solemnity of the feast is transferred to a Sunday, and not the Office of the feast, then the application must be made both on the feast day and on the Sunday. Likewise the obligation of applying does not cease although the solemnity of the feasts has been suppressed,[345] even by particular law.[345a]

b) The days on which vicars and prefects apostolic and quasi-pastors must apply Mass for the people are eleven, namely, the feasts of the Nativity of the Lord, Epiphany, Easter, Ascension, Pentecost, Corpus Christi, the Immaculate Conception and Assumption of the Blessed Virgin Mary, St. Joseph, Spouse of the Blessed Virgin Mary, Saints Peter and Paul, and All Saints.[346]

A bishop who presides over two dioceses is not bound to apply two Masses;[347] it suffices, therefore, that he apply one Mass for the whole people committed to him. A pastor who administers several parishes likewise must apply only one Mass on the prescribed days.[348] Wherefore all contrary statutes have now been revoked. If, however, these different parishes have different patronal feasts, the pastor must apply Mass on the feast of the patron of each parish.[348a]

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[338] Code of Canon Law, c. 339. Bishops are not bound to apply Mass for their subjects after election or confirmation in consistory, but after taking possession. Capitular vicars, during a vacancy of the see, are bound to the application just as bishops are. Code of Canon Law, c. 440.

[339] Code of Canon Law, c. 323.

[340] Ibid., c. 306.

[341] Ibid., c. 466, § 1.

[342] Ibid., and c. 306.

[343] Thus from Urban VIII, Constitution *Universa per orbem*, September 13, 1642; Clement XI, Constitution *Commissis nobis*, December 6, 1708; Pius IX, Constitution *Amantissimi Redemptoris*, May 3, 1858; Sacred Congregation of the Council, December 18, 1919, and March 16, 1920 (*Acta Apostolicae Sedis* XII, 42); cc. 323, 339, 440, 466.

[344] Sacred Congregation of the Council, December 15, 1913 (*Acta Apostolicae Sedis* VI, 9). Cf. Code of Canon Law, c. 339, § 3.

[345] Sacred Congregation of the Council, August 8, 1911 (*Acta Apostolicae Sedis* III, 391).

[345a] Sacred Congregation of the Council, July 19, 1930 (*Acta Apostolicae Sedis* XXII, 521).

[346] Code of Canon Law, c. 306.

[347] Ibid., c. 339, § 5.

[348] Ibid., c. 466, § 2.

[348a] Sacred Congregation of the Council, November 12, 1927 (*Acta Apostolicae Sedis* XX, 87).

257. Note. When pastors of souls must apply Mass for their subjects, they can accept absolutely no stipend, not even for another Mass which they may perhaps celebrate by virtue of the faculty of

bination. Thus by common law.[349] By a special indult of the Holy See, however, the acceptance of a stipend for the other Mass is sometimes permitted, and even commanded, to be expended for certain pious causes.

[349] Code of Canon Law, c. 824, § 2.

258. 4. The quality of the obligation. The pastor's obligation of applying Mass is:

a) **Grave.** Neither contrary custom, nor illness, nor poverty exempts from this obligation. Thus all authors.[350]

b) **Personal.** Therefore the pastor of souls is bound himself to apply Mass for his subjects, unless there is a legitimate impediment, for example illness, in which case he must apply it through another priest.[351] He is not, however, bound to sing Mass, but it suffices to say a private Mass.[352] When a pastor is legitimately absent from the parish, he can apply Mass for the people either personally in the place where he is staying, or through the priest who acts in his place in the parish;[353] nevertheless, it seems better that he personally, and not through his substitute, apply Mass for the people. The reason is that, just as the sacrifice of the Cross was accomplished by Christ Himself, the Pastor of all, so it is very fitting that the pastor who acts in the place of Christ the Pastor should himself apply the fruits of the sacrifice to his subjects.

c) **Local.** It is very fitting that Mass for the people be said in the parish church or in another place where the faithful can assist.[354] The reason is evident.

d) **To be fulfilled on the appointed days,** namely, those indicated above in n. 256. If there is a legitimate cause, for example, if a funeral Mass or a Mass for bride and bridegroom is to be said, the local Ordinary can permit the pastor to apply Mass for the people on a day other than that on which he is bound by law.[355] This permission indeed seems also capable of being presumed in a particular case. If, in some diocese, on suppressed feast days, the Mass for the people is to be applied by an indult of the Holy See according to the mind of the bishop, it can be tolerated that the pastor have the Mass to be applied celebrated, not on the very day on which he would be bound, nor personally, but through another priest, to whom the pastor must give a stipend. Thus the Sacred Congregation of the Council, December 16, 1914.[355a]

[350] Ibid., c. 339, § 1.

[351] Ibid., § 4.

[352] Sacred Congregation of Rites, December 20, 1864 (*Decr. auth.*, n. 3128).

[353] Code of Canon Law, c. 466, § 5.

[354] Ibid., § 4.

[355] Ibid., § 3.

[355a] *Acta Apostolicae Sedis* VII, 27.

Article III. On the Obligation by Reason of a Benefice

259. Notions. A benefice (or chaplaincy, of which there is question here) is a pious foundation duly made and accepted by a legitimate ecclesiastical superior, with the perpetual burden of saying Masses either in a determinate church or at a determinate altar or on a determinate day or hour, etc. This obligation is sometimes called briefly "perpetual burdens of Masses." The priest who receives the revenues of the foundation is called the beneficiary. Although so-called founded Masses, according to modern discipline, cannot properly be called benefices, nevertheless the rules to be given apply also to them.

260. Rule 1. All clauses placed in a pious foundation and accepted by legitimate ecclesiastical authority must be duly applied and faithfully observed. Cf. Code of Canon Law, c. 1475, § 1.

The reason is evident. For the pious foundation of a benefice is a bilateral contract by which the founder gives certain temporal goods, while legitimate ecclesiastical authority promises to institute from the revenues of those goods a beneficiary who must celebrate Masses according to the intention of the founder. The clauses placed in the foundation must be duly interpreted, and accordingly the rules concerning the interpretation of laws or contracts must be applied. A beneficiary sins gravely, however, if at any time without cause or dispensation he does not apply or even does not celebrate the founded Masses. If a daily Mass is established in the foundation of the benefice, it must be considered whether this obligation is annexed principally to the place, for example, to an altar or chapel, or to the person of the beneficiary. If the obligation is annexed principally to the place (for example, if the founder said: I will that Mass be said daily in this chapel), then Mass must truly be said on all days of the year, except the last three days of Holy Week; and if the beneficiary himself cannot say Mass, he must take care that another say Mass in that place. But if the obligation is annexed principally to the person of the beneficiary, it is lawful to presume that the founder wished to contribute to the support of a poor priest. Moralists then commonly teach that a beneficiary of this kind is not bound to celebrate Mass on absolutely all days of the year, but that by reason of illness, religion, or another reasonable impediment he can sometimes omit Mass.

First, by reason of illness he can omit Mass without being obliged to restore the fruits of the benefice. For a kindly master is not presumed readily to wish to deduct from the wages of a servant because of his brief illness. It is otherwise, however, if the illness endures for a long time; for then the fruits of the benefice must be restored, unless the beneficiary altogether needs them for his support. Authors dispute what illness is to be called long-lasting. To some, an illness of fifteen days seems brief; to others, one which does not exceed one month; finally, to others, one which does not exceed two months. St. Alphonsus[357] and Lugo[358] hold all these opinions probable. By reason of religion the beneficiary can omit Mass sometimes, that is, once in a week or in a month. Therefore, for example, Mass is licitly omitted because of humility, because of a better preparation for the tremendous sacrifice, or because of making spiritual exercises. Finally, by reason of another legitimate impediment, for example, because of making a necessary journey, the beneficiary can licitly abstain from saying Mass. Authors further concede that the beneficiary may apply Mass five or six times a year for himself or for his own. It is not lawful, however, for him then to take a stipend, because the beneficiary already has another stipend from the foundation.

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[357] *Theol. mor.* l. 6, n. 333.

[358] *De euchar.*, disp. 21, n. 49.

261. Rule 2. Although the Ordinary (the diocesan bishop or major religious superior) can interpret or even dispense from conditions annexed to the foundation in matters of lesser importance, nevertheless, according to the discipline now in force, recourse must be had to the Sacred Congregation of the Council whenever there is question of a reduction or remission of Masses.[359]

Therefore Benedict XIV[360] says that "today no faculty of reducing Masses has been left to the bishop, except only in that kind of case in which the testator himself is known to have granted this faculty." Indeed, when the question was proposed, "Whether a bishop can reduce the burdens of Masses not yet accepted, without the good pleasure of the Apostolic See or of this Sacred Congregation, whenever, because of the smallness of the

legacy, he judges a reduction to be necessary from the fact that the pious place refuses to accept the legacy unless the burden is diminished?" the Sacred Congregation of the Council replied on June 20, 1682: "Negative."

When the goods conferred in the foundation have totally perished without the fault of the beneficiary, the obligation of celebrating the Masses then ceases, because the beneficiary has a right to a fitting stipend for the Masses to be celebrated. But if those goods have perished only in part or their revenues have been greatly diminished, recourse must then be had to the Sacred Congregation of the Council, if the number of Masses was determined by the founder. A fortiori, no one except the Supreme Pontiff can remit Masses not said, if they ought to have been said from justice. The reason is that the founder of the Masses has a strict right to the ministerial fruits of the Masses to be said. But when the Supreme Pontiff remits Masses not said, he then compensates for the ministerial fruits of the Masses from the treasury of the Church, in which are the merits of Christ, which proceed especially from the sacrifice of the Cross. Therefore no injury accrues to the founder from such a remission, since the ministerial fruits of the Mass also derive from the sacrifice of the Cross.

[359] Innocent XII, Constitution *Nuper a Congregatione*, December 23, 1697; Code of Canon Law, c. 1517, § 2.

[360] *De syn. dioec.* l. 13, final chapter, n. 19.

Article IV. On the Obligation by Reason of an Accepted Stipend

262. 1. The origin of stipends. Mass stipends derive their origin from the offerings of the faithful (bread and wine), which were offered amid the solemnities of the Mass in the primitive Church. From these offerings were chosen those things which were necessary for the consecration and for the Communion of the faithful; the remainder, however, was distributed among the clergy and the poor. Gradually offerings of bread and wine of this kind ceased, and in their place the faithful offered money, especially in those regions where wine and grain could not be had so easily. At first money was offered in the Mass itself, just as even in our days such offerings of money are sometimes made during Mass. From the eighth century onward, the rather general practice seems to have been introduced of offering money outside Mass with the intention that the ministerial fruit of the Mass be applied for the offerers. From all these things it is evident that Mass stipends are not payment for the Mass, but rather offerings for the support of clerics.[361]

2. The lawfulness of a stipend. It is lawful for any priest to accept a just stipend for the application of the ministerial fruit, not indeed as the price of the sacrifice - for this would be simony - but as a certain aid to honorable support.[362] For those who serve the altar can also live from the altar.[363] Wherefore even those priests who have sufficient revenues from elsewhere can nevertheless accept Mass stipends. For just as a beneficiary is not bound to live from his own private goods, but can use the revenues of the benefice, so a priest sacrificing for others can accept Mass stipends from them. A priest, however, who celebrates Mass solely because of the stipend, and who otherwise would not celebrate, does not indeed commit direct simony, since he does not intend precisely to sell the Mass, but nevertheless he acts inordinately and for the most part sins venially. If, however, he expends the money received for good or pious uses, he does not seem to sin when led by this intention.[364]

The Church gravely prohibits a priest from accepting several stipends for the same Mass,[365] and this even if he applies both the ministerial and the most special or personal fruit.[366] Therefore as many Masses must be celebrated and applied as the stipends, even small ones, which have been given and accepted.

[361] Cf. Benedict XIV, *De syn. dioec.* l. 5, c. 8, and especially *Inst. eccl.* LVI.

[362] Code of Canon Law, c. 824, § 1.

[363] Cf. 1 Cor. 9:13; St. Thomas, *S. theol.* 2, 2, q. 100, a. 2 ad 2. Wherefore Pius VI condemned as rash and injurious to the Church and her ministers the proposition (54) of the Synod of Pistoia asserting that it is a shameful abuse to receive an alms for celebrating Masses (Denz., n. 1554).

[364] St. Alphonsus, *Theol. mor.* l. 3, n. 55, q. 5, and l. 6, n. 317.

[365] Cf. proposition 10 condemned by Alexander VII and the Code of Canon Law, c. 825, n. 3.

[366] Cf. above, n. 240.

264. 3. The obligation from an accepted stipend. From an accepted stipend there arises a grave obligation of justice to say Mass, and this with those conditions which were imposed by the giver of the stipend and freely accepted by the priest.

The reason is that a legitimate contract (*do ut facias*) has been entered into between the offerer of the stipend and the priest, which gives rise to an obligation of justice for each contracting party, namely, that the offerer leave his money at the free disposition of the priest, and that the priest perform those things which the offerer required. Hence a priest who, after accepting a stipend, does not apply Mass according to the intention of the offerer gravely injures justice and is bound to restitution. Thus holds the most common and certain opinion.

Although certain theologians, such as Billuart, Sporer, and Elbel,[367] opined that a priest does not sin gravely by the omission of a Mass if the stipend offered is only light matter, nevertheless it is almost certain that a priest, even though the stipend accepted is small, sins gravely if he omits the Mass. The reason is twofold: 1. because the offerer is unjustly deprived of a great spiritual good, such as the ministerial fruit of the Mass; 2. because the priest transgresses a most grave precept of the Church.

It is another question whether in this case the priest not only sins gravely but is also bound to restitution. "A priest who has not satisfied his obligation is not bound under grave sin to restore the stipend unless the stipend constitutes a relatively grave sum." Thus Noldin[368] and others. This opinion, however, seems scarcely probable. For nearly all teach that the omission of one Mass for which a stipend has been accepted is an objectively mortal sin against strict justice. But every violation of strict justice joined with an objectively grave sin also induces a grave obligation of restitution. Hence, for example, a priest who by theft took three francs from a rather wealthy man would not be bound under grave sin to restitution, since the thing taken is light matter. But if the same priest received from the same man a Mass stipend of three francs and did not discharge it, he would sin gravely and would be bound under grave sin to restitution. The reason is that in the case of theft the natural law alone obliges to restitution; but in the case of a Mass not said for an accepted stipend, the grave obligation of ecclesiastical law is added to the natural law. Other writers, however, prefer to say that in this case the priest is not indeed bound under grave sin to restore the accepted stipend, but that he must under grave sin take care that the omitted Mass be said by himself or by another priest. The two manners of speaking are not essentially different.[368a]

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[367] Cited by St. Alphonsus, *Theol. mor.* l. 6, n. 317, Question 3.

[368] *De sacr.*[17], n. 186.

[368a] Cf. Cappello, *De sacr.*, n. 669.

265. The contract which is entered into between the giver of the stipend and the celebrating priest is not a contract of sale and purchase, because otherwise there would be simony, as has already been said. More truly, this contract is reduced to the unnamed contract: *Do ut facias*. Once this contract has been entered into, the stipend immediately passes into the ownership of the priest, and accordingly, if it perishes culpably or inculpably, it perishes for the priest, who must nevertheless say the promised Mass. Thus at least if

there is question of a stipend for manual Masses;[369] but if the goods given for founded Masses have perished, the obligation of saying the founded Masses no longer seems to be present. In practice, the case must be referred to the bishop or to the Sacred Congregation of the Council, which alone can reduce the burdens of Masses. Although the accepted stipend immediately passes into the ownership of the priest, nevertheless it is more advisable, and sometimes even commanded, not to disburse the money before the Mass has been said.

4. The obligation of the circumstances. The obligation arising from a stipend extends not only to saying the Mass itself, but also to all the circumstances tacitly or expressly stipulated. Circumstances of this kind are those of place, time, a privileged altar, a votive Mass, and Gregorian Masses.

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[369] Some authors, such as Gasparri (*De euchar.*, n. 588) and Génicot (*Theol. mor.* II, n. 230), think but do not prove that a priest is not obliged to say manual Masses whose stipend has perished without his fault, for example, by theft. The Code of Canon Law, c. 829, establishes the contrary: "Although, without the fault of him who is burdened with the obligation of celebrating, the alms for Masses already received have perished, the obligation does not cease."

266. a) The circumstance of place and time. If it is established that the offerer or founder of the stipend gravely intended the place and time, for example, that the Mass be said at an altar where a miraculous image is preserved, or on such a feast, then the priest is bound under grave sin to observe this circumstance; if he neglects it, he must restore the stipend accepted. But if the intention of the offerer or founder was not so grave concerning these circumstances, the obligation of the priest is lighter.

If the offerer expressly prescribed no time for the celebration of manual Masses, a distinction must then be made: a) Masses offered for an urgent cause must be celebrated as soon as possible within a useful time, for example, Masses for the recovery of health, for a happy delivery, etc. b) In other cases, Masses must be celebrated within a moderate time according to the greater or smaller number of Masses.[370]

But if the offerer expressly left the time of celebration to the discretion of the priest, the priest will be able to celebrate them at the time which pleases him more, yet in such a way that no one is permitted to receive so many burdens of Masses to be celebrated personally that he cannot satisfy them within a year.[371] Therefore, the provisions formerly made concerning this matter by the decree *Ut debita* of May 11, 1904, now no longer have anything except directive force. It had been established that the useful time for celebrating one accepted Mass was one month, and for celebrating one hundred Masses, six months, or another longer or shorter space of time according to the greater or smaller number of Masses. When it is established in c. 835 that no one can licitly accept so many Masses as he himself will not be able to say within a year, this seems to be understood unless the offerer expressly consents to a delay beyond a year. For no reason is apparent why an offerer cannot commission Masses to be said beyond the space of a year.[372] He who has Masses to be celebrated by others is to distribute them as soon as possible; but the legitimate time for their celebration begins from the day on which the priest who is to celebrate receives them, unless something else is established.[373]

All, whether clerics or laymen, who are obliged to fulfill burdens of Masses must, at the end of the year, hand over to their proper Ordinaries those Masses which they have not yet discharged, unless the number of Masses remaining is small or the intention of the offerers permits their further retention.[374] I say: all, whether clerics or laymen. For laymen are sometimes administrators of pious causes, or by force of a testament or legacy must take care that a certain number of Masses be said. In these or similar cases laymen are bound to take care that the prescribed Masses be said within a year. The year must be computed in two ways: For quasi-manual Masses the obligation to hand them over to the Ordinary begins on December 31 of that year in which the Mass ought to have been said. For example, a founded Mass is to be said on May 30; if it has not been discharged by December 31 of the same year, it must be handed over to the local Ordinary. If there is question

of manual Masses, the obligation to hand them over to the Ordinary arises 365-366 days after the stipend was accepted.[375]

[370] Code of Canon Law, c. 834.

[371] Ibid., c. 835.

[372] Thus also Vermeersch, *Theol. mor.* III, n. 297 (5).

[373] Code of Canon Law, c. 837.

[374] Thus the cited decree, n. 4. The proper Ordinaries of exempt religious are their major superiors.

[375] Code of Canon Law, c. 841, § 2.

267. b) The circumstance of a privileged altar. If the offerer expressly requested that Mass be said at a privileged altar, this condition must be fulfilled. What a local, personal, and mixed privileged altar is will be said below in n. 564.

Let these things be said briefly: A Mass celebrated at a privileged altar has attached to it a plenary indulgence to be gained for the person for whom the Mass is offered. The application of the Mass and the application of the indulgence cannot be separated in such a way that the Mass is said for one person and the indulgence applied for another.[376] An altar is privileged for one deceased person, not for many at the same time. A privileged altar for both the living and the deceased is rarely granted. A Mass offered at a privileged altar for a deceased person no longer must be a Requiem Mass, although this is fitting, as was formerly prescribed.[377] A local privileged altar designates in certain churches a particular fixed altar, but not a portable one. A personal privileged altar is a pontifical indult granted to certain priests to celebrate Mass sometimes at any altar whatsoever, with which a plenary indulgence is joined. If a priest bound to celebrate at a privileged altar omitted this through forgetfulness, even in good faith, he cannot compensate for it by the application of another plenary indulgence.[378]

[376] Sacred Congregation of Indulgences, January 23, 1901. Cf. *Analecta ecclesiastica*, 1895, p. 83 ff.

[377] Holy Office, February 20, 1913 (*Acta Apostolicae Sedis* V, 122).

[378] Cf. below, in the treatise on indulgences, n. 565.

268. c) The circumstance of a determinate votive Mass. This circumstance seems to bind only under light sin, unless it is certainly established that the offerer of the stipend strongly intended a special votive Mass. Hence, for example, a priest who said the Mass of the day in place of a votive Mass of the Blessed Virgin Mary seems to have satisfied the substantial obligation. Likewise theologians commonly teach that the obligation of celebrating for the living is satisfied by a Requiem Mass, and the obligation of celebrating for the deceased by the Mass of a saint. It is plainly not fitting, however, that a Requiem Mass be applied for the living unless there is a just cause, for example, because only black vestments are available.

269. d) The circumstance of Gregorian Masses. This circumstance binds rather gravely and consists in this: that thirty Masses be said on thirty consecutive days for the soul of one deceased person,[379] whether by one priest or by several priests. Today no plenary indulgence is joined to these Gregorian Masses, but it is piously believed that through the special intercession of St. Gregory the soul of the deceased is specially assisted by these Masses.[380] From Holy Thursday until Easter exclusively, the number of these Masses can licitly be interrupted.[381] On the Nativity of the Lord only one Mass can be counted toward the Gregorian Masses. If a priest inculpably omitted a Mass of this kind on one day, he is not certainly bound to begin the

entire number again, but it seems sufficient simply to complete the thirtieth number, because that burden would be too hard, nor is it established that the soul of the deceased suffered notable injury from this omission, especially if the priest celebrates the Mass at a privileged altar.[382]

[379] It is not lawful to apply these Masses either for several deceased persons or for the living (Sacred Congregation of Indulgences, August 24, 1888).

[380] Sacred Congregation of Indulgences, March 15, 1884, and August 24, 1888.

[381] Benedict XIV, *Inst. eccl.* 34, n. 22.

[382] It is certainly safer, as is evident of itself, in this case to begin the set of thirty again or to seek remission from the Holy See. Cf. Larraga-Sanchez, *Prontuario*[9], n. 1273; *Monitore ecclesiastico* XIII, 40; Marc, *Inst. Alphons.*[16] II, n. 1622.

270. 5. The amount of the stipend need not be such as furnishes the priest his entire support on the day on which he celebrates; for the act of sacrificing does not require an entire day, and before receiving the subdiaconate the priest ought to have procured for himself another title of support. With account taken of the circumstances of places and times, the stipend must be measured according to the law established by the bishop or introduced by legitimate custom; or, in other words: **The diocesan rate must be observed by all.** Even exempt religious are subject to diocesan law in this matter,[383] and therefore they cannot, at least from diocesan persons, either demand a greater stipend or ordinarily accept manual Masses for a lesser stipend, at least if the local Ordinary has prohibited this.[384] For foundations of Masses, however, exempt religious are not bound to the diocesan rate.[385]

Nothing prevents any priest from accepting a larger stipend which is spontaneously offered by the faithful.[386] But if, beyond the alms fixed by the bishop, the priest who is to celebrate demands more for the Mass itself, he not only transgresses the law of the Church but also injures commutative justice;[387] yet he probably does not commit the sin of simony.[388] It is lawful, however, to demand a larger stipend because of special temporal burdens joined to the Mass. For then not the Mass itself, but something accidental and temporal, is appraised at a material price. Thus, for example, it is lawful to demand more for a sung Mass, for a Mass to be said at a late hour, or in a distant place. But it is not lawful to demand more for a Mass to be said at a privileged altar or before a miraculous image, because simony would then be committed by selling a spiritual favor for a temporal price.

If someone offered a sum of money, for example, one hundred dollars, for the application of Masses without indicating their number, the offering is reckoned according to the alms of the place in which the offerer resided, unless it must be legitimately presumed that his intention was otherwise. Therefore, if the offerer resides in the United States, where the Mass stipend is customarily one dollar, the stipend of one dollar can be taken even here in Europe.

But if someone by testament or legacy commissioned Masses to be celebrated and did not determine the amount of the stipend, either a) recourse must be had to the bishop so that he may prescribe a fitting stipend, or b) the stipend must be fixed according to the custom of the place in which the offerer resided,[389] or according to the legitimately presumed will of the testator.

It is evident of itself that a priest can, at least on some occasions, celebrate Mass from charity either without a stipend or with a reduced stipend. He must take care, however, lest prejudice to other priests be generated by this manner of acting.

[383] Code of Canon Law, c. 831, § 3.

[384] Sacred Congregation of the Council, May 8, 1905.

[385] Code of Canon Law, c. 1550.

[386] Ibid., c. 832.

[387] Sacred Congregation of the Council, January 16, 1649, and March 2, 1861.

[388] Cf. above, II, n. 563.

[389] Code of Canon Law, c. 830.

271. 6. Surplus Masses to be handed over to others. In recent years the Sacred Congregation of the Council has issued many provisions concerning the manner in which a priest can hand over to others the Mass stipends he has accepted. The principal provisions are these:

a) Founded, quasi-manual, and manual Masses are distinguished.[390]

Founded Masses are those whose stipends are received from the revenues of foundations and which are to be celebrated in perpetuity in some determinate church or at a determinate altar, for example, certain chaplaincies. We do not now treat of these here, since the conditions imposed by the testator must be diligently observed, and no one except the Supreme Pontiff can dispense from them.

Quasi-manual Masses are those which are indeed founded in some church or annexed to some benefice, but which can licitly, by law or by an indult of the Holy See, be handed over to other priests to be said elsewhere.

Manual Masses are those which the faithful request to be celebrated after offering a manual stipend. It matters little whether the stipends were given from hand to hand or proceeded from a testamentary disposition, provided, however, that the money handed over does not constitute a perpetual foundation to be discharged altogether in a determinate place. Likewise counted among manual Masses are those which indeed burden the patrimony of some private family in perpetuity but are not established in any church. These Masses can be discharged anywhere by any priests at the discretion of the family.[391]

b) "It is lawful for no one to assume more Masses than he himself probably cannot satisfy within a year from the day the obligation was undertaken, yet always without prejudice to the will of the offerers," who can either grant a longer time or require a determinate shorter time.[392] At the end of the year, however, surplus Masses must be handed over to the Ordinary. Cf. what was said above concerning this matter, and especially concerning the manner in which the year or time within which the priest must discharge surplus Masses of this kind which he has received is to be computed.

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[390] Code of Canon Law, c. 826.

[391] Ibid.

[392] Decree *Ut debita*, May 11, nn. 3 and 4.

272. c) A priest who has surplus Masses can transmit them: a) to the Ordinary or to the Holy See, and then by the very act of handing them over he is freed from every obligation before God and the Church;[393] b) to other priests, provided that it is established for him that they are "above every exception," that is, truly worthy or commended by the testimony of their own Ordinary.[394] In this case, however, the first priest is not freed from the obligation undertaken until he has obtained from the other testimony of the accepted obligation and of the stipend received.[395]

He who wished to send stipends to priests of an Eastern rite had to do this through the Congregation for the Propagation of the Faith or to apostolic delegates for the priests of their district.[396] Nevertheless, it is lawful to

send stipends to the East to priests of the Latin rite, with the same clauses which must be observed in transmission to another priest in the West. Hence stipends can be sent directly to delegates, vicars, and prefects apostolic; likewise religious priests can send stipends to their confreres living in the East; but if they wish to send them to religious of another regular institute, it is safer to hand them over to the superior general of the same institute residing in the West.

Since nothing special has been established in the Code of Canon Law concerning the transmission of stipends to Eastern priests, the decisions just indicated no longer seem to have preceptive force, but only directive force.

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[393] Decree *Ut debita*, May 11, n. 6.

[394] Thus the Code of Canon Law, c. 838, which therefore somewhat mitigated the decree *Ut debita*. A bishop cannot prohibit a priest from sending stipends for manual Masses outside the diocese; it is otherwise with founded or quasi-manual Masses, or with Masses offered not to some priest but to some sanctuary subject to the jurisdiction of the bishop. Sacred Congregation of the Council, February 19, 1921 (*Acta Apostolicae Sedis* XII, 230).

[395] Code of Canon Law, c. 839.

[396] Sacred Congregation of the Council, May 22 and September 9, 1907.

273. d) It is prohibited by means of Masses to buy or sell books, sacred utensils, or any other things whatsoever, whenever this becomes a habitual practice and tends toward the support of some commerce.[397] Nevertheless, the custom existing in several places is tolerated whereby assistant priests say Masses and receive their support for them from the pastor.[398]

Experience establishes that by transactions and acceptances of this kind some commerce, at least a disguised commerce, which is rather unbecoming is carried on. But he who acts otherwise, or illicitly retains something from transmitted stipends, is to be punished by the Ordinary according to the gravity of the fault, without excluding, if the matter requires it, suspension, deprivation of a benefice or ecclesiastical office, or, if there is question of laymen, excommunication.[399] The excommunications *latae sententiae* which formerly existed in this matter have been suppressed.

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[397] Decree *Ut debita*, n. 10.

[398] Sacred Congregation of the Council, February 27, 1905.

[399] Code of Canon Law, c. 2324.

274. e) It is altogether prohibited to retain any part of a manual stipend and to hand over to another priest the Mass to be said with a diminished stipend.

Wherefore Alexander VII condemned proposition 9: "After the decree of Urban, a priest to whom Masses to be celebrated are handed over can satisfy through another by giving him a lesser stipend and retaining for himself another part of the stipend."[400] The Holy See sometimes permits a small part of the stipend to be retained to be expended for pious causes.[401] It must be noted, however, that all indults granted in this matter before the year 1904 have been revoked.[402] Certain authors[403] think that a priest who retains part of a manual stipend does indeed sin gravely, but probably does not injure justice and accordingly is not bound to restitution, provided, however, that he takes care that the determinate number of Masses be celebrated. This opinion seems to us improbable. For if it were true, then a priest who retains, for example, one thousand francs from one thousand rather ample stipends, but has those Masses discharged elsewhere, would be bound to nothing from justice. This seems very unfitting. The reason for the injured justice seems to be this: A

stipend is not the price of a Mass, but is an offering permitted by the Church and given by the offerer to the one who is to say the Mass. Although, therefore, the first priest receiving the stipends immediately becomes their owner, nevertheless he is not the absolute owner, but only when he fulfills the precepts issued by the Church concerning this matter. But if he gravely violates these precepts, he loses ownership and is bound to restitution. Moreover, the Church has gravely commanded that part of a manual stipend not be unduly retained. Authors most commonly defend the obligation of restitution in this case,[404] at least those who wrote after the proposition condemned by Alexander VII.

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[400] Denz., n. 1109.

[401] Cf. Sacred Congregation of the Council, February 27, 1905, response to the Society of the Most Holy Savior.

[402] Decree *Ut debita*, n. 9.

[403] For example, Noldin, *De sacr.*[17], n. 192; Génicot, *Theol. mor.* II, n. 231; D'Annibale, *Summula Theol. mor.* III, 190, n. 17; Ballerini-Palmieri, *Opus theol.* IV, n. 1017.

[404] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 322; Vermeersch, *Theol. mor.* III, n. 299.

275. It is lawful to retain part of the stipend in the following cases:

a) By virtue of a pontifical indult granted after the year 1904.[405]

b) If the donor consents.[406]

This is evident. Not only explicit consent, but also implicit consent sometimes suffices. Thus, if because of friendship, gratitude, etc., the donor gave, in view of the person of the recipient, a notably larger stipend than is customarily given, he is considered implicitly to consent that the recipient retain the excess part. Therefore, for example, if in such a place the amount of the ordinary stipend is two francs and the donor gave twenty francs, a priest handing this Mass over to another priest is not bound to give twenty francs, but two francs. If, however, the excess is moderate, the donor's implicit consent is not established and must not be presumed.

c) If there is question of stipends which are not strictly manual, but quasi-manual.

For then it suffices to hand over a stipend according to the diocesan rate of the place in which the Mass is celebrated,[407] provided that these Masses are annexed to some benefice or, from the intention of the founder, constitute part of the fitting support of the pastor. "Considering that the alms for the Masses of certain legacies in part take the place of the 'parochial congrua,' the Most Eminent Fathers have judged it lawful for a pastor, if he cannot satisfy them personally, to commit these Masses to another priest, with the ordinary alms of the place assigned, whether for read or sung Masses.... In legacies of Masses founded in some church, that portion of the revenues which at the establishment of the foundation or in another legitimate manner was assigned to the ministers and those serving the church, independently of the special work to be performed for the fulfillment of the legacy, can be retained in their favor."[408] Hence, for example, a pastor who commits to a vicar a funeral or nuptial Mass to be sung is not strictly bound to give him more than the customary stipend which is given for a Mass sung at such an hour, although the pastor himself received a much larger stipend. For these funeral and nuptial Masses are numbered among the stole fees which belong to the pastor. Nevertheless, ordinarily it seems very equitable that the vicar who performed the entire burden also receive some part of these stole fees.

d) If the recipient freely consents.

For Benedict XIV[409] declares: "A priest who has accepted a stipend of greater value for the celebration of a Mass cannot give a stipend of lesser value to another priest, even if he had indicated to the same celebrating and consenting priest that he had accepted an alms of greater value." Hence it does not suffice that the priest celebrating the Mass consent in any manner whatsoever to the diminution of the stipend offered, because he can consent because of moral necessity; rather, it is required that he consent altogether freely and expressly.

e) If some church is poor and does not have sufficient revenues.

For then it can subtract from the stipends offered by it to priests celebrating in this church such a part as suffices for the necessary expenses of each Mass, for example, for wine, candles, the use of vestments, etc. Thus Innocent XII.[410]

In the Tarragona case, the Sacred Congregation of the Council granted for a five-year period that he who by office distributes Masses in that diocese retain three percent for himself as an honorarium.

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[405] Cf. the preceding number above.

[406] Code of Canon Law, c. 840, § 1.

[407] Ibid., § 2.

[408] Thus it is contained in the decree *Ut debita*, n. 15. Cf., however, the response of the Sacred Congregation of the Council to the Bishop of Breda, February 27, 1905.

[409] Constitution *Quanta cura*, June 30, 1741.

[410] Constitution *Nuper*, December 23, 1697.

276. 7. The register and book of Masses. Rectors of churches and of other pious places, whether secular or religious, in which alms for Masses are customarily received, are to have a special book in which they accurately note the number, intention, alms, and celebration of the Masses received. The Ordinaries, whether bishops or religious superiors, are bound at least every year to inspect books of this kind personally or through others.

Likewise, local Ordinaries and religious superiors who commit Masses to be celebrated to their own subjects or to others are quickly to enter in order in a book the Masses which they have received with their alms, and are to take care to the extent of their powers that they be celebrated as soon as possible.

Every private priest also is to have a special book in which he records all Masses to be discharged and discharged, with the stipend accepted.[411]

The register of founded Masses must be preserved in a safe place.[411a]

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[411] Code of Canon Law, cc. 843 and 844.

[411a] Ibid., c. 1549, § 1.

277. Scholion 1. On the exchange of Masses. A priest is probably immune from every sin who, after accepting a more ample stipend for celebrating Mass on a determinate day, when on that day he cannot discharge this Mass, sometimes asks another priest to celebrate for him, while at the same time promising that on another day he will celebrate according to the intention of that priest. Thus rightly hold Billuart,[412] Génicot,[413] Vermeersch,[414] and others. Wherefore there is no appearance of shameful gain on account of which St. Alphonsus[415] condemns this manner of acting as a venial sin. For here there is not an exchange of stipends

but of Masses, and it is the same as if someone were to say to another: I will say Mass for you tomorrow if you say Mass for me today.

[412] *De euchar.*, diss. 8, a. 6.

[413] *Theol. mor.* II, n. 231, 9th ed.

[414] *Theol. mor.* III, n. 300.

[415] *Theol. mor.* l. 6, n. 322, dub. 4.

278. Scholion 2. On the Mass of a newly ordained priest. Newly ordained priests celebrating with the bishop can and must apply that Mass, but whether they can accept a stipend for it without the express consent of the offerer is not so well established. Since custom is contrary, the negative opinion is better in practice, although the affirmative opinion is theoretically more true. On the other hand, it is lawful to accept a stipend for the three Masses which are imposed upon newly ordained priests by the bishop.[416]

[416] Cf. Benedict XIV, *De sacrif. Miss.* l. 3, c. 16, n. 10; St. Alphonsus, loc. cit., n. 829.

Article V. On the Obligation by Reason of a Promise

279. 1. He who has made an onerous promise to apply Mass, with the intention of binding himself gravely, is bound under grave sin to satisfy this obligation. For example, a priest who, after receiving benefits, promised in thanksgiving and recompense to say Mass for the benefactor accepting this promise is bound to say the Mass. For the most part, such a grave obligation is not present and must not be asserted unless it is certainly established.

2. He who has made a gratuitous promise of saying Mass is indeed bound from fidelity, but only under light sin, and he can satisfy several promises by one Mass, since according to a solidly probable opinion[417] the fruit of the Mass is of infinite value. Hence he who gratuitously promised Peter a Mass for the deceased, Paul a Mass according to his intention, and Andrew likewise a Mass according to his intention, can satisfy all these promises by one sacrifice of the Mass. Thus holds the common opinion.[418]

[417] Cf. above, n. 237.

[418] Cf. Noldin-Schmitt, *De sacr.*[17], n. 199.

Article VI. On the Obligation by Reason of Obedience

280. Prelates, both secular and regular, can, when a just cause exists, command their subjects to apply Mass. Thus holds the far more probable opinion, which is confirmed by nearly universal practice.[419] For although the application of Mass is an internal act and accordingly, in the opinion of some, does not fall under ecclesiastical law, nevertheless priests, by freely undertaking certain offices or emitting religious vows, have obligated themselves to all those things which are joined with such offices or with the vows. Moreover, the application of Mass is also sometimes joined with an office undertaken or with the religious state. Accordingly, no one denies that a pastor is bound under grave sin not only to celebrate Mass, but also sometimes to apply it for the people. The same applies to the conventual Mass of chapters to be applied for benefactors. A religious superior can command his subjects to apply Mass for an accepted stipend or from mere obedience. When the superior has accepted a stipend, he is considered to command the application under grave sin, because a grave obligation of justice has arisen for him also. But when he has commanded it from another motive, there is indeed an obligation of obeying, but disobedience commonly would not be a

mortal sin. In practice, the laws of each religious institute must be attended to; these commonly do not bind under sin. A religious priest who, contrary to a grave precept of his superior, applies Mass otherwise applies it validly but illicitly. For the validity of the application depends solely upon the celebrating priest, since it is joined with the priestly order itself, as was said above in n. 243.

Whether by his own authority a bishop can command a private secular priest who has no ecclesiastical office to apply Mass for a determinate end is not established. For the application of Mass is a merely internal act, and there is no evident title by force of which the bishop can command this act. It is otherwise if the bishop commands by a special indult of the Holy See. Hence the Sacred Congregation of the Council decreed on May 8, 1920, that by virtue of an apostolic indult the local Ordinary can compel priests to apply a binated Mass, or a Mass from whose application for the people they have been dispensed, in favor of a pious cause.[420] The Supreme Pontiff commanded the special application of the second and third Mass on All Souls' Day, as will be said below in n. 285.

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[419] Pertinent here is the response of the Sacred Congregation of Religious, May 3, 1914 (*Acta Apostolicae Sedis* VI, 231): "Can religious superiors command their subjects, even in virtue of holy obedience, to celebrate according to the intention prescribed by the Constitutions or established by the superiors themselves, with the exceptions sanctioned by the Constitutions or by legitimate custom remaining intact? - Affirmative."

[420] *Acta Apostolicae Sedis* XII, 541.

Chapter III. On the Liturgical Requisites for Celebrating

Preliminary note. Since enough has already been said above, n. 191 ff., concerning those things which by divine law are required for the valid and licit celebration of Mass, such as the priestly order, the state of grace, attention, intention, etc., it remains to say a few things concerning the requisites from ecclesiastical liturgical law, and indeed not insofar as these prescriptions are to be fulfilled physically, since this pertains to the liturgy, but insofar as their transgression constitutes a more or less grave sin. By ecclesiastical law four things are required for licitly celebrating Mass, namely: 1. a legitimate time; 2. a becoming place; 3. sacred furnishings; 4. rites to be observed. Enough has already been said above, n. 198 ff., concerning the Eucharistic fast.

Article I. On the Time of Celebrating Mass

The time of celebration is determined by ecclesiastical law both as regards the days and as regards the hours. It is indeed lawful to celebrate Mass daily, but by Latin ecclesiastical law private Masses are prohibited on the last three days of Holy Week. On the other hand, several Masses are sometimes also permitted to be said on one day. For the sake of clarity, it is useful to treat separately: 1. Masses during the last three days of Holy Week; 2. several Masses to be said on the same day; 3. the hour at which Mass is to be celebrated.

§ 1. On Masses During the Last Three Days of Holy Week

281. On Holy Thursday private Masses are generally forbidden; one solemn Mass, however, is to be celebrated in all cathedral, collegiate, and parish churches. By indult it is not rarely granted that a solemn Mass also be said in public or semipublic oratories in which the Most Holy Eucharist is habitually reserved. The bishop can grant that parish or quasi-parish churches which do not have three clerics celebrate only a read Mass.[421]

In some dioceses bishops permit that, not only in parish churches but also in others, for example, churches of seminaries, religious, etc., one Mass be read before the solemn Mass for the convenience of the people. But the bishop cannot grant a faculty of this kind by his own authority; either legitimate custom or an apostolic indult must be added. For the decree of the Sacred Congregation of Rites of March 27, 1773, is no longer found in the authentic collection of the Sacred Congregation of Rites, and accordingly is considered abolished. A fortiori, the opinion formerly defended by several grave authors, asserting that according to the Latin rite private Masses are not absolutely prohibited either on Holy Thursday or on Holy Saturday, must be rejected.[422]

On Holy Thursday, with the permission at least of the bishop, it is lawful to sing Mass in non-parish churches, even though the Mass of the Presanctified is not celebrated in those same churches.[423] In this case the consecration of the other Host and the procession are to be omitted. In parish churches, however, all the liturgical rites prescribed for these three days must be performed, at least according to the small Ritual of Benedict XIII. Nevertheless, the Sacred Congregation of Rites, on December 9, 1899, replied to the question, "Whether on Holy Thursday in parish and other non-parish churches a read Mass with singing can be celebrated without the functions of Good Friday and Holy Saturday being performed?": "In parish churches where there is a baptismal font, let the rubrics of the Missal and the decrees be observed.... In other non-parish churches, however, the function of Holy Saturday can be omitted, but not that of Good Friday; and let the Sepulcher be made." This response cannot be reconciled so easily with the response of the same Congregation of February 1, 1895. Perhaps it must be said that this latter decision regards a particular case. Hence in practice the Mass of the Presanctified is to be said in all churches in which Mass was held on Holy Thursday. Nevertheless, regular superiors who do not perform the solemn functions on these three days can celebrate a private Mass on Holy Thursday to furnish Holy Communion to their subjects, but in the domestic chapel or, if this is lacking, in the church with the doors closed.[424]

If some feast of precept, for example, St. Joseph, falls on Holy Thursday, the bishop must take care that as many Masses be said in the churches as suffice for the people to be able to satisfy the precept of hearing Mass.[425] This by no means applies, however, if such feasts either are no longer of precept or are transferred to another day.[426] All bishops and Cardinals who on Holy Thursday do not say the solemn Mass in their cathedral can say a private Mass in their domestic oratory or permit another priest to celebrate Mass before them.[427]

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[421] Sacred Congregation of Rites, July 28 (31), 1821 (*Decr. auth.*, n. 2616 ad 1). Cf. Gasparri, *De euchar.* I, n. 81.

[422] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 350, who says that private Masses are altogether unlawful on these days.

[423] Sacred Congregation of Rites, February 1, 1895 (*Decr. auth.*, n. 3842 ad 2).

[424] Sacred Congregation of Rites, August 31, 1839.

[425] Sacred Congregation of Rites, September 12, 1716.

[426] Sacred Congregation of Rites, September 27, 1868.

[427] Code of Canon Law, c. 349, § 1, n. 1; c. 239, § 1, n. 4.

282. Good Friday is called an aliturgical day, because, except in a case of grave necessity to consecrate a Host for administering Viaticum, no Mass can be celebrated. In such a case of necessity, the votive Mass of the Passion of the Lord is to be said; but this case can scarcely occur in our times, since particles for administering Viaticum are always reserved. When, however, some feast, for example, the feast of the principal patron which is of precept, falls on Good Friday or Holy Saturday, particular laws must be attended to.

The so-called Mass of the Presanctified, which is customarily celebrated on this day, is not a true Mass, since consecration is lacking; accordingly, no stipend can be accepted, nor are the faithful bound to assist, even if on this day a feast of precept from particular law occurs.

283. On Holy Saturday, private Masses separated from the other liturgical functions are prohibited much more strictly than on Holy Thursday. Accordingly, either a special pontifical indult or the necessity of confecting Viaticum is required for saying a private Mass. In parish churches in which there is a baptismal font, the Mass and the other functions must be performed; in other churches, however, they can be omitted, even if the sacred functions were held on Thursday and Friday.[428] On Holy Saturday, Holy Communion can be distributed to the faithful not only immediately after the completion of Mass, but also amid the solemnities of the Mass.[429] Concerning the distribution of Holy Communion on Good Friday by particular law, see what we said above in n. 220.

[428] Sacred Congregation of Rites, December 9, 1903, ad 1 (*Decr. auth.*, n. 4049).

[429] Sacred Congregation of Rites, April 28, 1914 (*Acta Apostolicae Sedis* VI, 197); Code of Canon Law, c. 867, § 3.

§ 2. On Several Masses to Be Said on the Same Day

284. Three Masses can indeed, but need not necessarily, be said by any priest of the Latin rite: 1. on the feast of the Nativity of the Lord; 2. on the Commemoration of All the Faithful Departed, November 2.[430]

Concerning Masses on the feast of the Nativity, the following must be noted:

a) If a priest celebrates only one or two Masses on this day, he must choose that which corresponds approximately to the hour of celebration, that is, the first if he celebrates at night; the second if around dawn; the third if after dawn.[431]

b) A priest is not prohibited from receiving a stipend for each of the three Masses.[432]

c) Blind priests who by indult are permitted daily to say the Mass of the Blessed Virgin Mary or another votive Mass can say this Mass three times on this day.[433]

d) Even in private oratories, where on other days only one Mass is permitted, it is lawful to say three Masses on the feast of the Nativity.

e) Although it seemed lawful to some[434] that all priests could say at least one Mass at midnight on the Nativity,[435] nevertheless it follows both from the general rubrics of the Missal[436] and from the Code of Canon Law, c. 821, § 2, that by common law only one conventual or parish Mass is then permitted. In all religious or pious houses, however, which have an oratory with the faculty of habitually reserving the sacred species, it is lawful for one priest on the sacred night of our Lord Jesus Christ to celebrate the three ritual Masses, or even, according to the circumstances, only one, and to minister Holy Communion to all.[437] Nevertheless, this indult "does not import the faculty of celebrating with the doors of the oratories also open, nor can it be extended to churches of religious which serve for the public use of the faithful people, yet without prejudice to the privilege of religious of celebrating a [solemn] Mass at midnight."[438] In some places, however, there exists a custom or privilege whereby every priest can say three Masses on the night of the Nativity even in public churches, and every member of the faithful can receive Communion there.

[430] Code of Canon Law, c. 806, § 1.

[431] Sacred Congregation of Rites, January 19, 1875, and February 13, 1892 (*Decr. auth.*, nn. 3354 and 3767 ad 21). Concerning the mystical signification of these three Masses, cf. *S. theol.* 3, q. 83, a. 2 ad 2.

[432] Cf. Benedict XIV, Constitution *Quot expensis*, August 26, 1748; Code of Canon Law, c. 824, § 2.

[433] Sacred Congregation of Rites, January 26, 1920, and January 12, 1921 (*Acta Apostolicae Sedis* XII, 122; XIII, 155).

[434] From c. *Nocte sancta* 48, dist. 1, *De consecratione.*

[435] Cf. Donoso, *Instituciones de Derecho canónico*, n. 204.

[436] Title 15, n. 4.

[437] Motu proprio, August 1, 1907; Code of Canon Law, c. 821, § 2.

[438] Holy Office, November 26, 1908.

285. Concerning Masses on November 2, the following must be noted:

a) It is not lawful to accept a stipend except for one of these three Masses.[439] Nevertheless, the privilege granted from ancient times in some regions of receiving three stipends for three Masses does not seem to have been suppressed.[440]

b) A priest saying three Masses is bound to apply the second for all the deceased, and the third according to the intention of the Supreme Pontiff;[441] for these two Masses he can accept absolutely no stipend, except by reason of labor or an extrinsic inconvenience,[442] for example, in a distant place.

c) The first Mass is that which is inscribed in the Missal on the Commemoration of All the Faithful Departed; the second is that which is contained there in the anniversary of the deceased; the third is that which is read among the daily Masses for the deceased.[443] But he who wishes to celebrate only one Mass is to say that which is found in the Missal on the Commemoration of All the Faithful Departed; this same Mass is also to be used if a sung Mass is celebrated. A priest singing Mass can freely say the other two Masses either before or after the sung Mass. He who wishes to say two Masses on this day is to take the first and second indicated above; one is to be applied according to the intention of the celebrant, the other for all the faithful departed.[444] A priest to whom, because of weakness of sight or another just cause, the Holy See has granted the faculty of always saying the daily Mass for the deceased can say the same Mass three times.[445]

By special indult, some priests are permitted to say two or three Masses on certain days. An indult to say three Masses is customarily granted very rarely and with difficulty. The Sacred Congregation of the Council granted an indult of this kind on September 9, 1899, to the Diocese of Tulancingo in the Republic of Mexico.[446]

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[439] Benedict XV, Constitution *Incruentum altaris*, August 10, 1915 (*Acta Apostolicae Sedis* VII, 403).

[440] Cf. Donoso, loc. cit., n. 204.

[441] Benedict XV, loc. cit.

[442] Pontifical Commission, December 13, 1923 (*Acta Apostolicae Sedis* XVI, 116).

[443] Sacred Congregation of Rites, August 11, 1915.

[444] Cf. Sacred Congregation of Rites, February 28, 1917 (*Acta Apostolicae Sedis* IX, 187).

[445] Sacred Congregation of Rites, January 26, 1920.

[446] Cf. *Analecta ecclesiastica* VII, 452.

286. The faculty of bination, or of saying two Masses on Sundays and feast days, occurs very frequently today, whether from common law or from a special pontifical privilege.

In the primitive Church bination does not seem to have had a place. But already before the time of Innocent III bination occurred rather frequently, wherefore this Pontiff established: "Except on the day of the Lord's Nativity, unless a cause of necessity persuades otherwise, it suffices for a priest to celebrate one Mass once in the day."[447] In the following centuries abuses sometimes crept in concerning this matter, because priests said several Masses more from greed for the stipend than from love of piety, and thence they also neglected other duties of the care of souls. Wherefore the Council of Trent, session 22, and Benedict XIV[448] established that it is never lawful to celebrate two Masses on the same day except in a case of the spiritual necessity of the people, namely, if otherwise a notable part of the people could not satisfy the Sunday precept, or if some sick person could not receive Viaticum.

Concerning the faculty of bination, the following must be noted according to present common law or according to indults of the Supreme Pontiff:

1. It is not lawful to binate except on days of precept, in order that a notable part of the faithful may be able to hear Mass.[449]

Therefore it is not lawful to say two Masses on other days or on suppressed feasts,[450] nor in a private oratory in order that some family may be able to hear Mass. Sometimes, however, the faculty of bination is granted in favor of nuns who are subject to strict enclosure.

When the Holy See was asked several times by various bishops how great a number of the faithful or how great a distance between churches is required for a Mass to be repeated, it did not wish to give a response, but left this to the prudence and conscience of the bishops. For the rest, one must not proceed in this matter with excessive severity. Wherefore Leo XII wrote on March 13, 1828, to the Archbishop of St. Louis in North America: "You ought to lay aside every anxiety of mind, and, lest you be disturbed by the rigor of the words, he [namely, His Holiness] entrusts it to your conscience and prudence, so that you may judge in which cases, with account taken of the circumstances of your diocese, grave causes are to be considered present for imparting to priests the faculty of which there is question. But wherever you have judged these grave causes to be present according to your conscience and prudence, His Holiness benignly declared that you can use this faculty without any doubt." In these letters it is held to be a sufficient cause if 30-50 faithful cannot hear the prescribed Mass without bination. The Holy Office indeed judged on January 28, 1688, that the number of 15-20 persons who would otherwise lack Mass did not suffice; but a few months later in the same year the Sacred Congregation for the Propagation of the Faith judged the number of 10-12 servants to suffice. "Nor ought it to be surprising if this Congregation [for the Propagation of the Faith] yielded to a more benign interpretation; for there was question of servants who, because of their peculiar condition, deserved indulgence, since the sacrifice of the Most Holy Mass was perhaps their only consolation." Thus the Instruction of the Sacred Congregation for the Propagation of the Faith of May 24, 1870, in which even the distance of half a league, that is, half an hour, of one church from another is not rejected, although neither is it expressly acknowledged as a sufficient cause of bination. This also depends upon the difficulty of the road and the weather.

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[447] c. 3, X 3, 41.

[448] Constitution *Declarasti nobis*, March 16, 1746.

[449] In mission territories the faculty of bination is sometimes granted even on weekdays. Likewise during a Eucharistic Congress. Cf. *Acta Apostolicae Sedis* XVI (1924), 157.

[450] Sacred Congregation for the Propagation of the Faith, May 24, 1870.

287. 2. By common law, yet dependently upon the Ordinary, to whom it pertains to judge concerning these matters, bination is not only permitted but also commanded in two cases: a) When a pastor "holds two parishes or two peoples so separated that one of them can in no way be present with the celebrating pastor on feast days because of the very great distance of the places." Thus the cited Instruction. This case can easily occur, especially in mission territories. b) "When there is only one church in which Mass is celebrated and to which the whole people cannot assemble at the same time." Thus the same Instruction.

Although even in this second case the pastor must seek the previous permission of the bishop, nevertheless in a case of necessity, for example, when his assistant or the pastor himself suddenly becomes ill, this permission can and even must be presumed, since otherwise the faithful people would suffer harm. Afterward, however, the matter is to be reported to the bishop as soon as possible. The people are considered unable to assemble in the church at the same time not only because of the narrowness of the building, as some hold, but also because of distance and other inconveniences. Thus, for example, in nearly all rural parishes which are distant from one another by at least the space of half a league and in which only one priest celebrates Mass, such a necessity is considered present. For the faithful cannot leave homes, infants, animals, etc., without custody. Hence, when one part of the family assists at Mass, the other must remain at home. Therefore in these places the pastor must say two Masses so that all the faithful can satisfy the precept of hearing Mass.

288. 3. The Ordinary can permit a priest to say two Masses, even if other priests say Mass in the same church or in the same place, provided that otherwise a notable part of the faithful cannot assist at Mass.[451]

In large parishes where the faithful people are very numerous, two or three Masses often do not suffice for all to be able to assist, whether because of the narrowness of the church itself or for other reasons. Then the bishop, who is unable to send as many priests as are necessary, can grant that some priest say two Masses, even if other priests celebrate Mass on the same day in the same church or place. Thus runs the practice in several places.

4. It is not lawful for a priest celebrating two Masses by an indult of bination to accept a stipend for the other Mass or to satisfy any obligation of justice,[452] unless he has special permission of the Holy See.

Therefore a pastor cannot apply one Mass for the people and take a stipend for the other Mass. But if special labor is joined to the second Mass, for example, a long journey, a late hour, an instruction to be given, etc., remuneration for this labor can certainly be accepted.[453] Nothing prevents one celebrating two Masses from satisfying another obligation, for example, of charity, gratitude, obedience to the statutes of a sodality, etc., through the other Mass, as when he applies it for the deceased according to the constitution of the Order. For only an obligation of justice cannot be fulfilled through the other Mass. If a priest, contrary to a grave precept of the Church, took two stipends for two Masses, he must restore the other, since a title for retaining it is lacking. By a special pontifical indult, however, it is lawful to accept two stipends in mission territories and in some dioceses, for example, of Germany, Belgium, Switzerland, etc.; but then it is customary to command that the other stipend be expended for pious causes determined by the bishop.[454]

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[451] Code of Canon Law, c. 806, § 2.

[452] Sacred Congregation of the Council, September 25, 1858, March 21, 1863, and often.

[453] Sacred Congregation of the Council, May 23, 1861; Code of Canon Law, c. 824, § 2.

[454] Cf. Sacred Congregation of the Council, May 8, 1920 (*Acta Apostolicae Sedis* XII, 541).

289. 5. The rite to be observed in bination is prescribed in this manner by the cited Instruction of the Sacred Congregation for the Propagation of the Faith of May 24, 1870: The priest must say the second Mass fasting, and accordingly he cannot drink the ablution. A twofold manner of acting must be distinguished, according as another Mass is to be said on that day at the same altar after the first Mass has been said or not.

a) **If the other Mass is to be said at the same altar,** the priest is to proceed in this manner: "After carefully consuming the Blood of the Lord in the first Mass, with the customary purification omitted, leaving the paten covering the chalice and the pall covering the paten upon the corporal, he will say with joined hands: What we have received with our mouth, O Lord, etc. Then he will wash the fingers with which he touched the Most Holy Sacrament in some clean vessel prepared for this purpose on the altar. (This can be the vessel in which the fingers are customarily washed after Communion has been distributed outside Mass.) While washing his fingers he is to say: May Thy Body, O Lord, etc.; and after drying his fingers with the purificator, he will cover the chalice with the veil and place it, veiled, upon the unfolded corporal. When Mass is completed, if there is no sacristy in the church, he will leave the chalice upon the altar; otherwise he will carry it into the sacristy, and there place it upon a corporal or pall in some becoming and closed place until the second Mass, in which ... he will carry the chalice back to the altar and replace it upon the unfolded corporal." When he pours wine and water for the second Mass, he is not to wipe the chalice with the purificator.

b) **If the other Mass is to be said in another church,** then the Instruction given by the Sacred Congregation of Rites on September 12, 1857, and contained in the first appendix of the Roman Ritual must be observed. The manner of acting is nearly the same as above under letter a). After the Last Gospel has been completed, however, the priest is again to uncover the chalice and inspect whether any of the divine Blood has settled at the bottom or not, which will generally occur. Therefore, if some drop of the divine Blood remains, it is again to be carefully consumed; this must in no way be omitted, because the sacrifice morally endures and, while the species of wine remain, must be completed by divine precept. Afterward the priest is to pour into the chalice as much water, at least, as he had previously placed wine, move it around over the same part from which he drank the sacred Blood, and pour it into the prepared vessel. He is then to wipe the chalice with the purificator, cover it, and carry it with him into the sacristy. After laying aside the sacred vestments, he is either to preserve the water poured into the vessel until the following Mass and drink it in the second ablution, or absorb it with cotton or tow and burn it, or pour it into the piscina.[455]

[455] Cf. *Collectanea de Propaganda Fide*, n. 1352.

§ 3. On the Hour at Which Mass Is to Be Celebrated

290. By common law, the celebration of Mass can begin from one hour before dawn until one hour after noon.[456]

By dawn is understood here twilight, which customarily arrives about two hours before sunrise. All theologians say that this time is to be taken morally and not mathematically, so that he who says Mass a little before or after it has no fault. Dawn varies greatly according to different times and places. In central Europe during the month of June dawn begins almost at midnight. Therefore, according to strict law, Mass can be said then even from midnight; yet it is unbecoming for this to be done without a grave cause. In polar regions, however, where dawn does not appear on some days, the Sacred Congregation of Rites granted on September 18, 1634, that Mass could begin from the beginning of civil life, that is, at the time when men customarily rise in the morning for their labors according to the approved customs of the regions.

The precept not to celebrate outside the hours established by the rubric binds of itself under grave sin; accordingly, he who without any legitimate cause anticipates or postpones the time considerably, that is, by one hour, sins gravely.[457] The reasons for which it is lawful to say Mass earlier or later are the following:

a) **The necessity of confecting the Eucharist for administering Viaticum.** This is evident of itself; for if it is lawful for this reason to repeat Mass or to say it while not fasting, a fortiori it is lawful to pass beyond the time of celebration.

b) **On the night of the Nativity of the Lord,** as was said above.

c) **A reasonable custom approved by the Ordinary.** Thus, for example, it is lawful to say Mass very early in the morning in order that servants and workmen may be furnished an opportunity of hearing Mass.

d) **A dispensation given by the bishop or regular superior for a reasonable cause.**[458] Thus, for example, because of a journey to be made or already made, it is lawful to say Mass before dawn or after noon.

e) **A privilege granted by the Holy See.** Certain religious possess such a privilege. Pius VI[459] granted to the Congregation of Purity that Mass could be said two hours before dawn and two hours after noon. Génicot[460] teaches that this privilege is shared by other religious. Indeed, Redemptorists can celebrate Mass in their churches two hours after midnight and three hours after noon.[461]

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[456] Code of Canon Law, c. 821, § 1.

[457] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 346.

[458] Cf. ibid., n. 344.

[459] January 24, 1783, and May 10, 1785.

[460] *Theol. mor.* II, n. 237.

[461] Cf. Marc, *Inst. mor.* II, n. 1625.

291. Scholion 1. On reciting Matins before Mass. Since the rubric of the Missal says: "The priest ... who is to celebrate Mass ... at least after Matins with Lauds have been completed, etc.," several older authors, for example, St. Antoninus, Antoine, and Gavantus, thought that there was a grave obligation of reciting Matins and Lauds before Mass. This opinion is indeed certain if there is question of choral recitation before the conventual Mass. For those, however, who recite the Divine Office privately, it is also practically certain that this obligation is not grave but only light, and any moderate cause excuses from it altogether, for example, convenience of study, labor to be completed, etc.[462]

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[462] Cf. above, II, n. 373; St. Alphonsus, *Theol. mor.* l. 6, n. 347 ff.

292. Scholion 2. On the time to be employed for the celebration of Mass. With the time and hour of celebration there is in some measure connected the time itself necessary for celebrating, concerning which St. Alphonsus[463] rightly teaches "that a priest who completed Mass in less than a quarter of an hour could with difficulty be excused from mortal sin, even if the Mass were one of the shorter ones or the Mass of St. Mary on Saturday; because in so brief a space he must commit two grave defects: one, grave irreverence toward the sacrament; the other, grave scandal toward the people." Therefore the priest is to take care that he employ at least twenty minutes in the celebration of an ordinary private Mass and not exceed half an hour.

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[463] Ibid., n. 400.

Article II. On the Place of Celebration

The place of celebration includes two things, namely, the space in which and the altar upon which Mass is celebrated.

293. Principle 1. By common law it is not lawful to celebrate Mass except in churches or oratories at least blessed, and these neither polluted, execrated, nor interdicted.

This is evident from the Council of Trent,[464] which commands: Let bishops "not permit this holy sacrifice to be performed by any seculars or regulars in private houses and altogether outside a church and oratories dedicated solely to divine worship, to be designated and visited by those same Ordinaries." What churches and public, semipublic, and private oratories are has already been stated above, II, n. 483 ff., in the treatise on religion. No one except the Holy See can grant the faculty of habitually celebrating in strictly private oratories;[465] but local Ordinaries or, if there is question of a house of an exempt religion, major superiors can by their own authority grant for just and reasonable causes that, by way of an act,[466] that is, in a particular case, Mass be celebrated in any becoming place (but not in a bedroom), and even in the open air, for example, because of a great religious gathering of the people or for an army. Bishops can also grant, in favor of those who already have an indult of a private oratory, that by way of an act Mass be celebrated on those days which are excepted in the indult obtained. In this case, however, just and reasonable causes are required, and indeed causes other than those for which the indult of a private oratory had already been granted (Sacred Congregation for the Discipline of the Sacraments, March 22, 1915, ad II). Authors dispute what cause is sufficient for a bishop to be able, by way of an act, to grant the celebration of Mass in a domestic oratory or in any other respectable place. St. Alphonsus[467] teaches that a bishop can, by way of an act, permit Mass in a private house in order that some distinguished man suffering from illness may assist at the Sacred Rite or be refreshed with Holy Communion, or that a sick priest may be able to celebrate Mass. The following are enumerated as sufficient causes for a dispensation: if Viaticum could be carried to a dying person neither from a church nor from a properly established oratory; if a large part of the people otherwise would have to be without Sunday Mass. Perhaps to many the following will seem pressing causes: the grave illness of a noble man who has deserved exceedingly well of the Church; a reason for celebrating in the house of such a deceased man while the corpse is present. The local Ordinary, however, cannot then permit the celebration of more than one, a second, and at most three Masses before the corpse in the so-called "burning chamber" (*camera ardente*).[468] For the rest, it seems to be the mind of the Church that Masses of this kind by way of an act be celebrated outside an oratory very rarely.

The pollution or violation of a church is caused by four acts: the crime of homicide, the injurious and grave shedding of blood, impious and sordid uses, and the burial of an infidel or an excommunicated person, as was stated more fully above, II, n. 546, in the treatise on religion; the interdict of churches, however, will be discussed below in the treatise on censures.

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[464] Session 22, *On the Things to Be Observed and Avoided in the Celebration of Mass.*

[465] Cf. Many, *Praelect. de locis sacris*, n. 80.

[466] Sacred Congregation for the Discipline of the Sacraments, March 22, 1915; Code of Canon Law, c. 822, § 4. The Sacred Congregation of the Sacraments on July 26, 1924, established that merely profane or political causes do not suffice for a bishop to be able to permit Mass in the open air. Therefore a religious cause is always required (*Acta Apostolicae Sedis* XVI, 370).

[467] *Theol. mor.* l. 6, n. 359.

[468] Sacred Congregation of the Sacraments, May 3, 1926.

294. Concerning the execration or profanation of churches, the following things from Canon Law are briefly to be noted: A church is execrated, that is, it loses the consecration or blessing received, when it is so changed that it is no longer considered the same church. This can occur:

a) If it is destroyed wholly or for the greater part, even though it is rebuilt with the same material.

b) If a new part is added and it is greater than that which existed before. A church is not execrated even though at the same time the whole coating of the walls upon which the crosses had been painted is scraped away or falls off. The contrary opinion was commonly held by the ancient canonists, but the Sacred Congregation of Rites on May 19, 1896, replied to the doubt: "Whether a church, from whose walls the plastering, commonly *intonaco*, is removed either partly or entirely at the same time in order that it may be renewed, remains consecrated or is execrated?" - "The church remains consecrated, although the plasterwork upon its walls has been renewed."[469]

c) If it has been reduced to profane uses by the local Ordinary.[470]

When, while an interdict is in force, it is lawful to say Mass will be indicated below, n. 533.

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[469] *Decr. auth.*, n. 3907 ad 2.

[470] Code of Canon Law, c. 1170.

295. Privileges and indults concerning the place of celebration.

1. Cardinals and bishops, whether residential or titular, can erect private oratories in their houses in which they may celebrate Mass. This applies also to the lodging in which they stay while traveling,[471] and indeed also on a ship, as will be said immediately.[471a]

2. Missionaries are customarily granted an ample faculty of celebrating in any becoming place when a church or oratory is lacking.

3. An apostolic indult is required for Mass to be said on a ship traversing the sea. This indult is not granted except under the condition that the sea be calm and that no danger of irreverence be present. Nor is celebration in the rooms of the ship, commonly called cabins, absolutely prohibited, provided that it is done becomingly.[472] Cardinals and all bishops, including titular bishops, can celebrate Mass daily on a ship, provided that: a) the place chosen for this purpose presents nothing unbecoming; b) the sea is so calm that no danger of the shedding of the Most Precious Blood is present; c) another priest, vested in a surplice, is present assisting the prelate who celebrates.[473]

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[471] Leo XIII, June 10, 1896. Code of Canon Law, c. 1189. All apostolic protonotaries, except honorary protonotaries, also enjoy the privilege of a private oratory, at home and in the country, which nevertheless is to be visited and approved by the local Ordinary. In these oratories either the protonotaries themselves or another priest can celebrate Mass even on the more solemn days, six days excepted; and blood relatives, relatives by affinity, members of the household, and those dwelling with the protonotaries satisfy the Sunday precept by hearing this Mass. Thus from the motu proprio of Pius X, *Inter multiplices*, February 21, 1905, nn. 11, 22, and 46 (*Analecta ecclesiastica* XIII [1905], 63 ff.). - The Knights of the Golden Fleece likewise have the privilege of a private oratory and portable altar. Thus from the Brief of Pius X, February 10, 1913 (cf. *Linzer Quartalschrift* 1914, p. 991). Likewise Vicars and Prefects Apostolic; likewise Abbots and Prelates *nullius*; likewise Auditors of the Rota. Pius X, July 26, 1913.

[471a] Code of Canon Law, c. 239, n. 8; c. 349, n. 1.

[472] Sacred Congregation for the Propagation of the Faith, March 1, 1902, and August 13, 1902 (*Collectanea*, n. 2130).

[473] Code of Canon Law, c. 239, n. 8; c. 349, n. 1.

296. Principle 2. It is never lawful to celebrate Mass except upon an altar duly consecrated.

A twofold altar is distinguished: **fixed** (immovable) and **portable** (movable). A fixed altar is again twofold, namely: 1. fixed in the strict or liturgical sense, which consists of: a) a mensa made from one natural stone, not one made by art; b) a stone base,[473a] joined with the mensa placed above it and with the sepulcher of relics; and 2. fixed in a less strict sense, which is stable in some manner, although made of wood. When a fixed altar is required in the matter of indulgences, it suffices that it be fixed in the less strict sense.[474]

A **portable altar** is one which can easily be carried from one place to another. It must consist of one natural stone, hard, whole, and sufficiently large that it can support the host and at least the greater part of the chalice.[475] It is not required that the stone be marble; but pumice stone or another friable stone is prohibited.[476] It is never lawful to say Mass except upon an altar at least portable and consecrated.

The consecration of all altars belongs by law to the bishop; sometimes, however, a priest is delegated for this by the Supreme Pontiff or by the law.

An altar fixed in the strict sense is execrated in three ways: 1. if the mensa is moved from the base; 2. if the mensa, although unmoved from the base, is enormously broken; 3. if the sepulcher of the relics is broken open.[477] A portable altar, however, is execrated: 1. if the stone is enormously broken, or if there is a large crack in it; 2. if the sepulcher is broken open or the enclosed relics are removed. It must be noted: when a church is execrated, the altars are not execrated;[478] but when a church is polluted, the altars also are considered polluted. How an execrated or polluted church and altar can be reconciled may be seen in the canonists or liturgists.

[473a] Either the entire base is to be of stone, or at least the sides or little columns by which the mensa is supported are to be of natural stone. Code of Canon Law, c. 1198, § 2.

[474] Cf. our *Man. iur. can.*, q. 267.

[475] Code of Canon Law, c. 1198, § 3.

[476] Commonly *Bimsstein, pierre ponce.* - Sacred Congregation of Rites, June 13, 1899 (*Decr. auth.*, n. 4032).

[477] Except, however, if the bishop himself or his delegate removes the cover in order to secure, repair, or replace it, or to inspect the relics. Thus the Code of Canon Law, c. 1200, § 2, n. 2, established.

[478] Code of Canon Law, c. 1200, § 4.

Article III. On Sacred Furnishings

297. The sacred furnishings necessary in Mass comprise three things: 1. the ornamentation of the altar; 2. the vesture of the priest; 3. the sacred vessels.

1. In the ornamentation of the altar[479] the following are comprised:

a) **Three cloths** (or altar cloths) made of linen or hemp. These cloths must be blessed by the bishop or by the pastor or by others having the legitimate faculty. Omission of the blessing would be unbecoming and a venial sin.[480] To celebrate Mass upon an altar adorned with no cloth seems to be grave irreverence and a grave sin.

b) **A Missal with a cushion or small bookstand.** To celebrate Mass without a Missal is considered grave irreverence because of the danger of error. If someone, however, cannot have a Missal and knows the Mass by memory, the lack of a Missal does not seem gravely irreverent.[481]

c) **Two lighted candles.** It would be a grave sin to celebrate Mass without any light. Hence, if the light fails before the consecration and another cannot be had, the priest must break off the Mass; but if this occurs after

the consecration, the sacrifice can and must be completed, nor ought it to be interrupted for a long time, that is, for a quarter or half an hour. To celebrate Mass with only one candle is held to be a venial sin.[482] The candles must be made of wax, at least for the greater part, unless an apostolic indult is present.[483] Génicot,[484] however, deservedly teaches that it is not a grave sin to use candles made of stearin and other vegetable substances, since they are scarcely distinguished from those which are made of beeswax. By reason of the celebrant, if he is lower than a bishop, it is not lawful to have more than two lighted candles at a strictly private Mass. I say, however, at a **strictly private Mass**; for if even a read Mass is celebrated by reason of some solemnity, nothing seems to prevent several candles from then being lighted upon the altar, not by reason of the Mass but by reason of the solemnity.[485] Certain regular prelates can have four lighted candles at their read Masses, custom thus permitting. Electric light and gas cannot be employed for worship, but only for splendid illumination.[486]

d) **An image of the Crucified** must stand out between the candlesticks or above the tabernacle, but not in the throne of the Most Holy Sacrament,[487] so that it can easily be seen not only by the celebrant but also by others. It is a light obligation.[488]

The cards which are customarily placed on each side of the altar are not strictly prescribed; but they are fittingly employed for the convenience of the priest.[489] An **antependium**, which is an artistically made hanging suspended before the mensa of the altar, contributes greatly to the ornamentation of the altar. The color of the antependium is changed according to the feasts occurring each day. But the antependium is now not in use in most regions.

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[479] Concerning the ornamentation of the altar, the General Rubrics of the Missal, title 20, prescribe: "The altar upon which the sacrifice of the Most Holy Mass is to be celebrated must be of stone and consecrated by the bishop ...; or at least a stone altar similarly consecrated by the bishop ... is to be inserted into it, which is to be so large that it can hold the host and the greater part of the chalice. This altar is to be covered with three clean cloths or altar cloths blessed by the bishop or by another having the power: the upper one at least is to be oblong and to reach to the ground, the other two shorter, or one doubled. It is also to be adorned with a frontal of a color corresponding, insofar as this can be done, to the feast of the day or to the office. Upon the altar a cross is to be placed in the middle and at least two candlesticks with lighted candles, one on each side of it. At the foot of the cross is to be placed the card called the card of the secret prayers. On the Epistle side a cushion is to be placed under the Missal; and on the same Epistle side there are to be prepared a candle to be lighted at the elevation of the sacrament, a small bell, glass cruets of wine and water with a basin and a clean towel in a niche or upon a small table prepared for these things. Absolutely nothing is to be placed upon the altar which does not pertain to the sacrifice of the Mass or to the ornamentation of the altar itself."

[480] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 375, dub. 2. Pastors and religious superiors can bless sacred furnishings only for their own churches. Code of Canon Law, c. 1304.

[481] Thus also Noldin-Schmitt, *De sacr.*, n. 213.

[482] Cf. St. Alphonsus, loc. cit., n. 394.

[483] Cf. Sacred Congregation of Rites, September 7, 1850; December 14, 1904 (*Decr. auth.*, nn. 2985 and 4147).

[484] *Theol. mor.* II, 246.

[485] Sacred Congregation of Rites, September 12, 1857 (*Decr. auth.*, n. 3059 ad 9).

[486] Cf., however, above, n. 224.

[487] Sacred Congregation of Rites, June 11, 1904 (*Decr. auth.*, n. 4136).

[488] Cf. St. Alphonsus, loc. cit., n. 393.

[489] Ibid., n. 390.

298. 2. The vesture of the priest saying Mass consists of the amice or humeral, alb, cincture, maniple, stole, and chasuble. All these vestments must be blessed by the bishop or by one having the faculty. Such a faculty is possessed, besides Cardinals and all bishops, by religious superiors, pastors, and rectors of churches, but these last three only for their own churches.[490] Although the chasuble, stole, and maniple need not absolutely be made of silk, precious material is nevertheless required, and those vestments made entirely of cotton, linen, or wool are unlawful.[491] The cincture is more fittingly made of white linen, but neither another material nor another color is prohibited. Thus, for example, red silk cinctures are employed in some churches. It is considered a grave sin to celebrate Mass without any sacred vestment. The same applies to the lack of the chasuble or alb.[492] The remaining sacred vestments, however, do not seem to be of such necessity. Hence, in order to confect Viaticum, or if otherwise the people could not satisfy the Sunday precept, it would be lawful to say Mass without those vestments.

The **color** of the vestments must indeed be observed according to the diverse offices and feasts, but it does not bind under grave sin. Hence Sporer[493] rightly says that it is better on any day to offer the Sacred Rite in any color than to omit it, and that every reasonable cause excuses, as if vestments of the due color would not suffice for a gathering of priests. Gold color cannot serve in place of the colors white, green, and red; but if cloth truly of gold[494] was used, then vestments so made can, because of their preciousness, serve in place of the colors white, green, and red,[495] but not in place of violet or black.

The General Rubric likewise prescribes that the priest, before putting on the sacred vestments, be in an ankle-length garment, according to the prescription of c. 811, § 1: "A priest who is to celebrate Mass is to wear a becoming garment which reaches to the ankles."[495a] Hence, if in some regions a priest does not always wear an ankle-length garment, he must put it on in the sacristy. It is altogether unbecoming to put sacred vestments on over clothing of any color other than black, except in a case of necessity. It seems that a celebrating priest cannot wear a wig, commonly *Perücke*, unless he has the permission of the Holy See, which, however, Apostolic Nuncios also can grant.[496]

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[490] Code of Canon Law, c. 1304.

[491] Sacred Congregation of Rites, September 23, 1837; June 23, 1892 (*Decr. auth.*, n. 2769, dub. 5; n. 3779, dub. 1).

[492] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 377.

[493] *Theol. mor.* P. 2, c. 6, n. 414.

[494] *Goldbrokat.*

[495] Sacred Congregation of Rites, March 29, 1851; November 20, 1885 (*Decr. auth.*, n. 2986 ad 5; n. 3646 ad 2).

[495a] Cf. Sacred Congregation of the Council, July 28, 1931 (*Acta Apostolicae Sedis* XXIII, 336).

[496] *Facultates Nuntiorum*, n. 35.

299. 3. The sacred vessels required for Mass are the chalice with the paten and the cruets of wine and water. Added to the sacred vessels are the corporal, pall, purificator, chalice veil, and burse for the corporal.

The **paten and cup of the chalice** must be of gold, or, if they are of silver, tin, or aluminum, they must be gilded within.[497] Another material is not admitted according to the present discipline; the paten, however, can also be made of another solid material.[498] Gilding is required under grave sin for the interior part of the cup of the chalice and the upper part of the paten.[499] The Sacred Congregation of Rites on August 31, 1867, replied "Affirmative" to the question: "Can a ciborium of gilded copper, likewise a monstrance and lunula, be

permitted?" Therefore the cup of the chalice must be of silver, tin, or aluminum; but another solid material is also permitted for other sacred vessels. The chalice and paten are execrated: 1. through loss of form, for example, if the foot is separated from the cup by breaking, but not if the foot is screw-threaded and can easily be separated from the cup; nor through new gilding.[500] If, however, through long use the gilding has been worn away, the chalice indeed remains consecrated, but the gilding must be renewed. 2. If they have been employed for unbecoming uses or exposed for public sale.[501] Since no layman can touch a consecrated chalice, and since its consecration remains even if the gilding has been worn away, the permission of the bishop or regular prelate seems to be required for a consecrated chalice which is to be gilded anew to be handed over to an artisan; but the chalice must not first be execrated.[502] The use of a small spoon for pouring water into the wine is not prohibited,[503] as was already stated above, but such a spoon is not blessed.

A **corporal** made of linen or hemp is to be placed beneath the chalice. He sins gravely who, outside a case of great necessity, celebrates without a corporal, and one that has been blessed.[504]

The **purificator** likewise must be of linen or hemp, but it is not to be blessed,[505] nor is any blessing of it found in the Roman Ritual. Therefore the purificator can be supplied by a clean handkerchief, which, however, afterward is not again to be employed for profane uses.

The **pall** must be made of linen or hemp, at least on that part by which it touches the chalice. On the other side it can be covered with gold or silk ornaments, provided that the cloth is not black and does not bear any signs of death.[506] The pall is to be blessed just like the corporal.

The **cruets** of water and wine are better made of glass; those made of gold, silver, or tin are nevertheless also permitted.[507]

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[497] Cf. St. Thomas, *S. theol.* 3, q. 83, a. 3 ad 6; Benedict XIV, Constitution *Etsi pastoralis*, May 26, 1742 (§ VI, 20); Sacred Congregation for the Propagation of the Faith, January 16, 1797.

[498] Cf. Génicot, *Theol. mor.* II, n. 247.

[499] This seems to follow from c. 1305, § 2, where it is established: "The chalice and paten do not lose their consecration through the wearing away or renewal of the gilding, with the grave obligation, however, in the former case of gilding them again remaining intact."

[500] Ibid.

[501] Code of Canon Law, c. 1305, § 1, n. 2.

[502] Sacred Congregation of Rites, April 20, 1822 (*Decr. auth.*, n. 2620).

[503] Sacred Congregation of Rites, February 6, 1858 (*Decr. auth.*, n. 3064).

[504] St. Alphonsus, *Theol. mor.* l. 6, n. 387.

[505] Sacred Congregation of Rites, September 7, 1816 (*Decr. auth.*, n. 2527 ad XII).

[506] Sacred Congregation of Rites, July 17, 1894 (*Decr. auth.*, n. 3832 ad 4).

[507] Sacred Congregation of Rites, August 28, 1866 (*Decr. auth.*, n. 3149).

300. The first washing of corporals, palls, and purificators which have been used in Mass must be performed by a cleric in major orders.[508] The water of the first washing is to be poured into the sacrarium; if this is lacking, into the fire. Nuns require the special permission of the Sacred Congregation of Rites in order to be able to perform this first washing. Therefore the discipline in force regarding the first washing is stricter than regarding simple touching. For the chalice with the paten and, before washing, the purificators, palls, and

corporals which have been used in the sacrifice of the Mass can be touched even by simple clerics or by those who have custody of them.[509]

The Sacred Congregation of Rites on March 14, 1900, established the following concerning a cleric ministering in place of a subdeacon at Mass:

1. "A cleric is never to be deputed to undertake the office of subdeacon at a solemn Mass unless there is a reasonable cause and he has been constituted in minor orders or at least initiated by sacred tonsure."
2. "A cleric serving in place of a subdeacon is to be vested in an alb over the amice, a cincture, and a tunic without a maniple, and he is duly to fulfill all the things which according to the rubrics pertain to the subdeacon, with these exceptions, however: a) he is not to pour water into the chalice before the offertory, which in this case the deacon will do; b) he is never to touch the chalice itself during the Action, that is, during the Canon, nor remove the pall from it or replace it upon it; c) after the ablution he is not to wipe the chalice, the celebrant himself wiping it, but is only to arrange it in the customary manner, cover it with the veil and burse, and carry it to the table."[510]

[508] Code of Canon Law, c. 1306, § 2.

[509] Ibid., § 1.

[510] *Analecta ecclesiastica* XIV (1906), 166.

301. Scholion. How blessed or consecrated things lose their blessing. All things, whether vessels or vestments, which require consecration or blessing for the use of the altar lose it in three cases: 1. if they notably lose their original form, so that they become wholly unfit for the use intended; 2. if new material is added in a great or at least an essential part; 3. if they have been employed for unbecoming uses or exposed for public sale.[510a]

How a chalice is execrated has already been stated above. A corporal loses its blessing if it is so torn that it can no longer be placed beneath the chalice and host. A cincture loses its blessing if it is broken into such parts that none of them is any longer fit for girding. An alb loses its blessing if new sleeves are added. Finally, a chasuble must be blessed again when the new part sewn on exceeds the part retained. The same seems to apply to the maniple and stole.

[510a] Code of Canon Law, c. 1305.

Article IV. On the Rites to Be Observed

302. Preliminary note. Here we do not treat of the diverse rites instituted or permitted by the Church, such as the Roman, Oriental, and Ambrosian rites, the rite of the Preachers, the Carthusians, and so forth. The general rule is: "Let it not be lawful for priests to perform sacred rites according to a mixed rite; therefore let each confect and minister the sacrament of the Body of the Lord according to the rite of his own Church."[511]

Wherefore, without any doubt, a priest of the Order of Preachers would sin, for example, if without previous legitimate permission and outside a most urgent necessity he celebrated Mass according to the Roman rite; and conversely, a priest bound to the Roman rite who wished to say Mass according to the rite of the Friars Preachers.

The Council of Trent[512] established the following concerning ceremonies accepted in general: "Since the nature of men is such that it cannot easily be raised to meditation upon divine things without exterior aids,

holy Mother Church has therefore instituted certain rites, namely, that some things be pronounced in Mass in a low voice and others in a louder voice; she has likewise employed ceremonies, such as mystical blessings, lights, incense, vestments, and many other things of this kind, from apostolic discipline and tradition, both that the majesty of so great a sacrifice might be commended and that the minds of the faithful, through these visible signs of religion and piety, might be aroused to the contemplation of the most sublime things which lie hidden in this sacrifice."

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[511] Constitution of Pius X, *Tradita ab antiquis*, September 14, 1912 (*Acta Apostolicae Sedis* IV, 615).

[512] Session 22, c. 5, *On the Sacrifice of the Mass* (Denz., n. 943).

303. Principle. All the rubrics of the Missal oblige in conscience in some manner.

Proof 1. St. Pius V strictly commands in the Constitution which is read at the beginning of the Missal that Mass be celebrated according to the rite, manner, and norm as noted in the rubrics of the Missal. Now such a general ecclesiastical law obliges in conscience.

Proof 2. The Sacred Congregation of Rites, in a decree which likewise is found in the Roman Missal, "commands that the rubrics of the Roman Missal be observed in all things and in every respect," notwithstanding any pretext and contrary custom, which it declares to be an abuse. Moreover, that such a precept is purely directive or penal is an altogether gratuitous assertion.

Wherefore the distinction employed by several authors between preceptive and directive rubrics is of little utility, both because no one up to this time has been able to designate which rubrics are preceptive and which are merely directive,[513] and because this distinction cannot be solidly proved. Therefore it must be said: Whenever something is determinately established in the rubrics, it obliges in conscience; but when it is left to the discretion of the priest or bishop, or is proposed according to the convenience of the priest, certainly each one can act as is consonant with his reason.

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[513] Some authors think that all the rubrics to be observed within Mass are preceptive, but those to be observed before or after Mass are merely directive. This opinion does not seem sufficiently founded, since, for example, the prayers which are to be said while putting on the sacred vestments are most commonly held to be preceptive.

304. Gravity of the obligation. The rubrics of the Missal are positive ecclesiastical laws; and accordingly, for judging the gravity of their obligation, the general rules concerning the obligation of ecclesiastical laws are to be employed; namely, it is necessary to attend to: a) the gravity of the matter; b) the common judgment of the doctors. From the application of these rules it is useful to adduce the following practical solutions:

1. A responding minister, and indeed a male, is required under grave obligation to serve at Mass. From this law, however, there excuse: a) a pontifical dispensation, which sometimes is customarily granted to missionaries and other priests; and b) a case of necessity, for example, that on a feast day the people may be able to assist at Mass, that Viaticum may be confected, or even probably if otherwise the priest would be wholly unable to say Mass on that day. It is lawful to celebrate from a lesser necessity with a minister who does not know how to make the responses. Therefore a priest ought not make scruples for himself if the minister pronounces the words badly; it is fitting, however, that the priest himself then supply the words omitted. To permit a woman to take the place of the Mass server in all things, that is, to stand at the altar, present the cruets, and so forth, is considered a grave transgression of the ecclesiastical precept. When a male minister is lacking, however, it is lawful to celebrate Mass if a woman, especially a nun, indeed makes the

responses but does not approach the altar. In public churches, however, a woman cannot serve at Mass in this manner unless necessity[514] or at least a just cause is present.

How great this necessity must be is not established. After the Sacred Congregation of Rites, on August 14, 1893, replied that such necessity was not present in a case in which the priest otherwise would have to omit a Mass which was in no way necessary for fulfilling the precept of hearing Mass, it afterward, on January 13, 1894, suspended the execution of this rescript until it had weighed new arguments brought forward. To this day a decision has not yet been given. Indeed, the Code, c. 813, § 2, no longer requires necessity, but a just cause. Wherefore it seems lawful to employ a woman if otherwise the priest could not say Mass even for the sake of devotion.

2. Every notable change in the Canon of the Mass is a mortal sin. Thus all teach. St. Alphonsus[515] thinks it already grave to omit ten words in the Canon.

3. Outside the Canon, to omit entire parts which must be said in every Mass is likewise considered a grave sin, for example, the omission of the Confession and of all the other prayers to be said before the steps; the omission of the Epistle with the Tract or Gradual; the omission of the Gospel.

4. To omit one or another of those parts which do not occur in every Mass does not seem grave, for example, to omit the Gloria, Creed, a commemoration, and so forth.

Lehmkuhl[516] teaches: "It is not altogether established that it is a grave sin in Holy Week to omit the Passion, reciting only the final part which is taken as the Gospel; but if someone is detained by a fortuitous impediment from being able to say so long a Mass, yet is impelled by devotion or another cause to celebrate, it is better to take another Mass, such as a votive Mass of the Passion, than to omit from the Mass of those days the history of the Passion. For to take that votive Mass, although of itself it is a sin against the rubrics, is certainly only venial, and for a moderately grave cause it will be lawful to do this without any fault." The second part of this opinion is displeasing, because it is necessary: 1. to change the color of the vestments; 2. to take a Mass contrary to the express prohibition of the Church. Since, however, according to the common opinion, it is not grave to omit those things which are not to be said in every Mass, and the Passion is not to be said in every Mass, when a true cause exists it seems that the Passion should be omitted rather than that a votive Mass of the Passion be said.[517] For the rest, bishops today are customarily empowered to grant that a priest celebrating twice omit the Passion in one Mass.

5. It is not lawful from importunate devotion to add anything in the Mass, and especially Collects or prayers cannot be added at will.[518]

6. If someone through error has omitted something which belongs to the necessity and integrity of the Mass, for example, the Offertory or the consecration, he must supply it. But other things which do not belong to the necessity and integrity of the Mass, such as the Gloria, Collects, Creed, and so forth, if the priest has already advanced somewhat, he ought not supply, but continue the Mass.[519]

7. It is not lawful to break off Mass before the consecration unless scandal is absent and at the same time a grave cause is present, for example, if the priest remembers that he is not fasting or if he suddenly becomes ill.[520] It is never lawful to break off Mass after the consecration and before Communion unless danger of death or profanation of the Eucharist is imminent. A Mass broken off after the consecration must be completed altogether by the priest himself or by another, even one who is not fasting, because otherwise an enormous sacrilege would be committed.[521] If, however, more than one hour has intervened, the moral union between the parts of the Mass already seems to have been destroyed, and therefore the strict obligation of

completing the Mass probably ceases. It is nevertheless lawful to complete a Mass that has been broken off even after several hours.[522]

It is lawful to interrupt Mass for a short time before the Offertory or after the Communion of the priest, provided that a just cause is present. Thus, for example, it is lawful to interrupt Mass after the Gospel in order to preach, to proclaim banns, and so forth; it is lawful after Communion to give a brief exhortation to children receiving Communion, or to receive or emit religious vows. But once the Canon has begun until the Communion of the priest, it is not lawful to interrupt Mass except for a most grave cause, for example, to administer Viaticum to a dying person, because of an illness of the priest which will pass shortly, and so forth.

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[514] Sacred Congregation of Rites, March 18, 1898 (*Decr. auth.*, n. 4015 ad 6); Code of Canon Law, c. 813.

[515] *Theol. mor.* l. 6, n. 403.

[516] *Theol. mor.* II, n. 332.

[517] Cf. Ballerini-Palmieri, *Opus theol.* IV, n. 1105.

[518] Sacred Congregation of Rites, July 17, 1894 (*Decr. auth.*, n. 3832 ad 8).

[519] Cf. St. Thomas, *S. theol.* 3, q. 83, a. 6 ad 5.

[520] Cf. ibid., a. 6 ad 2.

[521] Ibid.

[522] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 355.

Treatise V. On Penance

305. Preliminary note. "Let us approach the work of expounding this treatise on the sacrament of penance, to which indeed one must diligently apply oneself with every study above the other matters, since in it are contained the sum of all Moral Theology and the questions which pertain more to practice." Thus St. Alphonsus.[1] The Roman Catechism,[2] however, says: "Just as the frailty and weakness of human nature is known to all, and each one easily experiences it in himself, so no one can be ignorant of how great a necessity there is for the sacrament of penance. But if the diligence which pastors must employ in each subject is to be measured from the magnitude and weight of the matter which they treat, we shall altogether confess that they will never be so diligent in the explanation of this topic that it could seem sufficient; indeed, this sacrament must be treated more accurately than baptism, because baptism is administered only once and cannot be repeated, but occasion for penance is given and the necessity of repeating it imposed as often as it happens that one sins after baptism." But pastors and other priests are altogether unequal to instructing the faithful rightly concerning penance unless they themselves first have learned this matter exceedingly well. Hence let no priest dare to administer the sacrament of penance unless he is instructed with a perfect knowledge of penance.

We divide this whole treatise into three chapters: 1. on the essence of penance; 2. on the subject of penance; 3. on the minister of penance.

Innumerable authors have written concerning penance; we specially commend St. Thomas, *S. theol.* 3, q. 84 ff.; St. Alphonsus, *Theol. mor.* l. 6, n. 427 ff., and his disciples Marc and Aertnys. Then Billuart, Drouven, Lehmkuhl, Noldin, Haine, Joseph Göttler, *Der hl. Thomas von Aquin und die vortridentin. Thomisten über die Wirkungen des Bußsakramentes* (Freiburg 1904); Reginald Schultes, O.P., *Reue und Bußsakrament* (Paderborn 1907); A. Tappehorn, *Anleitung zur Verwaltung des heiligen Bußsakraments* (Dülmen 1893). Paul Galtier, S.J., very learnedly unfolds the history of the sacrament of penance in *De poenitentia: Tractatus dogmatico-historicus* (Paris 1923).

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[1] *Theol. mor.* l. 6, n. 426.

[2] Part 2, c. 5, q. 1.

Chapter I. On the Essence of Penance

We divide this chapter into five articles: 1. on the notion of penance; 2. on the virtue of penance; 3. on the existence of the sacrament of penance; 4. on its essence; 5. on its effects.

Article I. On the Notion of Penance

306. Some derive the Latin name of penance from "to hold punishment" (*poenam tenere*), because the penitent imposes punishment upon himself in order to make satisfaction to the one offended. Others think that this name signifies to feel something "deeply" (*penitus*), that is, inwardly in the heart, and indeed weariness or sorrow of soul. In Greek penance is called μετάνοια, which is the same as a change of mind or resipiscence, that is, a return to right-mindedness.

The Greeks, however, in calling penance μετάνοια do not intend to say, as Luther did, that its whole essence consists in resipiscence, but that resipiscence is an evident sign of true penance. Lactantius already refuted Luther's error.[3] The Greeks sometimes also call penance ἐξομολόγησις, that is, confession.

1. The profane senses of the name penance signify weariness, displeasure, and sorrow. Penance is employed both concerning good and concerning evil. Thus, for example, Cicero says concerning old age: "If then he had lived to his hundredth year, would he have regretted his old age?"

2. Theological senses. The word penance is taken by theologians principally in a threefold sense: a) for the moral virtue of penance; b) for the sacrament of penance; c) for that part of this sacrament which is also customarily called satisfaction. Penance taken in the first sense is rightly called **interior penance** by the Roman Catechism; but taken in the other two senses it is called **exterior penance**. Both penances, however, are intimately connected, so that in the present order of things neither can exist without the other. For the true virtue of penance includes the desire for the sacrament of penance, because the sinner cannot make satisfaction to God by his own powers, but needs the sacrament of penance for this. On the other hand, the sacrament of penance cannot be validly received unless an act of the true virtue of penance is present, namely, contrition or attrition. For although confession and satisfaction can be absent in a case of necessity, for example, in a man deprived of his senses, an act of the virtue of penance is altogether a condition without which someone cannot be validly absolved. This internal penance joined at the same time with external penance is customarily called by the Holy Fathers **laborious baptism**, or also **the second plank after shipwreck**. For the first plank of salvation after the shipwreck of original sin is baptism.

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[3] *Inst. div.* VI, 24 (Migne, *Patr. lat.* 6, 722 ff.).

Article II. On the Virtue of Penance

Definition. The virtue of penance is a supernatural habit whereby a man is rendered prompt to grieve over a sin committed insofar as it is an offense against God, with a purpose of amendment.[4]

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[4] Cf. St. Thomas, *S. theol.* 3, q. 85, aa. 1-3. St. Alphonsus (*Theol. mor.* l. 6, n. 434) gives the following definition: "Penance is a virtue tending toward the destruction of sin, insofar as it is an offense against God, by means of sorrow and satisfaction."

307. Explanation. It is said, first: penance is a supernatural habit, because, although a man even by natural powers and on account of natural motives can repent of sins committed, nevertheless such penance is neither a perfect virtue nor does it destroy the stain of sin. Hence the Council of Trent[5] defined: "If anyone says that without the prevenient inspiration of the Holy Spirit and His assistance a man can ... repent as he ought, so that the grace of justification may be conferred upon him, let him be anathema." The same Council[6] and, after it, the Roman Catechism[7] teach that a man arrives at the true virtue of penance through five supernatural movements or degrees, namely, there is required:

a) **An act of divine mercy moving and illuminating us,** according to that saying: "Convert us, O Lord, to Thee, and we shall be converted."[8]

b) **An act of faith.** For a man moved and illuminated by the merciful God must tend toward God through faith. For whoever wishes to approach God must believe that God exists and rewards human works.[9]

c) **An act of fear.** For a man, believing God to be the just avenger of crimes, is necessarily struck by fear of God angered and punishing.

d) **An act of hope.** For the sinner cannot approach God unless the hope of obtaining divine mercy and the remission of sins shines upon him.

e) **An act of initial love.** For a man believing in a God equally just and merciful is necessarily induced to love such a God. Moreover, no justification is possible for an adult man unless he wills to turn himself toward God and to be united with Him. Now such conversion and union include at least an imperfect act of love.

A man prepared by these five movements or degrees can elicit an act of true penance and thus be justified, his sins having been blotted out. Certainly it is not always required that these five movements or degrees be really distinct or separated before the act of true penance; but sometimes a man moved by divine grace elicits one formal act of penance which nevertheless virtually contains all the other requisites.

It is said, second: whereby a man is rendered prompt to grieve over a sin insofar as it is an offense against God. Therefore not every sorrow over sins committed is an act of the true virtue of penance, but only when sin is held in hatred as an offense against God; and therefore the formal object of penance is the offense or injury against God to be repaired. For example, sorrow over sins arising from the natural turpitude of sin or from its evil natural effects is not an act of true penance. It is not indeed necessary that the motive of penance be perfect love of God, but it is required that it be referred to God in some manner; for example, temporal or eternal punishments are a sufficient motive, not indeed as they are in themselves, but as they are to be inflicted by divine justice.

Finally it is said, third: with a purpose of amendment, because true sorrow for sin includes detestation of the past and a purpose of amendment for the future.

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[5] Session 6, can. 3, *On Justification* (Denz., n. 813).

[6] Ibid., c. 6 (Denz., n. 798).

[7] Part 2, c. 5, q. 7.

[8] Lam. 5:21.

[9] Cf. Heb. 11:6.

308. Acts of penance. From what has been said, it follows that several acts are contained in the virtue of penance, namely: a) hatred and detestation of sin; b) sorrow over the offense inflicted upon God; c) the will to destroy sin in us; d) the will to make satisfaction to God who has been injured; e) the will to avoid future sin. Commonly, however, only three acts included in penance are assigned: sorrow, detestation, and purpose.

309. The proximate subject of penance is the will.

For penance is a potential part of justice, which resides in the will, as was stated above, II, n. 70. Although other faculties of the soul concur in the act of penance, for example, memory represents the sin committed and its malice, and sorrow is sometimes felt in the body, nevertheless it belongs to the will to elicit and command the act of penance; and therefore the faithful are not to be disturbed if, when eliciting contrition, they do not sensibly perceive sorrow, as they say; for acts of the will are not always felt in the body.

310. The remote subject of penance is every man guilty of sin or at least capable of it.

Since penance is an infused virtue, it is in all who are in the state of sanctifying grace and who have sinned or at least can sin. Therefore it is also in baptized infants. In Gehenna there is no true penance, because true virtue does not exist there; but in heaven the virtue of penance remains in the blessed, insofar as they have

displeasure over sins formerly committed and joy over the satisfaction rendered. Neither Christ nor probably the Blessed Virgin has the virtue of penance properly so called, since they were not capable of any sin.[10]

[10] Cf. Billuart, *De poenit.*, diss. 2, a. 2. Hence the Holy Office on July 5, 1893, deservedly proscribed the following formulas: "Penitent Heart of Jesus, penitent Jesus, Jesus doing penance for us."

311. The material object of penance is any actual personal sin insofar as it injures divine justice and accordingly demands satisfaction.

Hence penance properly concerns neither original sin nor the sins of others, because no one can retract anything except that which was done by his own personal will. In a broader sense, however, insofar as penance signifies detestation, someone can repent of all sins, just as Christ Himself also detested all sins. In this broader sense Christ can be said to have had the virtue of penance.

312. The formal object of penance is an expiable offense against God, or the divine right injured and reparable through satisfaction.

Penance therefore does not regard God as He is the supreme lovable good or as He is worthy of the highest worship, but as He is the supreme lord over all human actions, which therefore must be done according to His good pleasure. The sinner injures this right. The penitent repairs the same right. If these things are kept before the eyes, it is easily understood why St. Thomas and theologians commonly teach that penance is a special virtue, and not something intrinsically composite or a quality annexed to every virtue. For since penance has a special material and formal object, it must be a special virtue. St. Thomas[11] writes most rightly: "Penance, although it is directly a species of justice, nevertheless in some manner comprehends those things which pertain to all the virtues." Perhaps in no other virtue does the connection of all the virtues shine forth as it does in perfect penance. A truly penitent man exercises all the other virtues. Wherefore it is also easily understood why many truly penitent sinners, both men and women, arrived at great sanctity. The Angelic Doctor treats excellently of the virtue of penance in several articles of the *Summa theologica*, 3, q. 85.

[11] *S. theol.* 3, q. 85, a. 3 ad 4.

313. Necessity of the virtue of penance. Penance, either within or outside the sacrament, is necessary for all sinners by a necessity both of means and of precept.

a) **Necessity of means.** St. Thomas[12] says: "It is impossible for an actual mortal sin to be remitted without penance, speaking of penance which is a virtue"; and the Council of Trent[13] defined: "Penance was necessary at every time for all men who had defiled themselves with some mortal sin in order to attain grace and justice." The Savior said: "Unless you do penance, you shall all likewise perish."[14] The reason, however, is that mortal sin is essentially an aversion from God. Now this aversion must be destroyed through conversion to God or through detestation of sin, which is certainly penance. Cf., however, below, n. 346.

b) **Necessity of precept.** Penance is commanded by natural law, divine law, and ecclesiastical law alike. Natural law requires that injured justice be repaired. But sin injures justice by violating the honor due to God. The reparation of justice injured in this manner is made through penance. That penance is also necessary by a necessity of divine precept is evident from several texts of Sacred Scripture, for example: "Do penance, and be baptized every one of you.... Be penitent, therefore, and be converted, that your sins may be blotted out."[15] "Do penance therefore for this thy wickedness, and pray to God, that perhaps this thought of thy heart may be forgiven thee."[16] Ecclesiastical law prescribing annual confession also commands penance.

[12] Ibid., q. 86, a. 2.

[13] Session 14, c. 1, *On Penance* (Denz., n. 894).

[14] Luke 13:5.

[15] Acts 2:38 and 3:19.

[16] Acts 8:22.

314. You will ask: When does the precept of penance oblige?

Theologians do not agree. The following things seem to be admitted: The precept of penance obliges *per se* and *per accidens*.

It obliges **per accidens** whenever some precept urges which cannot be fulfilled without true penance, for example, if a priest existing in the state of mortal sin must administer some sacrament, or if someone cannot otherwise overcome a grave temptation.

The precept of penance obliges **per se** at the moment of death or in grave danger of death, because then a sinful man must obtain the remission of sin; but it does not oblige immediately after sin has been committed. For although it is greatly to be counseled that a man repent as quickly as possible after sin has been committed, nevertheless neither natural law nor positive law contains a clear precept of this kind. Hence St. Thomas[17] says: "It is not of the necessity of bodily salvation that medicine be sought immediately, except when the necessity of a cure presses; and it is similar with spiritual illness." The reason, however, is that the precept of penance is an affirmative precept which does not oblige at every time, but at a determinate time. Moreover, if someone were held under grave sin to repent immediately, then he would sin gravely as often as, while thinking about an obligation of this kind, he deferred penance, which certainly is asserted gratuitously and is taught by no one in practice.

Nevertheless, a **notable delay of penance** is a special and mortal sin. Thus holds the truer opinion against Cajetan, Durandus, and a few others. It seems at least that penance cannot be deferred beyond a year, since the precept of the Church concerning annual confession does not seem to anticipate the natural and divine obligation of penance. St. Alphonsus[18] does not altogether acquiesce in this opinion, saying: "For the space of a year seems sufficiently notable to me that one who remains in mortal sin for so long a time could avoid the danger of easily relapsing into other sins. Nor is it valid to say that the Church determined the period of a year indiscriminately for all; for the Church determined this period only for the obligation of confession, but not of penance. I do not deny, however, that sinners, especially the uneducated, can for the most part, indeed almost always, be excused from this sin of delayed penance because of inadvertence." Since, therefore, the Holy Doctor almost always excuses sinners from the grave special obligation of doing penance within a year, let the confessor indeed strongly counsel frequent penance, but let him not condemn for a special mortal sin those who have deferred penance until annual confession.

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[17] *In IV Sent.*, dist. 17, q. 3, a. 1, sol. 4 ad 2.

[18] *Theol. mor.* l. 6, n. 437.

315. Scholion. On resipiscence insufficient for penance. Luther taught that true penance is nothing other than resipiscence toward a good life. Against this error the Council of Trent[19] declares "that this contrition contains not only cessation from sin and the purpose and beginning of a new life, but also hatred of the old life." And in truth, he who considers the cries of the penitent Psalmist and the Prophet, for example: "I have labored in my groaning; every night I will wash my bed,"[20] and: "I will recount to Thee all my years in the

bitterness of my soul,"[21] easily understands that they flowed from a certain vehement hatred of the life previously led and an immense detestation of sins. Wherefore St. Gregory aptly says: "To do penance is both to bewail the evils committed and not to commit the things that must be bewailed."[22]

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[19] Session 14, c. 4, *On Penance* (Denz., n. 897).

[20] Ps. 6:7.

[21] Isa. 38:15.

[22] Book 2, Homily 34 on the Gospels, n. 15 (Migne, *Patr. lat.* 76, 1256).

Article III. On the Existence of the Sacrament of Penance

316. Errors. Besides certain ancient heretics (such as the Montanists, Novatians, and so forth), the Calvinists, Lutherans, and in general almost all heretics teach that external penance, as it is now employed in the Catholic Church and will be explained in the following article, is not a true and properly so-called sacrament of the New Law. Thus, for example, the Calvinists think that no other remedy for actual sins exists than baptism itself recalled to mind with a certain confidence in the remission of sins. Harnack teaches that a theory concerning penance had indeed always flourished in the Church, and that the Fourth Lateran Council (1215) prescribed annual auricular confession, but that St. Thomas was the first to assert that this auricular confession is a true sacrament. The Modernists also taught false things concerning the sacrament of penance, as is evident from propositions 46 and 47 of the Syllabus of Pius X (Denz., nn. 2046 and 2047). Against all these, it is established with the Catholic Church:

317. Thesis. External penance, which is performed in the Catholic Church, is a true and proper sacrament of the New Law.

Proof 1. From the definitions of the Church. The Council of Trent:[23] "If anyone says that in the Catholic Church penance is not truly and properly a sacrament instituted by Christ our Lord for reconciling to God the faithful as often as they fall into sins after baptism, let him be anathema." The Council of Florence defines the same thing, saying: "The fourth sacrament is penance."

Proof 2. From Sacred Scripture. Three things are required for a sacrament, namely, a sensible sign, productive of grace, and institution by Jesus Christ. But these three are found in penance. For a) there is a sensible sign, namely, the sacramental judgment itself, consisting of a twofold element, that is, of the confession of sins and of absolution pronounced by mouth. It is evident of itself that this sensible sign of penance is distinct from the sensible sign of baptism, and accordingly the sacrament of penance is distinguished from the sacrament of baptism. b) Then sanctifying grace is produced in penance. For sins are remitted in penance. But sins cannot be remitted without sanctifying grace at the same time being infused. That sins are truly remitted in penance, however, follows from the power of the keys conferred upon the Church by Christ, which power the Church exercises in the sacrament of penance. Christ conferred the power of the keys both upon Peter and upon the other Apostles, saying: "Amen I say to you, whatsoever you shall bind upon earth shall be bound also in heaven; and whatsoever you shall loose upon earth shall be loosed also in heaven."[24] c) The institution of the sacrament by Jesus Christ follows from His words uttered after the resurrection and directed to the Apostles: "Receive ye the Holy Ghost. Whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained."[25] This power handed down to the Apostles is not merely the power of declaring that sins have been remitted, but the power of truly remitting sins. For immediately beforehand Christ had said: "As the Father hath sent Me, I also send you," by which words He

signified that He was giving the Apostles a mission similar to that which He Himself had received from the Father. Now Christ not only declared that sins were remitted, but He Himself truly remitted them;[26] indeed, He came into the world for this. Moreover, when Christ conferred this power, He acted in a very solemn manner, for He first breathed upon the Apostles and then said: Receive ye the Holy Ghost, and so forth. Now to announce the remission of sins is not so new and singular a privilege that it can be exercised only with the special assistance of the Holy Ghost, since even the prophets of the Old Testament did this, and indeed any preacher is able to do it.

Proof 3. From tradition. In the book which is called the *Doctrine of the Twelve Apostles* and which was published in the second century, it is read: "But on the Lord's day, having come together, break bread and give thanks, after you have confessed your transgressions, so that your sacrifice may be clean."[27] Although this text is understood in diverse ways by diverse authors, nevertheless it is sufficiently evident from it that sacramental confession was already employed by the faithful in the second century, so that the sacrifice might be clean. Tertullian, living at the beginning of the third century, speaks sufficiently clearly concerning the sacrament of penance, but as a rigid Montanist he judged that it was to be administered to each person only once in life. At that time confession was first made by the sinner, which had to be made to the bishop or his delegate. Nothing, however, proves that this confession was always public. In the second place there was *exomologesis*, that is, satisfaction. At that time *exomologesis* was not the same as confession (as several have erroneously thought), but consisted of works of penance to be performed in satisfaction for sins committed. Hence Tertullian says: "And so *exomologesis* is the discipline of prostrating and humbling a man." In the third place absolution or pardon was given by the bishop.[28]

The institution of penitentiary priests, already known in the third century, proves not obscurely the existence of the sacrament of penance. Socrates[29] writes concerning this institution: "From that time [the Decian persecution, 250] the bishops added a penitentiary priest to the ecclesiastical register, so that those who had fallen after baptism might confess their transgressions before the priest appointed for that purpose." Sozomen,[30] however, adds that this priest absolved sinners. From the fifth century and thereafter the existence of the sacrament of penance is clear. Thus, for example, Innocent I (fifth century) writes to Decentius, Bishop of Gubbio: "But concerning penitents who do penance either for graver offenses or for lighter ones, if no illness intervenes, the custom of the Roman Church shows that they are to be remitted on the Thursday before Easter. But it belongs to the priest to judge the weight of the offenses, so that he may attend to the confession of the penitent and to the weeping and tears of the one correcting himself, and then order him to be dismissed when he has seen that his satisfaction is fitting. Or if anyone has fallen into illness and has come even to desperation, he is to be released before the time of Easter, lest he depart from the world without Communion."[31]

These things suffice for our purpose. He who desires more should consult the dogmatic theologians and apologists.

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[23] Session 14, can. 1, *On Penance* (Denz., n. 911).

[24] Matt. 18:18; cf. 16:18.

[25] John 20:22 ff.

[26] Cf. Matt. 9:6.

[27] *Didache*, n. 14 (ed. Funk).

[28] Cf. P. Galtier, *De poenitentia*, n. 143 ff.

[29] *Hist. eccl.* l. 5, c. 19 (Migne, *Patr. graec.* 67, 614).

[30] *Hist. eccl.* l. 7, c. 16 (Migne, loc. cit. 67, 1459).

[31] In Migne, *Patr. lat.* 20, 559.

318. Necessity of the sacrament of penance. The necessity of the virtue of penance has already been proved above. But since it was said there that in the present order of things the virtue of penance cannot justify without the sacrament at least *in voto*, it is evident that the sacrament itself also is necessary, at least by divine precept. Hence the Council of Trent[32] defined: "If anyone denies that sacramental confession either was instituted or is necessary for salvation by divine law, ... let him be anathema." The desire for the sacrament is understood as a serious purpose of making a sacramental confession, not indeed as soon as possible, but at the due time.

By ecclesiastical law the Fourth Lateran Council (1215) defined that the sacrament of penance must be received at least once a year by him who is guilty of mortal sin;[33] this indeed was confirmed by the Code of Canon Law, c. 906.

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[32] Session 14, can. 6, *On Penance* (Denz., n. 916).

[33] Denz., n. 437.

Article IV. On the Essence of the Sacrament of Penance

Preliminary note. In this article we shall treat of the constitutive parts of the sacrament of penance, after the definition of this sacrament has first been explained. Hence the whole article comprises four paragraphs: 1. on the definition of the sacrament of penance; 2. on its remote matter; 3. on its proximate matter; 4. on its form.

§ 1. On the Definition of the Sacrament of Penance

319. Definition. The sacrament of penance is a sacrament of the New Law instituted by Christ in the form of a judgment for remitting sins committed after baptism to a contrite man who has duly confessed, through sacramental absolution.

It is said, first: **instituted by Christ.** Since in the preceding article it was proved that the sacrament of penance exists, it follows that it was instituted by Christ, because all the sacraments were instituted by Christ. Concerning the time of this institution the Council of Trent[34] teaches: "The Lord then principally instituted the sacrament of penance when, being raised from the dead, He breathed upon His disciples, saying: Receive ye the Holy Ghost; whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained." The Council, however, says: *principally instituted*, because Christ had already promised this sacrament before His Passion, and accordingly had instituted it inchoatively.[35]

It is said, second: **in the form of a judgment,** and indeed a reconciliatory, not a condemnatory one. The Council of Trent[36] defined: "If anyone says that the sacramental absolution of the priest is not a judicial act, but a bare ministry of pronouncing and declaring that sins have been remitted to the one confessing, ... let him be anathema." In this sacrament the penitent is at once the accused, the witness, and the accuser, while the priest is the judge. The judicial form distinguishes this sacrament from all the others. For the sacrament of matrimony was instituted in the manner of a contract, while the other sacraments consist in physical things. Because of the judgment essentially required in penance, there are demanded the confession of sins, an indicative absolution (and not by way of entreaty), and several other conditions, as will be evident below.

Note. The sacramental judgment in penance, although it is a true judgment, differs in several respects from a civil judgment, in which the accused is never at once the accuser and the witness. Then human judgments intend the reparation of an injured public order and therefore often punish the guilty person gravely; but the sacramental judgment intends the reconciliation of the guilty person with God and, according to the present discipline, imposes the lightest punishments upon the penitent. The Church indeed has no power over the physical matter and form of the sacraments. But since in the sacraments of penance and matrimony the matter consists of the moral acts of man, the Church can impose conditions which are required not only for the lawfulness but also for the validity of both sacraments. Thus unimpeded jurisdiction is required for the validity of absolution in penance. Thus the Church establishes impediments which destroy the validity of matrimony.

It is said, third: **for remitting sins committed after baptism.** By these words the remote matter of this sacrament is indicated. Absolutely all sins, both venial and mortal, can be remitted in the sacrament of penance. Therefore there are no irremissible sins, as the Montanists and Novatians maintained. The Lutherans and Jansenists, however, attacked the confession of venial sins. Although it is not necessary to confess venial sins, nevertheless this is useful, and their remission can be obtained in the sacrament of penance. Through penance only sins committed after baptism can be remitted, since baptism remits all prior sins. If baptism was received with an obstacle, its efficacy then revives when the obstacle has been removed through contrition or through attrition with the sacrament of penance. Cf. below, n. 321.

It is said, fourth: **to a contrite man who has duly confessed, through sacramental absolution.** In these words are contained the proximate matter and the form of the sacrament of penance. For, as will be evident below, n. 327, the three acts of the penitent, namely, contrition, confession, and satisfaction, are the proximate matter of this sacrament, while the form is the sacramental absolution of the priest.

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[34] Session 14, can. 1, *On Penance* (Denz., n. 894).

[35] Matt. 16:19; 18:18.

[36] Session 14, can. 9, *On Penance* (Denz., n. 919).

§ 2. On the Remote Matter of the Sacrament of Penance

320. The remote matter (or rather the matter to be removed) of the sacrament of penance consists of sins subsequent to baptism, not to be accepted but to be detested and destroyed.

Thus St. Thomas.[37] It is, however, as is customarily said, the *materia circa quam*; for just as the matter of medicine is an infirmity to be cured, so the matter of penance consists of sins to be destroyed. This remote matter is distinguished as: 1. necessary and free; 2. certain and doubtful; 3. sufficient and insufficient.

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[37] *S. theol.* 3, q. 84, a. 2.

321. The necessary matter of the sacrament of penance consists of all mortal sins committed after baptism which have not yet been manifested in confession nor directly remitted through absolution.

It is said, first: **all mortal sins.** "For venial sins, by which we are not excluded from the grace of God and into which we fall more frequently, although they may rightly and usefully and without any presumption be stated in confession, as the practice of pious men demonstrates, nevertheless can be kept silent without fault and expiated by many other remedies."[38]

It is said, second: **committed after baptism.** For sins committed before baptism are remitted by the sacrament of baptism itself when worthily received. Theologians do not agree concerning the manner in which sins committed before or in baptism are remitted if baptism is indeed received validly but unworthily because of an existing obstacle, for example, because of a defect of sufficient faith and sorrow for past sins. It seems that the answer must be given with a distinction:

a) Sins which were committed **before baptism**, for example, adulteries, thefts, and so forth, are never the necessary matter of the sacrament of penance, even if baptism was received sacrilegiously, and accordingly there is never a strict obligation to confess them. The reason is that these sins were committed at a time when the Church did not yet have jurisdiction over this sinner and the power of absolving him.

b) The sin of sacrilege which is committed **at the very instant baptism is received** virtually endures for at least one moment afterward. Therefore it is already the necessary matter of the sacrament of penance, and accordingly must be accused. When, therefore, this sacrilege, confessed with due sorrow, is absolved in the sacrament of penance, baptism revives and all the sins previously committed are blotted out.[39]

c) If someone receives baptism validly with an obstacle but **without sacrilege**, for example, he does not grieve over sins committed because he does not perceive the grave obligation of sorrow, then the sins committed before baptism are blotted out when the baptized person elicits sufficient sorrow even outside confession; but not even in this case is he bound to confess those sins.

If an adult Catholic, a serious doubt having arisen concerning the validity of the baptism received, is baptized again, he is not bound to repeat the confessions made before the second baptism. The reason is that, if the prior baptism was valid, then the sins committed afterward were remitted by the subsequent confessions; but if the prior baptism was invalid, then all sins are remitted through the second baptism. Therefore in every case the sins are remitted. But sins committed since the last confession and not yet accused must be declared in confession.

If an adult non-Catholic is baptized again conditionally, he must confess all the sins of his past life and be absolved conditionally. The reason is that those sins have not yet been accused in confession, nor are they certainly remitted through conditional baptism.[40] The difference therefore arises from this, that a Catholic doubtfully baptized has already confessed all his sins, whereas the non-Catholic has not.

It is said, third: **not yet manifested in confession and directly remitted.** Those sins are said to be remitted directly which have been explicitly accused and thereafter directly received absolution from a confessor furnished with legitimate jurisdiction. A sin is sometimes remitted indirectly because of the valid absolution of other sins. For since one grave sin cannot be remitted to a sinner without all the others, when one has been duly absolved, all the others also must be absolved. For example, a penitent inculpably forgetting a mortal sin in confession and having universal contrition, with the direct absolution of the sins accused, is indirectly absolved from the sin omitted through forgetfulness. Indirect absolution sometimes also has place if reserved sins are involved.[41]

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[38] Council of Trent, Session 14, c. 5, *On Penance* (Denz., n. 899).

[39] Cf. *S. theol.* 3, q. 69, a. 10 ad 2. St. Alphonsus (*Theol. mor.* l. 6, n. 427) concedes that this opinion is the most common, but says that the reasons adduced for it are not convincing.

[40] Cf. above, n. 139.

[41] Cf. below, concerning the reservation of cases.

322. The free matter of the sacrament of penance consists of: a) venial sins committed after baptism; b) all sins, both mortal and venial, already directly remitted after baptism.

That venial sins are free and not necessary matter is evident from the words of the Council of Trent, Session 14, c. 5, cited above. The reason, however, is that venial sin on the one hand includes true fault and accordingly can be absolved in the sacrament of penance; on the other hand, the fault of venial sin is not so great and of such a kind that it cannot be remitted outside the sacrament of penance, for example, through acts of charity and of other virtues.

That sins, mortal and venial, already remitted are free matter of penance follows from the universal practice of the faithful, who submit sins of this kind again and again to the power of the Church. Concerning this matter Benedict XI[42] already writes: "But although it is not of necessity to confess the same sins again, nevertheless ... on account of the shame, which is a great part of penance, we judge it salutary that the confession of the same sins be repeated." The chief reason why sins of this kind already remitted may salutarily be submitted again to the power of the keys seems to be this: Sacred Scripture admonishes: Concerning a forgiven sin, be not without fear. And without special revelation a man cannot know with certainty whether he is worthy of the love or hatred of God. Therefore, after a sin has been accused and absolved, a man can nevertheless fittingly ask pardon of God again, and God can through the mouth of the confessor again grant pardon of the same sins.

[42] It is contained in c. 1, *Inter cunctas*, V, 7, *Extrav. comm.*

323. Certain matter is every true and certain sin, whether mortal or venial. But doubtful matter is a doubtful sin. A doubt concerning the existence of a sin can arise from diverse causes, for example, because of an erroneous conscience, doubtful advertence, doubtful consent, and so forth. Doubtful matter is insufficient matter, concerning which immediately.

324. Sufficient matter is that which suffices for receiving sacramental absolution validly. It consists of all necessary and free matter, provided that it is certain.[43] **Insufficient matter** consists of imperfections and all those things which do not certainly have the character of sin; or in other words: insufficient matter is everything which does not constitute even free matter. He who brings to confession only insufficient matter cannot be validly absolved, because sufficient matter belongs to the essence of the sacrament.

By the name of imperfections in this matter are understood less good acts which, considered objectively, constitute no certain transgression of the eternal law.[44] Indeed, since indifferent acts do not exist in the individual, such so-called imperfections are in reality either evil acts or good acts; but because the confessor ordinarily cannot judge with certainty concerning their sinfulness, they are not sufficient matter for absolution. Thus, for example, he who accuses himself of having sometimes omitted morning prayers, of having suffered involuntary distractions in prayer, or of having had sudden and involuntary movements of anger or concupiscence brings insufficient matter for sacramental absolution. Penitents can indeed laudably declare imperfections of this kind so that the confessor may be able to judge better concerning the state of their soul and give good counsels, but they are altogether to be induced to accuse, besides these imperfections, at least some sin of their past life, even if not described according to its lowest species; for example, they ought to say: Moreover, I accuse myself of the sins of my past life against chastity, against charity, and so forth.

[43] Code of Canon Law, c. 902.

[44] Cf. above, I, n. 131.

325. Scholion. On sins accused only in general. The essence of the sacrament of penance consists in this, that it is a judgment, and indeed a reconciliatory one. Now a judge cannot pronounce a just judgment unless he knows the offenses committed sufficiently. But so great a knowledge of offenses is not required in the sacrament of penance as in human judgments, because in it God, Himself the searcher of hearts, is the principal judge, and because the end of penance is a reconciliatory and liberating sentence. Nevertheless at least some knowledge on the part of the confessor is required for the validity of the sacrament.

In extreme necessity a generic accusation suffices. For example, when battle is imminent for soldiers,[45] or shipwreck for sailors, or for a dying man deprived of his senses, absolution is lawfully given if by some external sign they manifest themselves generically as contrite sinners, insofar as this is possible. Thus holds the universal practice of the Church. The reason, however, is that Christ, by an affirmative precept in the sacrament of penance, required a moral act of confession so that the confessor might be able to judge concerning the state of the penitent. Now an affirmative precept does not oblige in extreme necessity, provided that the essence of the sacrament is preserved. But the essence of penance consists in a judgment, which is present in some manner even after a merely general accusation.

Outside a case of extreme necessity a somewhat more determinate accusation is altogether required (although perhaps not for validity). But the determination of the accusation has diverse degrees, namely:

a) I accuse myself of all the sins of my life.

b) I accuse myself of all mortal sins.

c) I accuse myself of all sins committed against such a virtue, for example, chastity, charity, and so forth.

d) I accuse myself of having once injured the virtue of justice by secretly taking 1,000 Marks from the civil government.

These distinctions having been premised, the following two propositions seem true:

1. If necessary matter is involved, outside a case of necessity the accusation indicated under a), b), and c) does not suffice, but determination according to the lowest species and number is required. The reason is that by divine law mortal sins must be accused according to species and number, as the Council of Trent[46] declared: "If anyone says that in the sacrament of penance for the remission of sins it is not necessary by divine law to confess each and every mortal sin of which memory is had with due and diligent premeditation, ... let him be anathema." The manner of accusation indicated under d) is certainly the best and is sometimes necessary, as will be stated below, n. 370 (c), but of itself it suffices that the penitent accuse himself of having stolen grave matter.

2. If free matter is involved, the accusation indicated under c) is valid and lawful; indeed, even outside a case of necessity, the generic accusation under a) and b) is valid, but at least venially unlawful. That the absolution is valid in this case can scarcely be denied. For there is no divine precept to accuse free matter, and moreover one thing is not to be required as essential for a case of necessity and another outside this case. Therefore, since a general accusation is valid in a case of necessity, it must also be valid in other cases. Nor may anyone say that it follows from this that a general accusation of necessary matter also is valid, which nevertheless was denied above. For if necessary matter is involved, there is added the grave divine precept of declaring the individual sins, which is not present if free matter is involved.

That a merely general accusation of free matter is **unlawful** is very commonly taught by theologians, with a few exceptions, for example, Gury-Ballerini,[47] Génicot,[48] and Bucceroni.[49] The reason is manifold: 1. the universal practice of almost all confessors, who require that at least the species of free matter be declared; therefore there exists a legitimate binding custom; 2. there would be a danger of deficient contrition, since it is sufficiently difficult to elicit sorrow for sins accused only generically; 3. without sufficient reason the judgment of the confessor would remain too imperfect, as is evident. Hence in practice it is to be required of penitents who accuse only free matter that they employ at least the determination indicated under c), namely, that they say they have sinned against such or such a virtue. This obligation does not seem grave, and therefore, if the penitent is so uneducated or so infirm of memory that he remembers no determinate sin, the confessor ought not torture him in order to obtain more determinate matter. He can therefore say to him, for example: Be willing to include all the sins of your past life and especially to elicit contrition for sins against charity or due devotion in exercises of piety, and so forth.

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[45] Thus the Sacred Penitentiary expressly established on February 6, 1915 (*Acta Apostolicae Sedis* VII, 72). Soldiers thus absolved can also receive the Most Holy Eucharist; but afterward, if they escape the danger, they must make an integral confession.

[46] Session 14, can. 7, *On Penance* (Denz., n. 917).

[47] *Comp. Theol. mor.* II, 421.

[48] *Theol. mor.* II, 262.

[49] *Inst. Theol. mor.* 4th ed., III, n. 673.

§ 3. On the Proximate Matter of the Sacrament of Penance

326. The proximate matter of the sacrament of penance consists of the three acts of the penitent, namely, contrition, confession, and satisfaction. Contrition must be present actually (or virtually), but confession and satisfaction at least *in voto,* or as implicitly included in contrition. These three acts are rightly called the proximate matter because they operate upon the remote matter, that is, sins, and prepare the sinful man so that, when the form of the sacrament, namely, the absolution of the confessor, is added, sanctifying grace may be infused into him. Thus holds the most common opinion, which rests upon the authority of St. Thomas, the Councils of Florence and Trent, the Roman Catechism, and the Roman Ritual, and moreover upon a valid theological reason.

St. Thomas[50] says: "The fourth sacrament is penance, of which the acts of the penitent are the quasi-matter." The Council of Florence as well as the Council of Trent employs these same words. The Roman Catechism, however, explains them as referring to the true matter of the sacrament.[51] The Roman Ritual[52] says: "But since three things concur to constitute it [the sacrament of penance]: matter, form, and minister, its remote matter indeed consists of sins, but its proximate matter consists of the acts of the penitent, namely, contrition, confession, and satisfaction; while the form is those words of absolution: I absolve thee, and so forth."

The theological reason, however, is this: Christ instituted the sacrament of penance in the form of a judgment. Now in a judgment there must be two elements: the matter of the judgment, that is, the offense accused, proved, and to be punished, and the sentence of the judge. Thus, by parity, in the sacrament of penance there must be two elements: one material, namely, the offenses of the penitent and his three acts; the other formal, namely, the absolution of the confessor. It is also evident that the three acts of the penitent, although by themselves they cannot, at least ordinarily, confer grace, nevertheless dispose one toward it.

The three acts of the penitent are the **partial instrumental cause** by which God causes grace in the sacrament of penance. St. Thomas[53] manifestly teaches this, saying: "Every sacrament produces its effect not only by the power of the form but also by the power of the matter.... Hence ... the remission of fault is the effect of penance, principally indeed from the power of the keys which the ministers possess, from whose part is taken that which is formal in this sacrament; but secondarily from the power of the acts of the penitent pertaining to the virtue of penance, yet insofar as these acts are in some manner ordered to the keys of the Church."

Moreover, in practice two things are admitted by almost all: 1. It is not lawful to give absolution to a penitent who has not elicited these three acts, although he was able to do so; 2. absolution can and must be given to dying Christians even when deprived of their senses, provided that they have at least an interpretative intention of receiving it. This interpretative intention is almost always to be presumed, and indeed even among material heretics or schismatics. Hence the more severe opinion of several older authors, for example, Concina,[54] is to be abandoned. The reason is that almost every Christian man at some time externally manifests a desire to die religiously. Now such a desire (as is already sufficiently expressed by the words, "Hail Mary ... pray for us sinners, now and at the hour of our death. Amen") necessarily includes the will to perform all those things which are necessary for obtaining the remission of sins, among which are contrition and confession. Therefore, since the sacraments are for men and in a case of death it is lawful to administer even doubtfully valid sacraments, a baptized man who is dying and deprived of his senses is presumed to have a sufficient intention and contrition and confession previously manifested and now virtually and even externally persevering,[55] so that he can be absolved conditionally.[56] It is otherwise if such a dying man shortly before had manifestly expressed the will not to receive the sacrament of penance; but even in that case absolution can sometimes be given under condition, because it is not certain that the dying man persisted in his perverse will. In practice it is better that a priest assisting a dying Catholic deprived of his senses proceed in this manner: Since one who appears deprived of his senses nevertheless not rarely hears well and understands the words spoken, let the priest elicit in a loud voice an act of contrition for him and then give him absolution under condition; for a salutary penance let him offer him an image of the Crucified to be kissed. Afterward, if time permits and another obstacle is absent, let him give him Extreme Unction.

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[50] *Op. de articulis fidei et Eccl. sacr.*

[51] Cf. below, n. 327, the texts cited.

[52] Title 3, c. 1, n. 1.

[53] *S. theol.* 3, q. 86, a. 6.

[54] *De poenit.* l. 1, diss. 4, c. 10.

[55] Experience establishes that such men, who indeed appear deprived of their senses, have in reality perceived the words spoken and manifested contrition by a movement of the muscles and nerves.

[56] Cf. Holy Office, July 20, 1898; May 17, 1916 (*Linzer Theol. Quartalschr.* 1916, 693 ff.).

327. Those who think otherwise concerning the proximate matter. Certain older theologians, such as William of Auxerre and Alexander of Hales, are said to have taught that the proximate matter of this sacrament is the **imposition of the hand** made by the confessor. But this opinion is now obsolete, because it is certain that no imposition of the hand pertains to the essence of penance.

Several Scotists, to whom are added Melchior Cano,[57] Maldonatus,[58] and among modern authors Gury-Ballerini,[59] and more clearly Ballerini-Palmieri,[60] and Berardi,[61] teach that the acts of the penitent are indeed a

condition prerequired, but that the whole essence of the sacrament consists in absolution, which, insofar as it is an **external ceremony**, constitutes the proximate matter, but insofar as it has the **power of signifying**, is the form. Several arguments collected in favor of this opinion are found in Ballerini-Palmieri.[62] The principal argument is this: The matter of a sacrament must be a sensible sign. But it is lawful to give sacramental absolution to a dying man who by no sensible sign manifests either confession or contrition or satisfaction. Therefore in this case a sacrament would be administered without matter, which is manifestly false. But it is answered to this argument that the matter of penance even in this case is truly sensible, namely, virtually. For a man deprived of his senses could not be validly absolved unless previously by words or signs he had manifested the intention of receiving the sacrament of penance in a similar case. Now, with such an intention virtually persevering, there also virtually exists the matter necessary for the sacrament of penance, namely, confession and contrition externally manifested.

The opinion of the Scotists can be reconciled only with difficulty with the Councils of Florence and Trent defining that the quasi-matter of the sacrament of penance consists of the three acts of the penitent. The Roman Catechism, however, whose authority is very great and whose authors knew the mind of the Council of Trent exceedingly well, thus teaches: "Nor indeed are these acts called quasi-matter by the Holy Synod because they do not have the character of true matter, but because they are not matter of that kind which is applied externally, as water in baptism and chrism in confirmation." From all these things it follows that the opinion of the Thomists teaching that the three acts of the penitent are the matter of the sacrament of penance is safer and truer. If, on the contrary, the opinion of the Scotists were true, corollaries of the greatest moment would follow; for if confession, contrition, and satisfaction were not the proximate matter of penance, a) this sacrament could be valid without them; b) in controversies concerning them we would not be obliged to follow the safer opinion, because this obligation exists only for the essentials of the sacrament. It would therefore be lawful to follow a truly probable opinion. These two corollaries indeed are most commonly rejected by modern theologians.

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[57] *Relect. de poenit.* p. 6, q. 16.

[58] *De poenit.* p. 3, thes. 7.

[59] *Comp. Theol. mor.* II, n. 414 and 447, q. 7, note.

[60] *De poenit.* n. 5 ff.

[61] *Prax. confess.* IV, n. 2.

[62] Loc. cit. P. Galtier, S.J., treats abundantly of these diverse opinions in *De poenitentia*, n. 376 ff.

§ 4. On the Form of the Sacrament of Penance

328. The essential form of the sacrament of penance consists of the words of absolution duly pronounced by the confessor. The Roman Ritual[63] gives the essential form in these words: "Then I absolve thee from thy sins in the name of the Father and of the Son and of the Holy Ghost. Amen." According to all, the form, "I absolve thee from thy sins," is certainly valid, because the minister and his action are sufficiently expressed by the word "I absolve," the subject by the word "thee," and the matter by the words "from thy sins." Indeed, it is probable that the formulas "I absolve thee" and "I absolve from thy sins" are valid; nevertheless it is altogether unlawful to employ them, nor can there be a reasonable cause for someone to employ these formulas which are only probably valid.

In a case of necessity, for example, in a shipwreck, absolution can validly and lawfully be given to many at once under this form: "I absolve you from your sins in the name of the Father, and so forth."

The **rubrical form**, or rather the manner of acting of the confessor in the administration of the sacrament of penance, is this: Before confession the confessor blesses the penitent, saying: "May the Lord be in thy heart and on thy lips that thou mayest worthily confess all thy sins. In the name of the Father, and so forth." This blessing was introduced by a pious custom, but it neither obliges under fault nor is found in the Roman Ritual. When the confession has been completed, let the confessor say to the penitent certain brief exhortations or pious words. Only very rarely is it expedient that the confessor, omitting every exhortation, immediately impose a salutary penance and give absolution. For the confessor fulfilling his office has the special assistance of the Holy Ghost illuminating and moving him. Accordingly, his words are most efficacious and very salutary even for penitents who are well instructed or established in great dignity.

The Ritual has: "When the priest wishes to absolve the penitent, a salutary penance having first been enjoined upon him and accepted by him, he first says [from which words it follows that the salutary penance is to be imposed **before absolution** and not afterward, as is sometimes done less fittingly]: 'May almighty God have mercy on thee, and, thy sins having been forgiven, may He lead thee to eternal life. Amen.' Then, with his right hand raised toward the penitent, he says: 'May almighty and merciful God grant thee indulgence, absolution, and remission of thy sins. Amen. May our Lord Jesus Christ absolve thee; and I by His authority absolve thee from every bond of excommunication, suspension, and interdict, insofar as I am able and thou hast need. Then: I absolve thee from thy sins, in the name of the Father and of the Son + and of the Holy Ghost. Amen.' If the penitent is a layman, the word 'suspension' is omitted. 'May the Passion of our Lord Jesus Christ, the merits of the Blessed Virgin Mary and of all the saints, whatever good thou shalt do and evil thou shalt endure, be unto thee for the remission of sins, the increase of grace, and the reward of eternal life. Amen.'

"For a just cause, 'May He have mercy, and so forth,' can be omitted, and it will suffice to say: 'May our Lord Jesus Christ, and so forth,' as above, as far as: 'May the Passion of our Lord, and so forth.' But if some grave necessity is urgent in danger of death, the priest can briefly say: 'I absolve thee from all censures and sins, in the name of the Father and of the Son + and of the Holy Ghost. Amen.'" Thus far the Roman Ritual.

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[63] Title 3, c. 2.

329. Obligation of the ceremonies. a) **The elevation of the hand** from the word "Indulgence" as far as the formation of the cross in the absolution obliges neither under grave nor under light sin. It is, however, most fittingly employed, since it signifies the imposition of the hand upon the head of the penitent which was in use in ancient times. Hence the palm of the hand also, and not merely the little finger, should be turned toward the penitent.

b) The prayers **"May He have mercy"** and **"Indulgence,"** when a just cause exists,[64] can easily and without any fault be omitted in more frequent confessions (that is, if a great concourse of penitents is present) or shorter ones (that is, if the penitent returns more often). The prayer "May the Passion of Our Lord Jesus Christ" can also be omitted without fault under the same conditions. But since St. Thomas[65] and several theologians think that these words elevate the good works of the penitent to the merit of sacramental satisfaction, it is not fitting to omit them.

c) **To omit absolution from censures,** which is added as a precaution, if the confessor has moral certainty that the penitent is bound by no censure, is not a grave fault. Nevertheless, the formula of the Ritual is to be observed under light sin. The word "suspension" must be omitted if the penitent is a layman. The word "Then"

in modern editions of the Ritual is printed in black characters, and accordingly it is to be pronounced as pertaining to the form.

d) **The external ceremonies prescribed by particular statutes** are to be observed in the administration of the sacrament of penance. Unless a sufficiently grave reason is present, confessions are to be heard in churches or in public or semi-public oratories, but not in houses or private oratories. This is especially valid concerning the confessions of women. Religious sisters, however, can confess in another becoming place, provided that a confessional is present there with a fixed and finely perforated grille interposed;[66] it is lawful to hear the confessions of men even in private houses.[67] Let the confessor be clothed in a surplice and a violet stole. But in this matter custom or a particular statute not rarely dispenses from the surplice.[68]

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[64] Code of Canon Law, c. 885.

[65] *Quodl.* 3, q. 13, a. 28.

[66] Code of Canon Law, c. 909.

[67] Ibid., c. 910.

[68] Cf. Sacred Congregation of Rites, August 31, 1867, ad 2, and July 7, 1877, ad 4 (*Decr. auth.*, nn. 3158 and 3426). The Roman Ritual (title 3, c. 1) admonishes: "Let the priest called to hear confession show himself prompt and readily available; and before he approaches to hear it, if time permits, he will implore by pious prayers divine assistance for performing this ministry rightly and holily." Pius IX, by a Decree of the Sacred Congregation of Indulgences dated March 27, 1854, granted once a day an indulgence of 100 days to confessors reciting the following prayer before hearing confessions: "Give me, O Lord, wisdom that sits beside Thy thrones, that I may know how to judge Thy people in justice and Thy poor in judgment. Make me so to handle the keys of the kingdom of heaven that I may open to no one to whom it ought to be closed, and close to no one to whom it ought to be opened. Let my intention be pure, my zeal sincere, my charity patient, my labor fruitful. Let there be in me gentleness that is not lax, severity that is not harsh; may I not despise the poor man nor flatter the rich. Make me gentle in attracting sinners, prudent in questioning them, and skilled in instructing them. Grant me, I beseech Thee, dexterity in drawing them back from evil, diligence in confirming them in good, and industry in promoting them to better things; maturity in responses, rectitude in counsels, light in obscure matters, sagacity in intricate ones, and victory in arduous ones; may I not be detained by useless conversations nor contaminated by depraved ones; may I save others and not lose myself. Amen."

330. Manner of absolution. Absolution must be a) oral, b) given to a penitent morally present, c) not conditional, d) not deprecatory but indicative.

a) **Absolution must be oral or vocal.**[69]

Hence absolution given in writing or by a nod is invalid, even in extreme necessity, and accordingly a mute priest can never absolve validly. Thus holds the most common opinion, with a few contradicting it, for example, Sporer, Medina, and Peter Soto. No other reason can be given except the will of Christ instituting the sacrament of penance in this manner; this will can be known from the Councils of Florence and Trent, which define the form of this sacrament to be the words: "I absolve thee." Hence in this matter there is a distinction between the sacrament of penance and the sacrament of matrimony, in which the form, that is, consent, can validly be expressed even by signs.

b) **Absolution can be given only to a penitent morally present.**

For since absolution must be pronounced vocally, it can be given only to those who can hear the words or to whom the confessor can speak. According to St. Alphonsus,[70] that is considered moral presence within which men can and customarily do speak in an ordinary voice, although a louder one. In a case of extreme necessity this moral presence is to be interpreted broadly. Hence it is lawful to absolve one who falls from a roof at a distance, or a multitude of soldiers before battle. Outside such cases of extreme necessity, however, theologians

commonly teach with St. Alphonsus[71] that it is not lawful to absolve a penitent who is more than twenty paces distant from the confessor. For the sacrament of penance was instituted in the manner of a judgment. Therefore that presence of the penitent is rightly required within which a judge can fittingly speak with the accused; this indeed can occur over a distance of about twenty paces. If the penitent unexpectedly departs from the confessional before receiving absolution, then one is to act in these ways: 1. If he can fittingly be recalled, let him be recalled to the confessional; 2. if he cannot be recalled without surprise or another inconvenience, then let the priest quickly pronounce the essential words of absolution before the penitent has departed more than twenty paces from the confessional; it is not required, however, that the confessor still see or hear the penitent, provided that he is in a nearby crowd or place; 3. but if the penitent has already departed farther, and can neither be recalled nor will return to the same confessor, nothing else remains except to commend him to divine mercy.

Clement VIII, on June 20, 1602, condemned the proposition, "It is lawful through letters or a messenger sacramentally to confess sins to an absent confessor and to obtain absolution from the same absent confessor," "at least as false, rash, and scandalous." Moreover, he forbade "that henceforth this proposition be taught in public or private lectures, sermons, and assemblies, or ever be defended as probable in any case, printed, or in any manner reduced to practice."[72] Therefore it is never lawful to give absolution to one absent, as certain older authors taught, for example, Paludanus,[73] John Medina,[74] Peter Soto,[75] and so forth. For a sufficient cause, however, it can be permitted that the penitent send his sins written in a letter to an absent confessor, afterward personally approach this confessor, saying: I accuse myself of the sins which you already know from my letter. Then let him ask for and receive absolution for the sins manifested in writing. In this case there would be a manifestation of sins previously made in absence, but afterward a confession equivalently repeated by mouth in personal presence, and finally absolution given in the personal presence of the penitent. For sufficient reasons, for example, because of the excessive length of an oral confession, because of the shame of the penitent, and so forth, the confessor can permit or even counsel this manner of confessing. This manner of acting is in no way contrary either to the Decree of Clement VIII just cited or to the Declaration given by Paul V on July 14, 1605. For neither is there a confession made to one absent nor absolution given to one absent. Suarez did not teach so clearly and rightly in this matter, and accordingly the Sacred Congregation of the Inquisition, on July 31, 1603, and July 14, 1605, reproved his doctrine. Nevertheless, perhaps the dispute was more about the manner of explaining than about the matter itself. Billuart[76] excellently expounds this formerly celebrated controversy.

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[69] Cf. St. Thomas, *S. theol.* 3, q. 84, a. 3 ad 3.

[70] *Theol. mor.* l. 6, n. 429.

[71] Loc. cit.

[72] Denz., n. 1088.

[73] *In IV Sent.*, dist. 17, q. 2, a. 1.

[74] *Tract. de confessione*, q. 15, conclusion 4.

[75] *Tract. de institutione sacerdotum*, *De confessione*, lect. 11.

[76] *De sacr. poenit.*, diss. 7, a. 3, § 2.

331. Absolution by telephone is certainly unlawful outside a case of extreme necessity, and the same must be said of absolution given through a long acoustic tube.[77] The reason is that it is very doubtful whether the required moral presence then exists, and accordingly the sacrament would be exposed to the

danger of nullity. But it is not certain whether absolutions of this kind are certainly invalid. Nothing certain may be deduced from the response of the Sacred Penitentiary dated July 1, 1884. To the question, "Whether in a case of extreme necessity absolution can be given by telephone?" it replied: "Nothing is to be answered." The Sacred Penitentiary seems to have used this formula of response because it indeed pertains to it to resolve particular cases, but not to determine doubts which pertain to the essence of the sacraments. For this pertains to the Holy Office. The whole question concerning the validity of absolution by telephone or through a long acoustic tube is reduced to this: whether in those cases the penitent is still morally present to the confessor. If easy oral speech between the confessor and the penitent is held as the criterion of this moral presence, sufficient presence certainly exists, especially if speech through an acoustic tube is involved. Nor may anyone say that for moral presence it is additionally required that opaque bodies not totally separate the confessor from the penitent. For otherwise moral presence would not exist even if the confessor hears the confession of a nun who kneels behind a grille covered with a thick veil. The opinion of Father Sabetti, S.J., pleases us: "Since the sacrament of penance was instituted after the likeness of a forensic judgment, for which that presence suffices by force of which the judge and the accused can speak with each other, it does not seem that in the proposed case the absolution is certainly invalid, since the penitent and the priest can be said in a true sense to be conversing." G. A. Eschbach[78] argues at great length against the validity of a confession of this kind.

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[77] Commonly *Sprachrohr*, speaking tube, *porte-voix*.

[78] *La confession par téléphone*, *Examen* 1887, *Réponse* 1888 (Tournay).

332. c) Absolution should be absolute and not conditional, unless for grave reasons.

It was already stated above, n. 24, in the treatise on the sacraments in general, that it is never lawful to attach a condition concerning the future to the sacraments, except perhaps in the rarest case in a matrimonial contract. Therefore it is never lawful to give absolution under a condition concerning the future, for example, if you shall make restitution, if you shall avoid the proximate occasion. But when a present or past condition is involved, it is sometimes lawful to give conditional absolution.

General rule concerning conditional absolution. Conditional absolution can be given whenever absolution given absolutely would expose the sacrament to the danger of nullity, but absolution absolutely denied would expose the penitent to the danger of grave spiritual harm.

The reason for this rule is that the confessor, according to his powers, must procure both reverence toward the sacrament and the spiritual utility of the penitent. In these cases, however, both are preserved in the best manner possible. Almost all theologians teach that sometimes conditional absolution is truly lawful.[79] The reason is that the confessor often lacks moral certainty whether the penitent is capable of valid absolution. He is therefore then compelled to leave the certain judgment to divine omniscience, and meanwhile through conditional absolution to provide according to his powers both for the dignity of the sacrament and for the utility of the penitent. Indeed, in a certain true sense every sacramental absolution is conditional, because it is always given under this implicit condition, that the penitent be worthy. It is not indeed required, but it is lawful to premise the condition to the absolution in express words, for example: if you are capable. A condition conceived in the mind suffices.

The principal cases in which it is lawful to give conditional absolution are the following:

1. In doubt whether the penitent is living or dead.

2. In doubt concerning sufficient use of reason in children and persons of impaired reason who have objectively grave sins.

3. In doubt concerning absolution duly given, provided, however, that the penitent has confessed grave matter.

4. In doubt concerning the moral presence of the penitent.[80]

5. In doubt concerning sufficient sorrow and purpose in the penitent, if from the delay of absolution a greater evil is rightly feared. Let the confessor beware, however, lest he employ conditional absolution too frequently because of the doubtful disposition of the penitent, since otherwise he will not escape the mark of grave laxity and will bring to the penitent not utility but spiritual harm. This case is accustomed to occur in the confession of relapsing sinners and those in an occasion of sin, concerning whom a fuller discussion will return below, n. 449 ff.

[79] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 431.

[80] Cf. above, the preceding number.

333. d) A form of absolution essentially deprecatory is not lawful; indeed, more probably it is invalid.

The reason is that the essence of the sacrament of penance consists in a judicial form, as has already often been proved. Absolution is therefore like a judicial sentence. Now a judicial sentence neither is nor can be essentially deprecatory, because to pronounce sentence is the act of one having and exercising true authority, whereas to entreat is the act of one supplicating. Hence to entreat and authoritatively to judge are incompatible acts.[81] Nothing, however, prevents entreaties also from being employed in absolution, provided that, as to the formal sense, there is in addition a true and proper indicative judgment.[82] The adversaries indeed object that merely deprecatory formulas were customary in the Latin Church until the twelfth century and in the Greek Church even to our own days, but Billuart[83] notes three things: 1. These formulas pertain not to sacramental but to canonical absolution. 2. The ancient rituals contain not only a deprecatory but also an indicative formula; this is notably the case in the Euchologion edited by the illustrious Father Goar, for there on p. 678 it is read concerning the form of absolution: "Moreover, I absolve thee from all thy sins, whatsoever thou hast confessed before God and before my unworthiness." 3. Until the time of St. Thomas, several theologians thought that the remission of sins was properly caused by contrition elicited before confession, but that through absolution a man was reconciled to the Church, freed from punishments, and increased in grace. St. Thomas wrote an entire opusculum (18) on the form of absolution, in which he defends the validity of the positive indicative form alone, which is not deprecatory.

[81] Cf. St. Thomas, *Op.* 18, *De forma absolutionis.*

[82] Cf. P. Galtier, *De poenitentia*, n. 501 ff.

[83] *De poenit.*, diss. 1, a. 3, § 3.

334. Scholion. On absolution to be repeated. When a penitent, after having already received absolution, adds a forgotten sin, or a grave circumstance of some sin accused, or a notably diverse number, the confessor must repeat the absolution. The reason is that otherwise the penitent would have to confess this necessary matter again in the following confession, since he has not received direct absolution concerning it. Contrition

must extend also to this matter, and accordingly must be elicited anew, unless, however, that which was previously had still virtually perseveres.[84]

[84] Cf. below, n. 352.

Article V. On the Effects of the Sacrament of Penance

Preliminary note. Since in the present order of things no true virtue of penance can exist without the sacrament of penance received at least *in voto*, the effects of the virtue and of the sacrament of penance in fact almost coincide, although the manner of producing them is diverse. The effects of penance are customarily called by dogmatic theologians the **justification of the impious**. Let the following things be stated briefly concerning it. All the effects of penance can be reduced to three, namely: 1. the remission of all sins; 2. the infusion of grace; 3. the reviviscence of merits.

335. 1. Through penance all sins, whether mortal or venial, can be remitted.

"If the wicked man do penance, ... I will not remember all his iniquities which he hath wrought."[85] "If your sins be as scarlet, they shall be made as white as snow."[86] Hence the Lord also said to the Apostles: "Whatsoever you shall loose," making no limitation. For the remission of mortal sin the sacrament of penance received at least *in voto* is altogether required. But the venial sin of a man who exists in the state of sanctifying grace can be remitted even *ex opere operantis* without the sacrament of penance. For the Council of Trent[87] teaches that "venial sins can be expiated by many other remedies." But no sin, even venial, is remitted without some penance at least virtual,[88] which consists in the detestation of sin. For it is impossible that God remit fault to that man who does not will to abandon sin. Virtual penance can be exercised in many ways, for example, if someone asks pardon of sins from God, if someone exercises the virtue contrary to the sins committed, or if someone exercises even other virtues with the intention of obtaining pardon of sins.[89]

[85] Ezek. 18:21 f.

[86] Isa. 1:18.

[87] Session 14, c. 5, *On Penance* (Denz., n. 899).

[88] *S. theol.* 3, q. 87, a. 2 ad 2.

[89] *S. theol.* 3, q. 87, a. 3.

336. 2. Through penance sanctifying grace is infused.

For it is of faith that in justification sins are not only covered or no longer imputed, as the Protestants maintain, but on the contrary man is made pleasing to God. Now no one can be pleasing to God without sanctifying grace. Therefore sins are remitted through the infusion of sanctifying grace. But because sanctifying grace and sin cannot exist at the same time in the same man, for they are incompatible like water and fire, when one mortal sin is remitted, all are remitted; and when one is not remitted, none is remitted. From these things it follows that the penitent must elicit contrition for absolutely all mortal sins committed. It is otherwise with venial sins; for mortal sin can be remitted without venial sin, and likewise one venial sin without another, but a venial sin cannot be remitted unless the mortal sin is also remitted, since he who wishes to remain an enemy of God is unworthy of pardon. For the remission of venial sin some influx of sanctifying grace is always required.[90]

From the infusion of sanctifying grace the following effects are produced:

a) **When the fault is remitted, the eternal punishment, that is, of Gehenna, is also remitted, but not always the whole temporal punishment.** That eternal punishment is always remitted follows manifestly from the nature of sanctifying grace, since it renders a man pleasing to God and an heir of eternal glory. Therefore it is impossible that the same man should still be worthy of eternal punishment to be discharged in Gehenna. The Council of Trent, however, defined that through penance the whole temporal punishment is not always remitted. For it admonishes penitents after absolution has been received to make satisfaction through fasts, alms, and prayers, "not indeed for the eternal punishment, which is remitted together with the fault either by the sacrament or by the desire for the sacrament, but for the temporal punishment, which, as Sacred Scripture teaches, is not always wholly remitted to them, as is done in baptism."[91] That when mortal sin is remitted God does not always forgive the whole temporal punishment is clear from several examples of Sacred Scripture, for example, from the sin of David, which indeed was remitted, but the adulterine son had to die; Moses was forbidden to enter the promised land because of a sin of distrust, remitted indeed as to fault but not as to the whole punishment. The most manifest example, however, is original sin itself, which indeed is remitted as to fault, but whose penalties remain.

b) **With grace all the virtues, both theological and moral, are infused,**[92] and sacramental grace is granted, that is, a right to those helps by which the penitent man thoroughly wipes away past stains and guards against future ones.

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[90] Ibid., a. 4.

[91] Session 6, c. 14, *On Justification* (Denz., n. 807).

[92] Cf. above, in the treatise on the virtues, I, n. 472.

337. 3. Through penance the reviviscence of merits is obtained.

Theologians customarily distinguish four kinds of works: some are **living works**, namely, those which proceed from grace, the principle of spiritual life; others are **dead works**, which, although objectively good, were nevertheless performed by a man existing in the state of mortal sin, for example, an alms given by a sinner; others are **death-dealing works**, that is, mortal sins, which bring spiritual death upon the soul; finally, others are **mortified works**, which are good works performed in the state of grace but which, through the subsequent state of sin, have lost all merit. Through penance mortified works revive. Living works do not need reviviscence, as is evident. Death-dealing works, or mortal sins, do not revive through penance but are thoroughly destroyed. Nor do dead works revive, since they never had life. That mortified works, or merits which through subsequent sin have been deprived of efficacy, revive through penance is certain and admitted by all theologians; nevertheless, it is not properly of faith.

Proof 1. From Sacred Scripture. "The wickedness of the wicked shall not hurt him, in whatsoever day he shall turn."[93] But wickedness would hurt very greatly if through it all prior merits were irrevocably lost.

Proof 2. From the Council of Trent,[94] which requires three conditions for human works to be meritorious and to obtain eternal life, namely: a) that they be works of a justified man; b) that they be done in God, or by the grace of God; c) that the one acting depart in the state of grace. But mortified merits have the first two conditions, while they recover the third through the virtue of penance. Arguments drawn from the authority of the Holy Fathers may be seen in Billuart.[95]

Proof 3. From theological reason this reviviscence of merits is commended. It is very consonant with divine mercy that those works which were once good, meritorious, and accepted by God in order to eternal life

should always remain so unless a grave obstacle occurs. Such an obstacle indeed is mortal sin, but it is removed through penance. Therefore merits acquired before the state of sin are recovered if the sin is removed.[96]

The manner and degree of this reviviscence. Although all theologians agree concerning the fact itself of reviviscence, nevertheless they depart into many diverse opinions when they discuss the degree and quantity of reviviscence.

The **first opinion** holds that all merits acquired before sin, after penance has been performed, are immediately restored to the justified man both as to grace and as to the right to glory. Thus Suarez in his opusculum on the reviviscence of merits, and several others, especially modern authors.

The **second opinion** holds that all merits do not always revive, but according to the quantity of present penance and charity. Thus several Thomists, for example, Dominic Soto, Ledesma, and Gonet.

The **third opinion** teaches that merits revive only as to the right to accidental glory, which is increased from the reviviscence, but that essential glory is not indeed increased, yet is granted under a twofold title, namely, because of grace newly acquired and merits possessed before sin. Thus Bañez, Sylvius, and Contenson.

The **fourth opinion** asserts that all merits indeed rise again as to the right to glory, but not as to the quantity of habitual grace previously possessed, since this is given according to the actual disposition of the penitent. But at the moment of death a justified man elicits an act of charity so perfect that he acquires anew all the grace previously possessed. Thus the Salamancans.

Billuart[97] rightly says that among so many opinions scarcely anything certain can be established. The first opinion is more benign, more consonant with divine mercy, and suffers no more difficulties than the others. He who desires more concerning this controversy should consult Billuart,[98] who defends yet another opinion.

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[93] Ezek. 33:12.

[94] Session 6, can. 32, *On Justification* (Denz., n. 842).

[95] *De poenit.*, diss. 3, a. 5.

[96] St. Thomas, *S. theol.* 3, q. 89, a. 5.

[97] Loc. cit.

[98] Loc. cit.

338. Scholion. On the mutual relation between the virtue and the sacrament of penance. It is useful here, the essence of penance having been explained, to set forth under one view wherein the sacrament and the virtue of penance agree and wherein they differ.

1. **They agree in effect,** namely, in the destruction of sin. Indeed, in the present order of things neither the sacrament without the virtue nor the virtue without the sacrament received at least *in voto* can destroy mortal sin. Therefore the virtue and the sacrament of penance are intimately connected, but nevertheless differ in many things, namely:
2. **They differ a) as to nature.** The virtue of penance is a habit whose acts are principally internal. But the sacrament of penance, as a sensible sign, contains proximate matter externally manifested, namely, the three acts of the penitent externally produced: contrition, confession made to a priest, and satisfaction. The absolution of the priest, likewise externally manifested, must be added as the form.

b) **As to the manner of operating.** The virtue of penance produces the effect of justification *ex opere operantis*, but the sacrament *ex opere operato*; wherefore attrition or imperfect contrition suffices in the latter, but the virtue of penance cannot justify except by means of perfect contrition.

c) **As to necessity.** For a man burdened with grave sin, the virtue of penance *in re*, and not only *in voto*, is necessary by a necessity of means; but the sacrament of penance actually received is necessary only by a necessity of precept; wherefore in necessity the desire for this sacrament suffices.

Chapter II. On the Subject of the Sacrament of Penance

Preliminary note. After in the preceding chapter we treated of the essence both of the virtue and of the sacrament of penance, now the duties which the penitent must perform in receiving the sacrament of penance are to be treated specially. These duties are the three acts to be performed by him, namely, contrition, confession, and satisfaction. St. Raymond of Peñafort[99] beautifully says: "In true and perfect penance three things are necessary: contrition of heart, confession of the mouth, and satisfaction of work," concerning which we shall speak separately. The subject capable of the sacrament of penance is every baptized man who can elicit these three acts, or at least contrition.

[99] *Summa*, *De poenit.* l. 3, § 7.

Article I. On Contrition

We divide this article into four paragraphs: 1. on the nature, division, and effects of contrition in general; 2. on attrition; 3. on the qualities of contrition and attrition; 4. on purpose.

§ 1. On the Nature, Division, and Effect of Contrition in General

339. Definition. Contrition, taken generically, is "sorrow of soul and detestation for sin committed, with the purpose of not sinning henceforth." Thus the Council of Trent.[100]

Therefore three integral acts are required for contrition: a) sorrow, b) detestation, c) purpose.

Theologians dispute which act is more principal, sorrow or detestation. The question is of little moment and of no practical utility, since both acts must necessarily be present. For if someone truly grieves over some evil thing, he also detests it, that is, turns himself away from it; and if someone detests a thing, he also grieves over it when he must suffer it. There is no reason to depart from the order observed in the Tridentine definition, so that sorrow is more principal than detestation. This order indeed also seems to correspond more to the nature of sin, which is a disordered conversion toward mutable good with an aversion from immutable good, namely, from God. Because this disordered conversion toward created good is something disordered in the soul, it therefore necessarily causes sorrow, namely, remorse of conscience in this life and the punishment of Gehenna in the other life. From sorrow conceived in this manner, a man is almost necessarily induced, by the aid of divine grace, to detest the cause of this sorrow, namely, sin. Sorrow and detestation together cause the third act, namely, purpose. It can be said briefly with Billuart:[101] "The essence of contrition consists formally in sorrow, presuppositively in hatred, and consecutively in purpose."

[100] Session 14, c. 4, *On Penance* (Denz., n. 897). St. Raymond of Peñafort (loc. cit.) already gave a similar definition, saying: "Contrition is sorrow undertaken for sins, with the purpose of confessing and making satisfaction." St. Thomas likewise adopted this definition (*Suppl.*, q. 1, a. 1) and wrote an entire explanatory article. It is worthy of note that a twofold purpose is necessarily

included in contrition, namely, of confessing and of making satisfaction, so that no true contrition is given unless at least implicitly this twofold purpose is present. In practice it is to be insisted upon that this twofold purpose be elicited also explicitly.

[101] *De poenit.*, diss. 4, a. 1.

340. Division.[102] A twofold contrition is distinguished: one **perfect**, which is called simply contrition; the other **imperfect**, which is customarily called attrition. Nevertheless, from this explanation it is in no way lawful to deduce that contrition and attrition are distinguished only according to more and less, or according to accidental qualities, as several authors, especially older ones, maintained, who required true contrition for every remission of sin, as do all those more recent authors who require true love of charity for attrition, although not so perfect as in contrition properly so called. But it is better said that contrition and attrition are specifically distinguished. For they are distinguished in two ways, namely, a) by reason of motive, b) by reason of efficacy.

a) **Contrition arises from a motive of charity.** Now a twofold love of God is distinguished, namely, the love of hope or of concupiscence, by which God is loved because of the supreme goods which He communicates to us; the love of benevolence, by which God is loved as infinitely good and perfect in Himself, and by which a man desires the greatest glory to be contributed to God by every creature. This love of benevolence, if it exists in a perfect degree, is the love of friendship, namely, consisting in mutual love between God and man and causing a man to love God in Himself not only as the supreme good but also as his friend.

Certain authors, such as the Scotists, and among modern authors Hurter, Palmieri, Egger, and Tanquerey, seem to teach that for perfect contrition the love of hope and gratitude suffices, namely, if a man loves God because of the hope of beatitude and is thereby raised into affections of gratitude. This opinion, although perhaps probable, is nevertheless most commonly rejected. Hence almost all theologians require true love of benevolence and friendship, which nevertheless does not necessarily have divine goodness for its object, but any divine attribute. Moreover, he who loves one divine attribute with a true love of benevolence loves all, since they are not really distinct from one another.[103]

b) **Attrition arises indeed from a supernatural motive, but not from a motive of charity.** Motives of attrition are, for example, the turpitude of sin and an eternal or even temporal punishment to be inflicted by God. But it is to be noted especially that these motives must altogether be supernatural, that is, acquired by the light of faith and actual grace. Therefore, for example, the natural turpitude of adultery, the punishments which threaten because of homicide committed, and so forth, do not suffice. A fuller discussion concerning the nature of attrition will be given below in § 2.

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[102] During the first eleven centuries of the Christian era theologians did not distinguish diverse species of contrition, at least explicitly. But in the time of Peter Lombard, and especially of Alexander of Hales, St. Thomas, and St. Bonaventure, attrition was distinguished from contrition. Alan of Lille (d. ca. 1200, *Lib. poenit.* [Migne, *Patr. lat.* 210, 300 and 665]) seems to have been the first to employ the word attrition nearly in our sense. Attrition was at that time taken also in other senses.

[103] See, concerning this controversy, which is of little utility, the very keen contests between Ballerini and the *Vindiciae Alphonsianae.*

341. The effect of perfect contrition is the remission of all sins, provided that the desire for the sacrament of penance is added.

For the Council of Trent[104] teaches: "Although it sometimes happens that this contrition is perfected by charity and reconciles man to God, ... nevertheless this reconciliation itself is not to be ascribed to contrition itself without the desire for the sacrament which is included in it." St. Pius V condemned proposition 71 of Baius:

"Through contrition, even joined with perfect charity and with the desire of receiving the sacrament, crime is not remitted, outside a case of necessity or martyrdom, without the actual reception of the sacrament."[105]

For justification it is not required that contrition be intensively in the highest degree, but it suffices that it be appreciatively supreme. Hence St. Thomas[106] teaches: "However small the sorrow may be, provided that it attains to the character of contrition, it blots out every fault." The desire for the sacrament is not absolutely required to be explicit, but an implicit one suffices, such as is found in the general will to perform all things which are necessary for salvation. The desire, however, must under grave obligation be fulfilled at the opportune time, that is, at least within the space of a year; and then through sacramental absolution the sin indeed is not remitted, since it has already been remitted, but sanctifying grace is increased under a twofold title, namely, *ex opere operato* of the sacrament and *ex opere operantis* of the penitent, who, already existing in the state of sanctifying grace, performs a good work by confessing and making satisfaction.

[104] Session 14, c. 4, *On Penance* (Denz., n. 898). Cf. also the proposition condemned by Sixtus IV (Denz., n. 724).

[105] Denz., n. 1071.

[106] *Suppl.*, q. 5, a. 3.

§ 2. On Attrition

342. 1. Attrition cannot justify with the desire for the sacrament alone, but requires the sacrament actually received.

Hence arose the adage: **A man from being attrite is made contrite through the sacrament of penance.** This, however, is not to be understood as though attrition became contrition[107] in the sacrament of penance; rather, an attrite man receiving sanctifying grace through sacramental absolution at the same time receives the habit of charity which causes contrition.[108]

[107] *Suppl.*, q. 1, a. 3.

[108] Cf. R. Schultes, *Reue u. Bußsakr.*, nn. 19, 36 ff., 91.

343. 2. True attrition suffices for obtaining justification in the sacrament of penance.

This proposition is now altogether certain and admitted by all, so that the contrary opinion, which many theologians before the Council of Trent held, is rash. St. Thomas[109] already taught: "When someone approaches confession attrite, not fully contrite, if he places no obstacle, in the confession and absolution themselves grace and the remission of sins are given to him." The same is elicited not obscurely from the Council of Trent,[110] which says: "Although [attrition] without the sacrament of penance cannot of itself lead the sinner to justification, nevertheless it disposes him to obtain the grace of God in the sacrament of penance." The Council indeed employs the word "disposes," but this word is to be understood of a sufficient proximate disposition and signifies the same as *suffices*. This is evident from the context and from the comparison of attrition with contrition. For the Council wished to teach that contrition justifies even without the sacrament, but attrition only when sacramental absolution supervenes. Moreover, the same thing is manifestly evident from the universal practice of the Church, which admonishes that absolution be given to dying persons deprived of their senses whose disposition can rightly be presumed. Now this practice would not be reasonable if attrition did not suffice for valid absolution. For then, if true contrition were lacking, sacramental absolution would be invalid; but if contrition existed, absolution would be almost superfluous, since contrition justifies even without sacramental absolution actually received.

It is remarkable how many and how great ancient theologians thought true contrition to be necessary for every remission of sins, even in the sacrament of penance.[111] There are cited for this opinion: Hugh of St. Victor,[112] Richard of St. Victor,[113] Robert Pullen,[114] the Master of the Sentences,[115] Innocent III,[116] William of Auxerre,[117] Blessed Albert the Great,[118] Alexander of Hales,[119] St. Raymond of Peñafort,[120] St. Bonaventure,[121] and several others, for example, Vincent of Beauvais, St. Bernardine of Siena, and Gabriel Biel.[122] Nevertheless, Harnack errs in saying that before the thirteenth century contrition was always held to be necessary, since ancient authors often take the word contrition in a different sense from modern theologians; for under contrition they also include attrition.

There are some celebrated controversies concerning attrition which it is useful to touch upon briefly here:

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[109] *In IV Sent.*, dist. 22, q. 2, a. 1, sol. 3; cf. *Suppl.*, q. 10, a. 1; q. 18, a. 1.

[110] Session 14, c. 4, *On Penance* (Denz., n. 898).

[111] Cf. M. Buchberger, *Die Wirkungen des Bußsakr. nach der Lehre des hl. Thomas* (Friburgi 1901), § 4.

[112] *De sacr.* l. 2, P. 14, c. 8.

[113] *De potestate solvendi ac ligandi*, cc. 7 and 19.

[114] *De sacr.* P. 3, c. 13.

[115] *In IV Sent.*, dist. 17 and 18.

[116] *In Ps. 2 poenitentialem.*

[117] *Summa* IV, *De sacr. poenit.*

[118] *In IV Sent.*, dist. 17 and 18.

[119] *Summa*, l. 4, q. 8, membr. 1.

[120] *Summa*, *De poenit.* l. 3, § 11.

[121] *In IV Sent.*, dist. 18, P. 1, a. 2, q. 1.

[122] Cf. Drouven, *De re sacr.* l. 6, c. 2, a. 2.

344. 1. Is attrition conceived from the fear of Gehenna alone good?

Luther contends that attrition conceived from fear is forced and evil, and that it renders a man worse and a true hypocrite. The Jansenists, Quesnel, and the Synod of Pistoia taught similar things.[123] Before the proposed question is answered, it is necessary to attend to the doctrine of St. Thomas[124] concerning the four species of fear, namely: worldly, servile, initial, and filial.[125] Servile fear is subdivided: for it is either **servilely servile**, when, namely, someone indeed avoids sins because of the punishments to be inflicted, but is so disposed that he would continue sinning if punishment were not present; or, in other words, he still loves sin and is like a dog that would wish to devour the meat but is deterred from it by the master's threatening staff. Or fear is **simply servile**, which indeed detests sin because of the punishments that threaten, but at the same time truly puts away affection for sin. Servilely servile fear is certainly evil because it retains affection for sin; worldly fear is likewise evil, as is evident of itself. Filial fear is certainly good, and initial fear likewise. But is simply servile fear good? The affirmative answer is of faith and was indeed defined in the Council of Trent:[126] "If anyone says that the fear of Gehenna, through which, grieving over sins, we flee to the mercy of God or abstain from sinning, is a sin or makes sinners worse, let him be anathema." Alexander VII condemned proposition 15: "Attrition, which is conceived from fear of the punishments of Gehenna without the love of benevolence toward God for His own sake, is not a good and supernatural motion."[127] Leo X condemned

proposition 6 of Luther: "Contrition, which is prepared by the discussion, comparison, and detestation of sins, by which someone recollects his years in the bitterness of his soul, weighing the gravity, multitude, and foulness of his sins, the loss of eternal beatitude, and the acquisition of eternal damnation, this contrition makes a hypocrite, indeed, rather, a sinner."[128]

Theological reason manifestly shows the goodness of such attrition. For three elements concur in attrition, and all of them are good:

a) The inducing motive, namely, fear and flight from the punishments of Gehenna.

b) The means for obtaining this end, namely, detestation of sin.

c) The ordering of this means toward obtaining the end.

But if these three elements are good, the whole is also good, since there is question of a moral act in which nothing evil is found. Moreover, simply servile fear is a true detestation of sin, the affection for which is altogether removed from the soul, and therefore it includes a good purpose of serving God.[129]

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[123] Hence attrition has been called the sorrow of one hanging upon the gallows (*Galgenreue*).

[124] *S. theol.* 2, 2, q. 19, a. 2 ad 4.

[125] Cf. above, I, n. 542.

[126] Session 6, can. 8, *On Justification* (Denz., n. 818).

[127] Denz., n. 1146.

[128] Denz., n. 746; cf. proposition 25 of the Synod of Pistoia (Denz., n. 1525).

[129] Cf. Billuart, *De poenit.*, diss. 4, a. 5.

345. 2. Does attrition from the fear of Gehenna alone, without initial love, suffice for the sacrament of penance?

It is remarkable how very bitter disputes concerning this question have blazed forth since the sixteenth century. According to the testimony of Benedict XIV,[130] Francis de Vitoria and Dominic Soto, both of the Order of Preachers, were the first of all to teach that, for the remission of sins in the sacrament of penance, merely servile attrition suffices, provided that in good faith the penitent judges it to be contrition. Melchior Cano, proceeding further, no longer requires contrition thought in good faith to be present, but true attrition alone. Nevertheless, he still speaks hesitantly: "Contrition is set down as a part of the sacrament because it is certain and indubitable matter. But that attrition suffices, although it is true, is not so certain and indubitable; and therefore the Council of Florence and the common opinion, holding what is certain and leaving aside what is uncertain, set down contrition as a part of this sacrament."[131] Several other authors followed Melchior Cano, at first indeed timidly, such as Suarez, Vasquez, Comitolus, and so forth; but afterward, having become bolder, they advanced so far that they called the opposite opinion, which requires at least initial love, altogether improbable, dangerous, and contrary to the mind of the Council of Trent. Authors requiring some initial love were called **Contritionists**;[132] but the adversaries denying the necessity of this initial love are called **Attritionists**. The dispute reached such a point that Alexander VII, on May 5, 1667, had to impose silence upon the disputants. These are the words: "Our Most Holy Lord Pope Alexander VII, having learned, not without grave sorrow of mind, that certain Scholastics dispute among themselves too sharply, and not without scandal of the faithful, whether that attrition which is conceived from fear of Gehenna, excluding the will to sin together with the hope of pardon, requires in addition some act of love of God for obtaining grace in the

sacrament of penance, some affirming it, others denying it, and mutually branding the adverse opinion with a censure: His Holiness, earnestly desiring to preserve the bond of peace among the faithful and to extinguish every tinder of division, ... by this present decree, in virtue of holy obedience and under pain of excommunication *latae sententiae* reserved to this Holy See, and other penalties to be determined at the judgment of that Holy See, commands each and every one of the faithful, of whatever rank and dignity ... they may be, that if henceforth they write on the matter of the aforesaid attrition, or publish books or writings, or teach, or preach, or in any other manner instruct penitents or students or others, they shall not dare to brand either opinion with the mark of any theological censure or other injury or insult, whether the opinion denying the necessity of some love of God in the aforesaid attrition conceived from fear of Gehenna, which today seems more common among Scholastics, or the opinion affirming the necessity of the said love, until something in this matter shall have been defined by this Holy See."[133]

The dispute seems to be about words rather than things, because different men understand initial love differently. Initial love certainly is not the love of charity, because then there would no longer be attrition but contrition, since even the least charity suffices for justification.[134] Therefore initial love is either the love of benevolence alone or the love of concupiscence. Although in human matters the love of benevolence differs greatly from the love of concupiscence, nevertheless a true and upright love of concupiscence, which regards God as our ultimate beatitude, seems in some manner to be a love of benevolence. For a man who is truly attrite detests sin and must put away his affection for it; moreover, he must purpose the voluntary observance of God's commandments. But among these commandments there is found, as the principal one, that of loving God above all things. Moreover, he wishes to attain eternal life, which is most perfect friendship with God. From all these things it manifestly follows that true attrition is logically and psychologically altogether impossible without some initial love of God. Attrition which excludes every love of God is now nothing other than servilely servile fear, which assuredly does not suffice for obtaining justification in the sacrament of penance.

Since these things are so, today almost all theologians admit the necessity of some initial love in attrition. Therefore that opinion which in the time of Alexander VII seems not to have been so common is now far more common.[135] St. Thomas[136] already taught briefly and clearly: "Just as someone is introduced to loving God by the fact that, fearing to be punished by Him, he ceases from sin, as Augustine says; so also hope introduces charity, inasmuch as someone, hoping to be rewarded by God, is enkindled to love God and to keep His precepts." In this sense the text of the Council of Trent[137] also seems to be understood, which requires that sinners "begin to love God as the fountain of all justice." In almost the same manner St. Francis de Sales[138] and St. Alphonsus[139] explain the initial love required in attrition.

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[130] *De syn. dioec.* l. 7, c. 13, n. 6.

[131] *Relect. de poenit.* P. 6.

[132] All those ancient Scholastics who attributed the remission of sins to perfect contrition alone and not to priestly absolution are also sometimes called Contritionists.

[133] Denz., n. 1146.

[134] Cf. St. Thomas, *Suppl.*, q. 5, a. 3.

[135] Cf. Schanz, *Die Lehre v. d. Sakr.* I, § 40; Lehmkuhl, *Theol. mor.* II, n. 391.

[136] *S. theol.* 2, 2, q. 17, a. 8.

[137] Session 6, c. 6, *On Justification* (Denz., n. 798).

[138] *De amore Dei* l. 2, c. 17.

[139] *Theol. mor.* l. 6, n. 442 at the end.

§ 3. On the Qualities of Contrition, Whether Perfect or Imperfect

The qualities of contrition are those conditions which are required for the validity of contrition, whether perfect or imperfect. Four are customarily enumerated: 1. that it be true and formal; 2. supernatural; 3. appreciatively supreme; 4. universal.

346. 1. True and formal contrition or attrition is required, as has thus far been explained in the preceding paragraph.

It is therefore required, a) that contrition be **true or internal**, and consequently there does not suffice: a) the merely external recitation of a formula of contrition, unless true internal sorrow and detestation of sin are at the same time present. b) Supposed sorrow does not suffice, but true sorrow is required. The reason is that, just as supposed water does not suffice for baptism, so supposed sorrow is insufficient for the sacrament of penance. But if certain older theologians seem to have taught the contrary, either they must be abandoned or benignly interpreted in this sense: that they thought at least supposed contrition necessary; if this is not truly present, true attrition which exists and is in good faith held by the penitent to be perfect contrition suffices. c) Nor does a desire for sorrow and absolution suffice; nevertheless, in practice the faithful of timorous conscience who sincerely desire to have true sorrow for sins committed are not to be disturbed, even if they say that they feel no sorrow at all. For since contrition is an act of the will, it is not always felt.

b) **Formal contrition** is required, that is, a positive act by which a man truly and explicitly sorrows over sins committed. Therefore implicit or virtual contrition, such as is included in an act of charity, does not suffice, as very few after Lugo[140] have taught; for although an act of perfect charity justifies outside the sacrament of penance, nevertheless, speaking *per se*, it does not suffice in the sacrament, because formal contrition pertains to the proximate matter of this sacrament. Nevertheless, in practice it is scarcely possible that a sinful man eliciting an act of perfect charity should not at the same time sorrow over his sins and detest them. Still less does that implicit sorrow suffice which is included in the will not to sin henceforth; because it is absolutely possible for someone to have complacency in past sins but nevertheless no longer to wish to sin.[141]

[140] *De poenit.*, diss. V, n. 92 ff.

[141] Council of Trent, session 14, c. 4 (Denz., n. 897).

347. 2. Sorrow must be supernatural, and this in two ways: a) by reason of the principle, inasmuch as it must be elicited with the aid of supernatural grace;[142] b) by reason of the motive, which is in some manner referred to God.

Hence a merely natural motive for sorrowing over sins is insufficient, and Innocent XI condemned proposition 57: "It is probable that natural attrition suffices, provided that it is upright."[143] Insufficient natural motives are, for example, the punishment of imprisonment inflicted for sin, misfortune arising from it, infamy, and so forth. Suitable motives, however, can be reduced to four: 1. fear of punishment to be inflicted or already inflicted by God; 2. hope of reward in eternity; 3. the supernatural turpitude of sin; 4. the goodness of God. In a word: all those motives are suitable which are apprehended by the light of supernatural faith, but not those which are known by the light of reason alone.

[142] Thus, after the Council of Orange, the Council of Trent defined, session 6, can. 3 (Denz., n. 813).

[143] Denz., n. 1207.

348. 3. Contrition must be supreme, not indeed intensively, but appreciatively.

Contrition supreme in intensity is not only not required, but is not even possible, since the bitterness and intensity of sorrow can always be increased more and more through the grace of God. Contrition, however, must be appreciatively supreme, inasmuch as sin is judged to be an evil more detestable than any other evil; and therefore the sinner must be prepared to lose any good and to suffer any evil rather than to commit sin. In practice, however, both the confessor and the penitent should abstain from expressly instituting comparisons between a sin to be avoided and some atrocious evil to be undergone. St. Thomas[144] wisely observes concerning this matter: "A contrite man is bound in general to will to suffer any punishment rather than to sin; ... but he is not bound to descend in particular to this punishment or that. Indeed, he would act foolishly if someone were to trouble himself or another concerning particular punishments of this kind. For it is manifest that, just as delightful things move more when considered in particular than in common, so terrible things terrify more if they are considered in particular; and there are some who do not fall in a lesser temptation who perhaps would fall in a greater one. Thus someone hearing of adultery is not incited to lust, but if by consideration he descends to each enticement, he would be moved. And similarly someone would not refuse to suffer death for Christ; but if he descended to considering each punishment, he would be more withdrawn. And therefore to descend to particulars in such things is to lead a man into temptation and to furnish an occasion of sinning." Hence certain customary formulas of contrition are altogether unsuitable, for example: "I would rather die a thousand times than offend You again, O God."

Since intensity does not pertain to the essence of sorrow in penance, it follows: a) that sensible sorrow, which manifests itself by sighs and tears, is in no way required; b) that no delay of time is necessary for eliciting contrition, since, as a spiritual act, it can be exercised in an instant. Nevertheless, in practice the faithful are earnestly to be admonished to consider the eliciting of contrition more necessary than oral confession, and therefore to spend some time in eliciting true and sincere contrition.

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[144] *Quodl.* 1, a. 9.

349. 4. Contrition must be universal, inasmuch as it extends to absolutely all mortal sins not yet remitted.

The reason is that every mortal sin is a total aversion from God. Now contrition is conversion to God and must destroy every aversion from God, and therefore one mortal sin cannot be remitted without another. It is not strictly required, however, although it is generally better, that special contrition be elicited for each mortal sin. It suffices that the penitent, from a universal motive, namely, because he has offended the most good God and has merited the punishments of Gehenna, sorrow over all mortal sins committed, whether known or here and now unknown.

Since venial sins need not necessarily be accused in confession, it is not required that contrition be universal concerning them. But if someone confesses only venial sins, he must under grave obligation elicit true and formal contrition for at least one, or for other free matter consisting of sins already remitted, because otherwise he would not furnish sufficient proximate matter for the sacrament, which would therefore be frustrated; and this is certainly a grave sacrilege.

350. Corollaries. From the fact that contrition pertains to the proximate matter, while absolution is the form of the sacrament of penance, the following are deduced:

1. **Contrition must be manifested by a sensible sign.** For the matter of a sacrament pertains to a sensible sign. This sensible manifestation, however, is sufficiently had through the sorrowful confession of sins or through a devout petition for absolution. Nevertheless, children and the uneducated are to be counseled to elicit contrition also in express words, because these words are accustomed to help them greatly toward sincere internal contrition.
2. **Contrition must necessarily be elicited before absolution and coexist with it.** The reason is that contrition is the matter, while absolution is the form of the sacrament of penance. But the matter must be present when the form arrives. Of itself, indeed, it is not required that contrition be elicited before confession; but in practice this is altogether to be counseled and done, since it is sufficiently difficult to elicit contrition during confession or in that short interval between confession and absolution. Contrition must coexist with absolution, and therefore it cannot be elicited so long before absolution or confession that it no longer virtually perseveres. But how long contrition is judged to persevere virtually cannot be determined by a general rule, since this depends upon its intensity and upon the disposition of the penitent. Certain theologians think that contrition perseveres virtually for three or four hours; others, for one day and night; others, for several days.[145] In practice it is to be counseled that contrition elicited long before confession be renewed again before absolution. But it is evident of itself that contrition is altogether to be renewed when a new mortal sin has afterward been committed.

[145] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 446.

351. 3. Contrition elicited must have some ordering toward absolution; or, in other words, it must be sacramental. St. Alphonsus[146] indeed calls more probable the opinion which denies the necessity of this ordering, but he urges that the opposite opinion, since it is safer, be observed in practice. This opinion, however, seems to be not only safer but also truer. For if even in perfect contrition the desire to confess and to receive sacramental absolution must be included, *a fortiori* this is necessary in attrition. This desire is the same as an intention or ordering toward the sacrament of penance. But it is by no means required that the penitent first have the intention of receiving the sacrament of penance and, moved by this intention, elicit contrition. Hence without doubt a member of the faithful who, for example, is accidentally aroused to contrition while hearing a sermon and afterward confesses is validly and licitly absolved. But if the preceding sorrow is in no way referred to confession, the absolution seems to be invalid; and thus if the same member of the faithful today is most vehemently aroused by a sermon to sorrow for sins while thinking nothing of confession, but on the following day, thinking nothing of the contrition had yesterday, confesses his sins, he seems to receive absolution invalidly. Contrition and confession, therefore, must mutually influence one another. Contrition renders confession sorrowful and not merely narrative; confession, however, joins contrition with absolution and thus constitutes the whole sacrament.

[146] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 447.

352. 4. Contrition need not necessarily be elicited anew when the penitent, immediately after absolution, confesses a mortal sin omitted through forgetfulness and is absolved again. Thus Billuart,[147] who thinks this opinion more probable; Roncaglia holds it morally certain, while Sporer, Elbel, and many others hold it most probable, according to the testimony of St. Alphonsus.[148] The reason is that the contrition previously and universally had virtually perseveres and also extends itself to that sin omitted through forgetfulness. Nor should anyone say that in this case there are two sacraments and a twofold absolution or form, and therefore that a twofold contrition is also required as proximate matter. For, supposing

that the virtually persevering contrition extends itself to the omitted sin, sufficient proximate matter for confession is truly present. Moreover, this second absolution does not remit the omitted sin, since it has already been remitted through the first absolution. Therefore the second absolution is nothing other than the complement of the first, and both seem to be one sacrament. For if the penitent then truly received two sacraments, he would be in a better condition than if he had forgotten nothing and had declared all his sins integrally in the first accusation. This certainly seems unsuitable.

Nevertheless, in practice authors are accustomed to counsel that in this case the confessor invite the penitent to a new act of contrition, and that he also impose upon him a new satisfaction, or impose again the penance already imposed. The reason is that this practice is safer, indeed, according to a probable opinion of certain authors, necessary.[149] Certain authors, for example Noldin,[150] teach generally that one and the same act of sorrow suffices for several confessions; for example, if on the following day the penitent again submits to the keys sins already duly accused and remitted, the sorrow elicited yesterday suffices for absolution to be validly granted again, provided that yesterday's universal sorrow still virtually perseveres. But this opinion does not seem licit in practice if such an interval exists between the two sacramental judgments. For then there are certainly two sacraments, and therefore two acts of contrition are also required. Habitual contrition does not suffice for valid reception, but an act of contrition, at least virtually enduring, is required as the partial proximate matter.

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[147] *De poenit.*, diss. 4, a. 8.

[148] *Theol. mor.* l. 6, n. 448.

[149] Cf. ibid.

[150] *De sacr.* n. 258.

353. Scholion. Can the sacrament of penance be valid but unformed? This question has no practical moment, because this case scarcely ever occurs. According to the opinion of those authors who think that the whole essence of the sacrament of penance consists in absolution, nothing prevents the sacrament of penance from being valid but unformed. But this opinion is scarcely probable. Supposing, however, that the three acts of the penitent are the proximate matter of the sacrament, if they are not truly present with all their essential qualities, even inculpably, the sacrament is null because of a defect of matter. Therefore the opinion denying that the sacrament of penance can be unformed seems better.[151] Nor does the authority of St. Thomas,[152] who admits an unformed confession, stand in the way; for the Angelic Doctor manifestly treats only of confession and not of the whole sacrament of penance, because it is certain that the sacrament of penance without contrition is not only unformed but also invalid.

Moreover, even those who admit an unformed sacrament of penance say that this cannot occur except in a twofold case, namely: 1. If someone guilty of two mortal sins, through invincible forgetfulness, sorrows only over one from a particular motive and confesses this alone. For then the other sin remains, which was neither accused nor affected by contrition, and therefore could not be remitted. But in this case the sacrament seems to be invalid, because the essential quality of universality is lacking in the contrition, and therefore the contrition is insufficient. 2. If someone through invincible ignorance believes that it is not a mortal sin to approach the sacrament without sorrow for all sins, provided that sorrow for some sin is present. This case is truly chimerical, and, if it occurred, the sacrament would be invalid, since invincible ignorance cannot render valid a sacrament which otherwise would be invalid. Thus also someone would contract marriage invalidly

with a blood relative in the second degree, although through invincible ignorance he thought such a marriage valid and licit.

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[151] Cf. Billuart, loc. cit., diss. 7, a. 1, and, among modern writers, P. Galtier, *De poenitentia, tractatus dogmatico-historicus* (Paris 1923), n. 405 ff.

[152] *Suppl.*, q. 9, a. 1. Commentators agree very little in the explanation of this truly difficult text, which Capreolus, Cajetan, John of St. Thomas, the Salamancans, and, among modern authors, Billot (*De poenit.*, thesis 16, p. 162) subtly explain. Perhaps it is better and simpler to say with Dominic Soto (*In IV Sent.*, dist. 18, q. 3, a. 3): "St. Thomas was speaking with the common populace, that is, as a commentator he handed down the opinion of Peter Lombard, which was then common in the schools." Cf. Jos. Göttler, *Der hl. Thomas ... über die Wirkungen des Bußsakr.* (1904), p. 23.

§ 4. On Purpose

354. Definition. Purpose is the will not to sin henceforth. Therefore a mere velleity does not suffice, yet neither is a strict promise or vow of avoiding all sins required. Sometimes, however, the confessor can demand an explicit promise from the penitent if he doubts his sincere purpose.

A twofold purpose is distinguished: one **explicit and formal**, which is a special act distinct from contrition; the other **implicit and virtual**, which is contained in every sincere contrition, since by its nature contrition is a detestation not only of past sins but also of future ones.

355. Necessity. At least implicit purpose is required for the validity of the sacrament. It is better, however, if the penitent, thinking about future life, forms an explicit purpose, and one determined in particular.

Implicit purpose is necessarily contained in every true and universal contrition, and therefore it is equally as necessary as contrition for all mortal sins. And so someone has rightly said that two duties lie upon contrition, namely, to detest past sins and to guard against future sins. And indeed by the very fact that someone vehemently and sincerely detests a past act, he has the will to avoid it in the future. For a thing which is clearly known as detestable is by that very fact avoided, because no one can desire evil as evil. Besides this implicit purpose, certain authors[153] require an explicit and formal purpose because the Council of Trent[154] demands "the purpose of not sinning henceforth"; but this text is not to the point, because it is contained in the very definition of contrition. These are the words: "Contrition, which holds the first place among the aforesaid acts of the penitent, is sorrow of soul and detestation for sin committed, with the purpose of not sinning henceforth." Therefore the Council rather teaches the contrary, since it requires nothing other than that purpose which is contained in contrition itself.[155]

The true opinion, which is rightly called morally certain by several authors, teaches that for obtaining the remission of sins the purpose which is implicitly contained in contrition, whether perfect or imperfect, suffices. Hence the Council of Trent, enumerating the explicit acts which are necessary for the essence of the sacrament of penance, indeed adduces contrition, confession, and satisfaction, but says nothing concerning an explicit act of purpose. Purpose, therefore, is necessary in the same manner as the acts of faith and hope, which are also implicitly required in the penitent. Moreover, in practice it cannot happen that a penitent struck by sincere contrition and thinking about future life should not elicit an express act of purpose, just as also of faith, since he believes in the mercy and justice of God, and of hope, since he hopes to obtain pardon from God and divine aid for avoiding temptations. Ballerini[156] adduces texts of 73 authors, all of whom teach that implicit purpose suffices for the validity of the sacrament.

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[153] Concina, *De sacr. poenit.* l. 1, diss. 3, c. 1, q. 8.

[154] Session 14, c. 4, *On Penance* (Denz., n. 897).

[155] It is useful to note that several authors whom Concina (*De sacr. poenit.* l. 1, diss. 3, c. 1, q. 8) cites for his opinion in fact teach altogether the contrary, for example, St. Thomas, Cajetan, and others.

[156] In the notes to Gury, *Comp. Theol. mor.* II, n. 462.

356. Three qualities of purpose are customarily enumerated: firmness, efficacy, universality.

1. **Purpose must be firm**, at least as to the present affection of the will, although perhaps it may be infirm as to the future event. Firm purpose, therefore, is not the same as constant purpose. Nothing else is required except that the penitent here and now sincerely and firmly purpose that he no longer wishes to sin. Therefore the object of purpose is the actual will, not the future event. Thus "that someone afterward sins ... does not exclude the first penance from having been true."[157] Nevertheless, frequent relapse is not rarely an indication of an infirm purpose.

Several authors[158] rightly observe that only a firm purpose of not sinning henceforth is required, but not necessarily the penitent's persuasion that he will no longer sin or will no longer perpetrate this or that sin. For someone can truly sorrow over and detest sin, and truly and absolutely purpose that he will not sin henceforth, although he greatly fears, indeed certainly believes, that because of the experienced inconstancy of his will and his fragility he will fall again. If the penitent thus loses heart, the confessor must dispose him before absolution so that he may hope that, not by his own strength but by the grace of God, he can avoid sins, saying with the Apostle: "I can do all things in Him who strengthens me." But if the penitent cannot or, rather, will not conceive any hope at all of amendment, he now commits the sin of despair and is not worthy of absolution.

2. **Purpose must be efficacious** as to three things: the penitent must 1. employ the necessary means for avoiding sins, for example, prayer, vigilance, and so forth; 2. avoid the occasion of sinning insofar as he can (what an occasion of sinning is will be stated below, where there will be discussion of those in occasions and recidivists); 3. repair according to his strength the damage which perhaps has arisen to his neighbor from his sins, for example, from the sin of theft. It suffices, however, that the purpose be efficacious affectively, that is, that the penitent here and now have a serious will to execute those things which are necessary for avoiding sins. Let the confessor beware lest he command the penitent something as a strictly necessary means which is in truth only useful.
3. **Purpose must be universal**, inasmuch as it altogether excludes all mortal sins to be committed. But if the penitent confesses only venial sins or includes in confession only free matter, then nevertheless, just as true contrition is required for the validity of the sacrament, so also a true purpose, which must extend either a) to avoiding all mortal sins, or b) to avoiding one venial sin, or c) to amending a determinate species of sins, for example, sins of the tongue, or d) to avoiding all deliberate venial sins, or at least e) to diminishing the frequency of venial sins.

[157] St. Thomas, *S. theol.* 3, q. 84, a. 10 ad 4.

[158] For example, Sporer, *De poenit.* n. 310.

357. Practical admonition. When the faithful frequently confess the same sins, which arise not so much from fragility as from manifest negligence, it is lawful to conjecture, although not to judge with certainty, that

they elicit purposes that are too general or not sufficiently vigorous. Therefore they are to be admonished to elicit contrition and purpose with greater diligence. Not rarely penitents also, especially women, spend a long time in the examination of conscience, seek out the smallest faults with the greatest anxiety, and make long confessions, yet are not so solicitous concerning sorrow and firm purpose. They are to be seriously instructed to insist more upon eliciting perfect contrition and establishing a firm and specially determined purpose, omitting the anxious recital of all venial sins. To increase the firmness of purpose, it is also beneficial for penitents to renew it more frequently after confession, for example, every day.

Article II. On Confession

We divide this article into three paragraphs: 1. on the essence and necessity of confession; 2. on its qualities; 3. on its repetition.

§ 1. On the Essence and Necessity of Confession

358. Definition. Sacramental confession is the accusation of one's own sins committed after baptism, made to a competent priest in order to obtain absolution from them. Therefore three things pertain to the essence of sacramental confession: a) **The accusation of one's own sins.** Hence confession is not a mere historical narration, but properly an accusation made to a spiritual judge; the object of this accusation is one's own sins committed after baptism, and therefore neither original sin, nor another's sin, nor mere imperfections which do not have the character of sin. b) **Confession must be made to a competent priest.** Therefore a confession knowingly made to a layman, as was customary in the Middle Ages, or to a priest who manifestly does not have the necessary jurisdiction, is not sacramental confession. c) **Confession must be undertaken in order to obtain sacramental absolution.** Therefore, if a penitent confesses his sins, for example, to test the confessor or for the sake of counsel, sacramental confession is not present. All these things are indeed to be noted when there is question of the seal of confession, because the obligation of the seal arises from sacramental confession alone and not from another confession.

The necessity of sacramental confession was denied by Wycliffe, who said: "If a man has been duly contrite, every exterior confession is superfluous and useless to him";[159] by Peter of Osma;[160] by Luther, who called confession "a most bloody torture chamber which torments wretched consciences"; by Calvin, who contended that auricular confession was introduced by Innocent III in the thirteenth century; and by modern Protestants, all of whom deny its necessity, although some acknowledge the utility of confession. Against all these it is established:

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[159] Cf. Denz., n. 587.

[160] Ibid., n. 724 ff.

359. Thesis. Sacramental confession is necessary both a) by divine precept and b) by ecclesiastical precept.

a) **Necessity by divine law.** The Council of Trent[161] sets forth Catholic doctrine thus: "The universal Church has always understood that the complete confession of sins was instituted by the Lord and is necessary by divine law for all who have fallen after baptism, because Our Lord Jesus Christ, being about to ascend from earth to heaven, left priests, His own vicars, as presidents and judges, to whom all mortal crimes into which Christ's faithful have fallen are to be brought, so that, by the power of the keys, they may pronounce the sentence of remission or retention of sins. For it is evident that priests could not have exercised this judgment

without the cause being known, nor indeed could they have observed equity in enjoining punishments, if the faithful had declared their sins only in general and not rather in species and individually. From these things it is gathered that penitents must recount in confession all mortal sins of which they are conscious after a diligent examination of themselves, even if those sins are most hidden." From this text two things can be elicited: the necessity of confession introduced by divine law and the object of confession, namely, all mortal sins.

Proof 1. From Sacred Scripture. Although Christ said nothing directly concerning confession, nevertheless He certainly instituted it. For Christ instituted the sacrament of penance in the form of a judgment. But the form of a judgment cannot be observed without confession. Therefore Christ instituted confession. It has already often been said that the sacrament of penance was instituted in the form of a judgment, and this manifestly follows from the words of institution: Whose sins you shall forgive ... they are forgiven ...; whose sins you shall retain, they are retained. For if the apostles and their successors can remit certain sins but not remit others, they must first institute a judgment which is not arbitrary but diligent. Now they cannot institute such a judgment unless they know the sins themselves in particular. Moreover, they cannot know them in the ordinary manner unless the penitent himself has manifested them fully. Therefore confession is indirectly included in the judicial form of the sacrament of penance, and consequently is necessary by divine law, so that without it the sacrament of penance is administered invalidly. Nevertheless, the integrity of confession is not necessarily absolute, but is to be measured according to the strength of each man, since God demands nothing impossible. Therefore, if someone is unable to confess sins because of forgetfulness, or because he is deprived of his senses, he is capable of sacramental absolution.

To prove from Sacred Scripture the divine institution of confession, two further texts are adduced by certain authors, namely, in Acts 19:18 it is read: "Many of them that believed came, confessing and declaring their deeds," and in the Epistle of St. James 5:16 we are admonished: "Confess therefore your sins one to another." These texts can indeed be understood of sacramental confession, as several exegetes teach, though others contradict them.

Proof 2. From tradition. Already in the second century mention is made of confession in the text of the Didache cited above: "But on the Lord's Day, coming together, break bread and give thanks after you have confessed your offenses, so that your sacrifice may be clean."[162] In the third century St. Cyprian[163] says: "Let each one confess his offense, I beseech you, dearest brethren, while he who has offended is still in this world, while his confession can be admitted, while satisfaction and remission made through the priests is pleasing before the Lord." From the writings of Origen it is possible to see that both public and private confession were in use at that time and were employed according to the discreet judgment of the priest. "There is also a seventh remission of sins, although hard and laborious, through penance, when the sinner washes his bed with his tears and his tears become bread for him day and night, and when he is not ashamed to show his sin to the priest of the Lord and to seek medicine."[164] From the fourth century texts of the Holy Fathers abound which speak of sacramental confession, for example, St. Ambrose,[165] who himself heard the confessions of the faithful with great fervor. For Paulinus the deacon[166] relates concerning him: "He was also rejoicing with those who rejoiced and weeping with those who wept, since, whenever anyone confessed his falls to him in order to receive penance, he so wept that he compelled him also to weep.... But the causes of the crimes which they confessed to him he spoke to no one except the Lord alone, with whom he interceded." For many other texts of ancient writers, see Billuart[167] or Tanquerey[168] or Paul Galtier.[169]

Proof 3 is commended from the manifold utility and fittingness of confession. For confession is: a) **An excellent exercise of humility**, by which the ruinous pride of the sinner is subdued. Therefore even the

prodigal son in the Gospel had to say: "Father, I have sinned." b) **A cause of interior peace and security.** For although the sinner endeavors to destroy sin by sincere contrition and satisfaction, nevertheless he often remains doubtful whether he is worthy of the love or hatred of God, since no one is a judge in his own cause; but when he has candidly confessed all his sins to a pious and wise priest and has received absolution and salutary admonitions from him, he obtains peace of soul. Moreover, the confessor, knowing the interior state of the penitent's soul, can counsel him efficacious means for acquiring virtues. c) **A safeguard of social order.** For a prudent confessor urges the observance of divine and human laws, rightly orders the peace of domestic society and the republic, settles quarrels and dissensions, reconciles enemies, requires restitution for violated justice, and repairs or forestalls many scandals.

b) **By ecclesiastical law sacramental confession is likewise necessary.** For the Code of Canon Law, can. 906, establishes: "Every member of the faithful of either sex, after he has arrived at the years of discretion, that is, at the use of reason, is bound faithfully to confess all his sins at least once a year." The Fourth Lateran Council already established similar things in the year 1215.[170]

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[161] Session 14, c. 5, *On Penance* (Denz., n. 899).

[162] Chapter 14, 1; cf. c. 4, 14. Rauschen (*Euchar. u. Bußsakr.* § 10) confidently, but without solid proof, asserts that this confession was not sacramental.

[163] *De lapsis* c. 29 (Migne, *Patr. lat.* 4, 489).

[164] *Hom. in Lev.* 2, 4 (Migne, *Patr. graec.* 12, 418).

[165] *De poenit.* l. 2, c. 1 (Migne, *Patr. lat.* 16, 497).

[166] In Migne, loc. cit. 14, 440.

[167] *De poenit.*, diss. 5, a. 1.

[168] *Synopsis Theol. mor.*, *De poenit.* c. 2.

[169] *De poenitentia, tractatus dogmatico-historicus*, n. 421 ff.

[170] Denz., n. 437.

360. Time of the obligation. 1. The divine precept of sacramental confession obliges both *per se* and *per accidens*.

Per se it obliges the sinner: a) at the point of death or in imminent danger of death, because the sinner must then altogether recover sanctifying grace, which in the present economy of salvation by the will of Christ is not restored to him who is able and neglects to confess mortal sins; hence he sins gravely who, conscious of a mortal sin not yet directly remitted, neglects confession at the point of death or in imminent danger of death. Hence, for example, a gravely ill person who through inculpable forgetfulness omitted a grave sin in confession, and who afterward worthily received Viaticum and Extreme Unction, is nevertheless bound, if he can, to confess the omitted sin before death, although it has already been indirectly remitted; b) several times in life. A sinner confessing at least once each year seems sufficiently to fulfill both the divine and the ecclesiastical precept.

Per accidens the divine precept obliges: a) if the sinner wishes to receive the Most Holy Eucharist; for then elicited contrition does not suffice, as was stated above in nn. 192 ff.; b) when the state of grace is required and the sinner is unable with moral certainty to elicit an act of perfect contrition; c) when a grave temptation and especially an evil habit cannot be overcome without the aid of confession.[171]

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[171] Cf. St. Thomas, *Suppl.*, q. 6, a. 5.

361. 2. The ecclesiastical precept of confession establishes the following:

The **subject** of this ecclesiastical precept is all men capable of the use of reason who are conscious of mortal sin. Therefore neither the completely insane, nor children before the use of reason, nor those who are not conscious of mortal sin are bound to confession.

Before completing the first seven years of age, a person is very rarely obliged to confession. In our regions children are judged to have sufficient use of reason for making confession in the seventh or eighth year of their age.

Since the ecclesiastical precept seems to be nothing other than the determination of the divine precept, which indeed does not prescribe the confession of venial sins, hence he who has not committed mortal sins, either never or at least since his last confession, is not strictly bound to annual confession. Therefore in strict law he could approach Easter Communion without previous confession. Thus the precept of annual confession obliges only sinners, while the precept of Easter Communion obliges absolutely all the faithful capable of the use of reason. Thus the truer and more common opinion.[172] It is evident of itself, however, that it is unbecoming and harmful if someone should refuse to confess even once a year. For 1. he deprives himself of many graces and notably of the grace conferred in the sacrament of penance; 2. he easily errs in judging something to be a venial sin which is in truth mortal; 3. it is unbecoming that someone burdened even only with venial sins should approach the Eucharist. Now it is not likely that one who refuses annual confession cleanses himself from venial sins by other remedies.

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[172] Cf. Code of Canon Law, can. 901; St. Alphonsus, *Theol. mor.* l. 6, n. 667. St. Thomas (loc. cit., a. 3 ad 3 and q. 8, a. 5 ad 4) thinks that even one who has not committed mortal sin ought once a year to present himself to the priest, not indeed to make confession, but so that the subjects may become known to the ruler of the church, lest a wolf lie hidden within the flock. In the time of the Angelic Doctor there still existed a law that the faithful had to make annual confession to their own pastor. Today, however, this law has been abolished, and therefore the faithful who have committed only venial sins are not bound even once a year to present themselves to the pastor.

362. The object of this ecclesiastical precept is the determination 1. of the time, namely, the space of one year, and 2. of the matter, namely, mortal sin.

As regards 1, the Council says: "at least once a year." Theologians do not agree as to how this year is to be computed. Some compute it according to the civil year, that is, from January to the following January; others from Easter to Easter; others think that the year begins from the time when the first mortal sin was committed. Today there exists the universal custom of computing the year from Easter to Easter, so that the faithful who confess during each Easter season do not transgress the precept of annual confession. But if someone guilty of mortal sin has not confessed during the Easter season, he must confess as soon as possible when an opportunity is given, because the ecclesiastical law of annual confession was imposed not to terminate the obligation, but to urge it. But one who did not confess his mortal sins in the preceding year satisfies by a confession made in the present year, nor is he bound to confess again in order to satisfy the obligation of the present year.[173]

As regards 2, only the confession of mortal sins is required. When someone had only venial sins in confession during the Easter season, but shortly afterward commits a mortal sin, according to certain authors he must confess again before the end of the year, for by accusing himself of venial sins he did not fulfill the precept of annual confession; nevertheless, other authors, for example, Ballerini-Palmieri[174] and Génicot,[175] probably

teach that such an obligation is not established. Therefore the faithful who have confessed once in the year commonly think that they have satisfied the precept of annual confession.

The ecclesiastical precept is not satisfied through a sacrilegious confession, as is evident from proposition 14 condemned by Alexander VII: "He who makes a confession voluntarily null satisfies the precept of the Church."[176] Before the Council of Trent it was sometimes required that annual confession be made before one's own priest, that is, the pastor, or at least before another priest with his express permission. Today the faithful can confess before any legitimately approved confessor, even one of another rite.[177]

A twofold penalty was inflicted upon those transgressing this precept of annual confession, namely, interdict from entrance into the church and deprivation of ecclesiastical burial. But each of these penalties was *ferendae sententiae*, that is, it was not incurred except after the sentence of the bishop, and today it is not customarily applied.

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[173] Cf. St. Alphonsus, *l.c.*, n. 668.

[174] *Opus theol.*, *De poenit.*, n. 1061.

[175] *Theol. mor.* II, 323.

[176] Denz., n. 1114; cf. Code of Canon Law, c. 907.

[177] Code of Canon Law, c. 905.

§ 2. On the Qualities of Confession

363. Some qualities of confession are necessary, while others are merely useful. St. Thomas[178] and other ancient theologians enumerated sixteen qualities of confession:

Let confession be simple, humble, pure, faithful,

And frequent, naked, discreet, willing, shamefaced,

Complete, secret, tearful, prompt,

Strong and accusing, and let it be prepared to obey.

Among all the qualities the most necessary is integrity, which will be treated specially below. A few things concerning the other qualities:

1. **Confession should be simple and naked**, and therefore free from all useless words and narratives.

The confessor should in no way permit the penitent during confession to relate certain things which do not pertain to confession. Nor should he himself make useless speeches or questions. St. Antoninus[179] rightly teaches: penitents who need consolation because of tribulations or counsel because of doubts should say such things after confession has been made and absolution given, and should not mingle them in confession, lest the force of contrition be diminished.

2. **Confession should be humble** (that is, both in words and in gestures) **and prepared to obey.**

During confession the penitent should kneel as a sign of humility, unless he is impeded by infirmity or in another way; he should be with head uncovered if he is a man; soldiers should put aside their arms during

confession. The penitent should humbly receive the admonitions, and even the just rebukes, of the confessor, since he must obey the just commands of the confessor.

3. **Pure**, that is, undertaken with a right intention, namely, in order to receive sacramental grace.

Therefore one sins who, in confessing, seeks earthly ends, for example, the goodwill of the confessor, pleasant conversation, and so forth. A confessor perceiving that the penitent's intention is not so pure should admonish him, indeed in a paternal but also vigorous manner, concerning the dignity of confession and the need to have a pure intention.

4. **Discreet and shamefaced**, that is, the penitent should not disclose the sins of others, and especially should not reveal the name of his accomplice. Moreover, when speaking of sins against the sixth commandment, he should employ modest words, yet without thereby injuring objective truth.
5. **Strong and accusing**, that is, however much the penitent may be ashamed, he should nevertheless strongly accuse himself of his sins, saying to himself: If I was not ashamed to commit them, neither ought I to be ashamed to confess the sins committed.

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[178] *Suppl.*, q. 9, a. 4.

[179] *S. theol.* P. 3, c. 19, tit. 14, § 12.

364. 6. Faithful, that is, without any lie. Concerning a lie made in confession the following things are to be noted: if someone lies about a grave matter which must necessarily be declared, he commits grave sacrilege. But to lie about some matter which does not necessarily pertain to confession is a sin according to the quality of the matter.

Thus, for example, he sins gravely who in confession denies a circumstance changing the species of a grave sin, and likewise he who speaks a grave calumny concerning his neighbor; but he who denies some venial sin committed or a mortal sin already previously remitted, or lies about indifferent matters, sins venially, at least *per se*. Nevertheless, every lie made in confession, even one objectively light, introduces an aggravating circumstance, since it is great irreverence toward the sacrament to sin at the same time at which remission of sins is sought.[180] A penitent does not *per se* sin against fidelity if he confesses mortal sins to an unknown confessor and afterward tells venial sins to his ordinary confessor, provided that he never receives this second absolution before he has been duly absolved from the mortal sins. In practice, however, attention must be given to the motive for which this manner is chosen. If the penitent intends the deception of his ordinary confessor, his own glory, or something else inordinate, he certainly commits a more or less grave sin; but if he acts thus from the shame with which he would be suffused because he knows the confessor familiarly, he does not sin. Therefore the confessor should never inquire curiously concerning a confession made elsewhere, nor show that it displeases him if the penitent has confessed to another priest.

There are still several other ways in which fidelity is more or less injured, for example, if someone accuses a recent sin as an old one, or if the penitent makes a general confession in which he deliberately does not distinguish sins perpetrated since the last confession from those which were committed previously. Indeed, *per se* the circumstance of time does not gravely violate the fidelity of confession; *per accidens*, however, when, namely, the confessor's right judgment concerning the present state of the penitent is thereby impeded, it is a grave violation. That such a manner of acting is always blameworthy is evident of itself; but after Lugo certain authors, such as Gury, D'Annibale, Bucceroni, and especially Noldin-Schmitt,[181] teach that the penitent neither

sins gravely nor gravely injures the fidelity of confession, although he deliberately deceives the confessor by declaring that a sin which he actually committed recently and has not yet confessed was committed a long time ago. Everyone sees that by such a manner of acting the confessor is deceived so gravely that he can no longer judge rightly concerning the present state of the penitent. Therefore the reasons adduced for this opinion seem to be specious rather than solid, and it would be most dangerous if this opinion were reduced to practice. But the fidelity of confession is injured little and not gravely if the penitent disguises his voice or employs other means lest he be recognized by the confessor. When a legitimate cause exists and a right intention is had, however, such disguise is not sinful.

The penitent is also bound to respond faithfully and sincerely to a confessor legitimately questioning him; but he can decline illegitimate questions, for example, concerning his name, country, or place of residence, by refusing an answer or by employing a broad mental restriction.

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[180] Cf. Concina, *De poenit.* l. 1, diss. 4, c. 3, n. 6.

[181] *De sacr.*[17] III, n. 283.

365. 7. Vocal, that is, expressed in words, but not by a nod, signs, or writings, unless a just cause is present.

Theologians commonly teach that he who without a just cause confesses in writing or by nods sins gravely, because he acts against the universal and most just custom of the Church. But he who physically or morally cannot confess vocally can confess in other ways whenever the precept of confession urges. The reason is that vocal accusation does not belong to the essence of confession. For Christ, in instituting confession, strictly requires nothing other than a sorrowful manifestation of sins. Therefore the confession of the mouth which is required by the Council of Florence is nothing other than any confession externally manifested. Theologians commonly teach that in a case of physical or moral impossibility of speech a man not only can but also must confess by writings or nods,[182] because the inconvenience of writing sins is not customarily so great that it excuses from the grave divine precept of confession. Nor should anyone say: A man is not bound to write sins lest they fall from his memory. Therefore he is never bound to confess by writings. For the necessity of confession itself in itself is much greater than the necessity of its material integrity.[183] Thus, for example, a mute person is accustomed to confess by writings or signs; likewise, if the confessor is somewhat deaf, confession can be made by writings or signs, lest bystanders hear the accusation. Always, however, insofar as it is possible, the penitent should say vocally these or similar words: I accuse myself of the sins which I have manifested to you, and I ask for absolution,[184] as was already said above.

8. **Secret.** Although in ancient times public confession was in use, nevertheless today no one is obliged to confess sins if this cannot be done except publicly.

Hence, for example, no one ignorant of the language of the confessor is bound to confess through an interpreter. The Code of Canon Law, c. 903, establishes that one who wishes to confess through an interpreter is not to be prohibited; indeed, certain theologians, for example, Faustinus Scarpazza, O.P.,[185] teach that at the point of death a sinner must confess through an interpreter if this can easily be done. An interpreter employed in this case is bound to preserve secrecy concerning the sins heard. By employing some shrewdness, it can be obtained that the interpreter knows almost nothing of the confession heard. For if the confessor puts questions which the interpreter repeats in the language of the penitent, and to which the penitent responds not by voice but by signs which the confessor alone sees or perceives, but not the interpreter, sufficient integrity of confession can be had without the interpreter knowing the answers given by the penitent.

The principal quality of confession is its **integrity**. Three points concerning it must be explained individually: I. the necessity and extent of integrity; 2. excusing causes; 3. means for obtaining integrity.

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[182] St. Thomas, IV Sent., dist. 17, q. 3, a. 4, sol. 3 ad 2; St. Alphonsus, *Theol. mor.* l. 6, n. 479. The contrary is taught by Gopfert, *Moraltheol.* III, n. 117; Noldin-Schmitt, *De sacr.*[17], n. 279.

[183] Cf. Billuart, *De poenit.*, diss. 7, a. 3, § 1.

[184] Already Gratian (c. 88, dist. 1 *De poenit.*; this canon is taken from the book *De vera et falsa poenitentia*, which is falsely ascribed to St. Augustine) indicates the reason why confession should be vocal, namely, as a sign of true penance: "The Lord commanded those to be cleansed that they show their mouths to the priests, teaching that sins are to be confessed by bodily presence, not manifested through a messenger, not through writing.... You who have sinned through yourselves, be ashamed through yourselves. For shame itself has a part in remission. Indeed, from mercy the Lord commanded this, that no one should repent in secret. For in this, that he tells it to the priest through himself and conquers shame through fear of Him offended, the pardon of the crime is effected. He has offered much satisfaction who, mastering shame, denied nothing of those things which he committed to the messenger of God." Concerning this matter, see the decrees of Clement VIII and Paul V above, n. 330.

[185] *Theol. mor.* IX, 89.

1. The Necessity and Extent of Integrity

366. A. Necessity. As is evident from the text of the Council of Trent cited above, a man is bound to confess all mortal sins committed after baptism, insofar as this can morally be done. Hence a twofold integrity is distinguished: a) **material**, which comprises absolutely all mortal sins committed after baptism and not yet directly remitted, according to species, number, and circumstances changing the species; b) **formal**, which comprises all those mortal sins which the penitent, here and now and with all the circumstances considered, can and must confess.

Principle 1. The material integrity of confession is not always necessary for the valid and licit reception of the sacrament of penance.

For Christ in His merciful benignity did not wish to require from sinful man something which is morally or physically impossible, as material integrity sometimes is. Moreover, the law concerning the integrity of confession is a positive law. But a positive law ordinarily does not oblige in a case of grave inconvenience, as was said above in the treatise on laws. Hence the Council of Trent[186] also says: "But the remaining sins which do not occur to one thinking diligently are understood to be included universally in the same confession; for these we faithfully say with the Prophet: From my hidden sins cleanse me." What holds for sins omitted through forgetfulness also holds for sins not accused because of another grave cause. What the just causes excusing from material integrity are will be stated below, n. 378.

Principle 2. Formal integrity is altogether required for a valid and licit confession.

This integrity is equally as necessary for the sacrament of penance as water is for the sacrament of baptism. For the divine precept of declaring all mortal sins committed certainly refers to those sins which here and now can and must be declared. The same is evident from the Council of Trent,[187] which declares it necessary by divine law to confess all and each of the mortal sins of which memory is had with due and diligent examination beforehand, even hidden sins and those which are against the last two precepts of the Decalogue, and the circumstances which change the species of the sin.

B. The extent of integrity is to be considered as regards 1. the species of sins, 2. their number, 3. their circumstances, 4. the external act, 5. the effects, 6. doubtful sins.

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[186] Sess. 14, c. 5, *On Penance* (Denz., n. 900).

[187] Sess. 14, c. 5, *On Penance* (Denz., n. 899).

367. 1. The lowest species, both theological and moral, of mortal sins must be declared. This follows manifestly from the Council of Trent,[188] which says: "... Priests could not have exercised this [sacramental] judgment without the cause being known, nor indeed could they have preserved equity in imposing penalties, if they [the penitents] had declared their sins only in general and not rather in species and individually." These words "in species" are to be understood of the lowest species, because the name of species is always to be understood thus unless the contrary is altogether apparent. The reason for this precept is that otherwise the confessor cannot judge sufficiently concerning the state of the penitent.

Therefore the divine precept of making confession is not satisfied if, outside a case of necessity, the penitent accuses himself in the following ways: I have sinned mortally; I have sinned against justice, against chastity, and so forth. I say: outside necessity; for if the penitent cannot, because of forgetfulness, danger of death, scandal, and so forth, confess the lowest species of mortal sins, a generic accusation now suffices, as was said above, n. 325.

Sometimes it is morally impossible to ascertain from penitents who are little instructed the lowest species especially of internal sins. For they are unable to distinguish, for example, between morose delectation, joy, and desire, or between obscene words and words which are merely filthy. But in these cases the confessor should abstain from inopportune questions, since they are useful for nothing and instead disturb the penitents or affect them with weariness. The same holds for ascertaining the exact number of these sins. For, as St. Alphonsus rightly observes, such penitents then answer whatever comes into their "mouth."

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[188] *Ibid.*

368. 2. The number of mortal sins must likewise be declared in confession, insofar as this is morally possible. For the Council of Trent[189] says that all and each of the sins are to be accused. Therefore the penitent does not confess sufficiently by saying, for example: I have fornicated often; but he is bound according to his strength to accuse himself of the correct and certain number of sins. Likewise, he sins if he notably increases or diminishes the number. Hence, if a false number of grave sins was indicated, the penitent must declare the true number in the following confession. Theologians nevertheless teach that a penitent who in good faith expressed a notably greater number is not bound to correct this error, because the true number is contained in the greater number indicated. It is otherwise if the number was notably diminished.

A penitent who, after making a diligent examination of conscience, could not find the exact number of sins must determine it in the best way he can by employing the word "approximately." What number is judged to be comprehended in the particle "approximately" cannot be determined by an altogether certain rule. Certain authors say: approximately three is understood as 2 or 4; approximately ten as 8 or 12; approximately thirty as 27 or 33; approximately one hundred as 95 or 105; approximately one thousand as 950 or 1,050.[190] But if not even a probable number can be had, the habit of sinning, the duration, and the frequency in a day, week, or month are to be stated. Hence Noldin,[191] from Sporer-Bierbaum, notes that it suffices, for example, if a prostitute says: For two years I remained in prostitution and, as often as there was an occasion, I made my body available even to married men, and so forth; or if a man given to lust says: I lusted after any women who came my way, even relatives, married women, and so forth; or: On every given occasion I spoke with any companions about most filthy matters. A penitent who in confession in good faith indicated the number of mortal sins approximately is not bound to confess again if afterward he should happen to find the accurate

number. The reason is that the confessor was already able to judge sufficiently concerning the state of this penitent.[192]

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[189] *Ibid.*

[190] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 466.

[191] *De sacr.*[17], n. 277.

[192] St. Alphonsus, *l.c.*, n. 478.

369. 3. Circumstances changing the species of mortal sins must be declared in confession. This is evident from the Council of Trent.[193] Which circumstances change the species of a sin was stated above, I, nn. 117 and 373. The general rule is: a circumstance changes the species of a sinful act when it adds a new malice gravely repugnant to another virtue. Thus, for example, theft injures the virtue of justice; but theft committed in sacred things additionally injures the virtue of religion; fornication injures the virtue of chastity, but fornication committed with blood relatives additionally injures the virtue of piety. Besides these circumstances which change the **moral** species of the sin, there are still others which change the **theological** species, that is, which render mortal a sin *per se* venial; for example, the theft of a small coin is a venial sin, but the circumstance of a large quantity in theft, for example, the theft of 1,000 francs, constitutes a grave sin. These circumstances are also customarily called "aggravating unto infinity," and it is evident of itself that they are to be declared in confession.

There is, however, a grave controversy as to whether other circumstances which change neither the moral nor the theological species, but only aggravate the malice, must also be manifested in confession.

All indeed agree that circumstances which aggravate only slightly need not necessarily be accused; but if there is question of notably aggravating circumstances, theologians do not agree. Some, for example, Suarez, Billuart, Concina, Lacroix, and others, defend the affirmative opinion; others, for example, St. Antoninus,[194] St. Thomas,[195] St. Bonaventure,[196] St. Alphonsus,[197] and almost all modern authors, deny such an obligation, although in practice they counsel the confession of all notably aggravating circumstances. Neither opinion is certain, but the negative opinion seems better, whatever Concina may say.[198]

For a) the Council of Trent maintains a profound silence concerning this matter in that place where it accurately declares what must be manifested in confession, namely, all and each mortal sin and the circumstances which change the species of the sin. It is altogether impossible to understand why the Council, explaining *ex professo* the necessary matter of confession and designating circumstances changing the species, should have omitted notably aggravating circumstances if their confession were absolutely necessary. Moreover, nothing is had concerning such an obligation either in Sacred Scripture, in tradition, or in the Code of Canon Law, c. 901. Therefore it can be said with moral certainty that notably aggravating circumstances need not *per se* necessarily be manifested. *Per accidens* such an obligation will often be present, as will be explained below.

b) St. Thomas also denies that notably aggravating circumstances must always necessarily be accused. For he says: "Certain persons say that all circumstances which add some notable quantity to a sin must of necessity be confessed if they occur to the memory. But others say that only circumstances which draw the act into another genus of sin must of necessity be confessed, and this is more probable, ... the reason for which is that venial sins need not of necessity be confessed, but only mortal sins, which in a certain manner have an infinite quantity."[199] And elsewhere he writes: "A man is not bound to confess aggravating circumstances which do not draw the act into another genus of sin, just as neither is he bound to confess venial sins, although it is

praiseworthy that a man confess them."[200] Certain persons respond to these texts that St. Thomas indeed taught thus when he was younger, but that it was more likely that he would have changed this opinion if he had lived longer. But to answer thus is to divine rather than to teach. Others say that the Angelic Doctor speaks only of those circumstances which are after the manner of a venial sin and therefore aggravate the malice only lightly, but not of notably aggravating circumstances. This explanation also pleases little, because it is difficult to reconcile with the texts themselves which were adduced.

Since these things are so, a strict obligation always to declare notably aggravating circumstances is not to be asserted. For confession is already sufficiently burdensome of itself, and therefore the burden of accusing notably aggravating circumstances is not to be added unless a clear divine or ecclesiastical precept is present. But no one can prove the existence of such a precept, whatever Concina may assert.[200] Nor should anyone say that the very nature of sacramental judgment necessarily requires such a manifestation. For sacramental judgment cannot be perfect in every respect, since the confessor often cannot judge clearly, for example, when hearing the confession of a sinner who has not confessed for a long time, or when giving absolution to a dying person deprived of his senses, to those who are half-witted, to children, and so forth. Therefore, from the will of Christ alone depends the degree to which perfection must be present in sacramental judgment. But the will of Christ has not been manifested to us concerning the confession of notably aggravating circumstances.

Almost the sole argument for the affirmative opinion is taken from the Roman Catechism,[201] whose authority is assuredly the greatest and which seems to defend this opinion: "Nor is it necessary only to explain grave sins by recounting them, but also those things which surround each sin and greatly increase or diminish its depravity." Diverse explanations of this text have been devised, namely, that the Roman Catechism speaks only of those circumstances which change either the moral or theological species; or, if it speaks also of other circumstances, that it establishes this obligation only *per accidens*, or rather counsels it than inculcates it. Whatever the case, a strict obligation to confess such circumstances cannot be established from the cited text alone.

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[193] *Ibid.*; cf. Code of Canon Law, c. 901.

[194] *S. theol.* P. 3, tit. 14, c. 19, § 7.

[195] IV Sent., dist. 16, q. 3, a. 2, sol. 5.

[196] IV Sent., dist. 17, P. 3, a. 2, q. 3.

[197] *Theol. mor.* l. 6, n. 468.

[198] *De sacr. poenit.*, diss. 4, c. 6.

[199] IV Sent., dist. 16, q. 3, a. 2, sol. 5.

[200] *Opusc.* 12, *Ad lectorem Bisuntinum.* Blessed Albert the Great, the teacher of St. Thomas, says concerning the same matter: "I answer without prejudice, according to the ancient doctors, that circumstances need not be confessed except those which draw the act into another genus of sin; it is safe also to state the others, especially if conscience pricks someone, but nevertheless they say that he is not bound by precept" (IV Sent., dist. 16, a. 24, sol.).

[201] P. 2, c. 5, q. 47.

370. *Per accidens*, notably aggravating circumstances must often be manifested, for example:

a) **By reason of reservation.**

Thus the striking of a religious or of a cleric not constituted in a dignity, at the instigation of the devil, is a case reserved to the proper Ordinary; but the striking of a bishop or Cardinal is punished with

excommunication specially reserved to the Supreme Pontiff. Therefore the penitent must confess the character of the striking, although this circumstance of the sin of sacrilege is only aggravating and does not change the species.

b) **By reason of the occasion or habit of sinning.**

For although the occasion or habit of sinning does not essentially change the sin itself, for example, the sin of fornication committed from habit does not differ essentially from fornication rarely committed, nevertheless it is certain that the confessor can question the penitent concerning the habit and occasion, and that the penitent must then answer truthfully. This is evident from proposition 58 condemned by Innocent XI on March 2, 1679: "We are not bound to confess to a confessor questioning us the habit of some sin." The reason is that otherwise it is impossible for the confessor to form a right judgment concerning the state of the penitent and the means to be employed.

c) **By reason of satisfaction and of other things to be performed after confession.**

This occurs especially in restitution to be made. Thus, for example, the confessor will act differently with a penitent who stole 50 francs and with one who defrauded another of 50,000. He will impose one satisfaction upon him who, once aroused by anger, hated an enemy, and another upon him who has already had implacable hatred for an entire year. Billuart[202] treats excellently the controversy concerning the obligation of confessing notably aggravating circumstances.

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[202] *De poenit.*, diss. 7, a. 2, § 3.

371. Admonition. In practice penitents are to be strongly exhorted to confess notably aggravating circumstances, both to render the judgment of the priest easier and to exercise humility and avoid errors in their own cause. In the matter of the sixth commandment, however, it is commonly better to manifest nothing except the species and the circumstances changing the species. For there are in this matter certain notably aggravating circumstances whose manifestation penitents dread, and which the confessor himself ought to forestall, since it is not altogether necessary, because of the sanctity of the sacrament and for other grave causes.

372. Solutions. From what has been said, practical solutions easily follow.

a) Incest between blood relatives and relatives by affinity do not differ in species, and therefore it suffices simply to accuse oneself of incest.[203] According to the most common opinion, the first degree of the direct line must be expressly declared in confession, namely, carnal sins between father and daughter, mother and son, father-in-law and daughter-in-law, son-in-law and mother-in-law. In practice at least the first degree of the collateral line must also be manifested because of the proximate occasion of sinning, which is then customarily present.[204]

b) The circumstance of a **sacred time** need not *per se* necessarily be manifested, unless, however, the sinner specially intended the violation of the sacred time. Therefore it need not necessarily be stated whether, for example, lust was committed on a Sunday or on Easter, and so forth.[205]

c) The **number of persons with whom someone sinned** need not *per se* necessarily be accused. It suffices to state the number of sins.[206] Therefore one who fornicated with three different prostitutes confesses sufficiently by saying: I fornicated three times. But if the confessor suspects that the penitent lives in a proximate occasion or that a multiple injury arose from the sin, he has the right to ask whether there was one accomplice or more than one. The penitent is then bound to tell the truth.

d) A religious priest sinning against chastity confesses sufficiently by saying: I sinned against the public vow of chastity. The reason is that the vow emitted in the subdiaconate and the public vow emitted in religion are made from the same motive. Theologians commonly teach, however, that in this case the public vow must necessarily be manifested; hence an accusation of the transgression of a simple private vow would be insufficient. The reason is that the transgression of a public vow, even a simple one, is true sacrilege, which cannot be said so certainly of the violation of a simple private vow.[207]

e) In sins of hatred the condition of the person held in hatred must be declared if from the hatred not only charity but also another virtue is gravely injured. Therefore the penitent must confess, for example, hatred of his father.

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[203] *S. theol.* 2, 2, q. 154, a. 9 ad 2.

[204] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 470.

[205] Cf. above, II, n. 492.

[206] Thus the more common opinion, which Concina (*De sacr. poenit.* l. 1, c. 31) nevertheless thinks too lax.

[207] Cf. above, II, n. 544.

373. 4. An external act is often joined with an internal sinful act. Although sin is essentially situated in the internal act of the will, nevertheless all theologians teach that not only the internal but also the external act of sin must necessarily be declared. Therefore it does not suffice, for example, if an adulterer confesses: I had the intention of committing adultery; but he must say: I committed adultery. The reason is that otherwise the confessor cannot judge rightly concerning the state of the penitent. For he will judge differently concerning a penitent who actually committed adultery and concerning a penitent who only intended adultery. Under the name of an external act is understood not only a positive act perpetrated, but also the omission of a prescribed external act. Therefore neither does it suffice to confess: I had the intention of omitting Mass; but one must say: I omitted Mass.

374. 5. The external and foreseen effect of a sin is commonly to be accused in confession, and thus also holds the universal custom of the faithful who confess. The reason is the same; for even the foreseen effect of a sin, although it does not have a malice proper to itself, just as neither does the external act, nevertheless participates in the malice of the internal act and constitutes with it one moral whole. All theologians teach that the effect of a sin must sometimes be accused *per accidens*, for example, if from the effect a censure or reservation or obligation of restitution is incurred. But even *per se* such an obligation more probably exists when the effect was not retracted to the extent possible and was foreseen at least in a confused manner. For such an effect is the completion of the internal act and is voluntary at least in its cause.[208]

Thus, for example, a young man reading an obscene book and foreseeing that pollution would thence follow must confess: I read an obscene book with foresight of the future pollution, which also actually occurred; or a man making himself drunk and foreseeing that omission of Mass would thence follow must say in confession: I was drunk with foresight of the omission of Mass, which also actually occurred; or more briefly: I was voluntarily drunk and thence omitted Mass. But if the effect of the sin was retracted in the mind, although it could no longer be retracted externally, certain authors, especially Lugo,[209] deny that a strict obligation of confessing it is present. The reason is that such an effect is not properly a sin but only something physical following from sin. But sins alone are to be manifested in confession. Thus, for example, according to these authors, one who administered deadly poison to an enemy must confess: I gave deadly poison to an enemy,

and he can remain silent about the death which actually followed from it. Nevertheless, in practice this opinion is to be abandoned, and in fact it is customarily abandoned both by confessors and by penitents.

[208] Several theologians, according to Lugo (*De poenit.*, disp. 16, n. 440), teach the contrary.

[209] *Ibid.*; cf. Gury-Ballerini, *Comp. Theol. mor.* II, n. 490.

375. 6. Doubtful sins need not necessarily be accused if the doubt concerning the existence of a mortal sin or concerning its confession not yet having been made is negative or little founded. Thus all authors. The reason is that otherwise a broad way would be prepared for innumerable scruples and anxieties. On the contrary, doubtful sins which are much more probably mortal and not yet confessed are to be accused, although some slight reason exists that they are not mortal or have already been accused. The reason is that so slight a reason does not excuse from confession, and otherwise the reins would be given to laxism.

But if the doubt is **positive and truly founded**, then one must act otherwise. The doubt can concern: a) the very act of sin; b) the gravity of an act certainly committed; c) the confession of a certainly grave sin. Therefore a threefold question can be proposed:

Must sins necessarily be accused which are: a) doubtfully committed, b) doubtfully mortal, c) doubtfully confessed?

There are authors, such as Ballerini,[210] Noldin,[211] Génicot,[212] and Tanquerey,[213] who answer all three questions simply in the negative, or deny that there is a strict obligation of confessing them; but these authors and all theologians also counsel the confession of doubtful sins unless the penitent is scrupulous. For the sake of clarity, each question must be answered separately:

a) **If there is question of a sin doubtfully committed, there is not *per se* a strict obligation of confession.** Thus the more common and more probable opinion.[214] The reason is that a sin doubtfully committed is not even sufficient matter for absolution, since absolution cannot be given, at least absolutely, concerning a sin doubtfully committed. Therefore, *a fortiori*, such a sin is not necessary matter of confession. Moreover, the Council of Trent requires only the confession of mortal sins of which the penitent has consciousness. But it cannot be said absolutely that the penitent has consciousness of a sin if a true doubt exists.

Nor does St. Thomas seem to be opposed to this opinion, although this is said by its adversaries. Behold the words of the Angelic Doctor:[215] "When someone doubts concerning some sin whether it is mortal, he is bound to confess it while the doubt remains. For he who commits or omits something concerning which he doubts whether it is a mortal sin sins mortally by exposing himself to danger. And likewise he exposes himself to danger who neglects to confess that which he doubts to be mortal; nevertheless, he should not assert that it is mortal, but should speak doubtfully and await the judgment of the priest, whose office it is to discern between leprosy and leprosy." For the Angelic Doctor does not seem here to speak of a sin doubtfully committed, but of a sin certainly committed yet doubtfully grave, because a sin doubtfully committed is not certainly leprosy; nor does the confessor then discern between leprosy and leprosy, but between leprosy and non-leprosy.

Per accidens, however, sins doubtfully committed must be manifested: a) at the point of death, and an act of contrition does not seem to suffice if there is then an available confessor,[216] for a man is then bound to choose that which is safer; b) in a practical doubt, in order to seek counsel for the future.

[210] In the notes to Gury, *Comp. Theol. mor.* II, 477 sqq.

[211] *De sacr.*[17], n. 280.

[212] *Theol. mor.* II, 290.

[213] *Synopsis Theol. mor.*, *De poenit.*, n. 289.

[214] Cf. Gury, *Comp. Theol. mor.* II, n. 477.

[215] *Suppl.*, q. 6, a. 4 ad 3.

[216] St. Alphonsus (*Theol. mor.* l. 6, n. 473) thinks that an act of contrition alone then suffices.

376. b) If there is question of a sin certainly committed but doubtfully grave, the following practical rules are to be observed, according as there is question either of doubtfully grave matter or of perfect consent doubtfully given. For this doubt cannot arise except from this twofold source; for example, someone took 5 francs and doubts whether this matter of theft is grave; or someone lingered for some time in morose delectation and doubts whether he gave full consent.

Rule 1. In doubt concerning the gravity of the matter, penitents, especially the uninstructed, must declare sins of this kind. For it is almost impossible for the penitent alone then to form a right conscience for himself.

Rule 2. In doubt concerning full consent or perfect advertence, the principle admitted by all is to be employed: "One must stand for that for which the presumption stands."[217] If the penitent is of a timorous conscience and is not accustomed to sin gravely, the presumption stands for him, and therefore he is not bound to confess a sin to which he did not certainly give consent. But if the penitent is of a lax conscience and often falls into mortal sins, the presumption stands against him, and therefore he is bound to confess that doubtful sin. Finally, if the penitent keeps a middle way between scrupulosity and laxity, then, unless it is much more probable that sufficient consent or advertence was lacking, the doubtfully grave sin must be manifested, "because this seems to be the universal and inveterate practice of the faithful, and therefore it is supposed to have emanated from the institution of Christ and to have been observed through tradition until now."[218]

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[217] St. Alphonsus very well observes: "Likewise, those who are of a timorous conscience and are not accustomed to sin gravely and deliberately must be exempted from the obligation of confessing doubtful mortal sins. For these, in doubt, can reasonably, indeed with moral certainty, believe that they did not consent, because the presumption is taken from things which commonly occur.... The *a priori* reason for this is that he who habitually adheres to God and greatly fears lest he be deprived of divine grace, if it happens at some time that he turns away from Him, must inflict great violence upon himself in order to despise the remorse of conscience and cast himself deliberately into sin. But he cannot do this unless he certainly adverts to the evil which he embraces, for, as the most learned Father Alvarez says: Full consent in mortal sin is such iniquity that it cannot be hidden or unknown, but while recent it is easily recognized. Hence the Lord said to St. Teresa: No one loses Me unless he certainly knows it.... Conversely, the opposite is to be judged concerning one who is accustomed easily to fall into mortal sins, because in doubt this man is presumed to have consented; for if he had resisted, he would certainly remember that effort which he made to repel the temptation. Hence Croix rightly concludes that scarcely ever in men of this kind, of both the first and the second class, is there a merely negative doubt. For the presumption establishes the probability of consent given or dissent" (*Theol. mor.* l. 6, n. 476).

[218] St. Alphonsus, *Theol. mor.* l. 6, n. 474.

377. c) If there is question of a mortal sin certainly committed but doubtfully confessed, it must be accused, unless, however, the doubt concerning the confession having been made is very slight. The reason is that, since the mortal sin is certain, the obligation of confessing it is also certain. But a certain obligation cannot be satisfied by a doubtful fulfillment.

Thus authors commonly teach who are not pure probabilists, with St. Alphonsus,[219] who nevertheless adds: "Nor do I reject ... that one who was diligent in confessing his sins, if afterward he doubts whether he omitted some sin after much time has elapsed since he committed it, is not bound to confess it, since in that case he can believe with moral certainty that he has already confessed it. And Father Concina adds that if someone previously fell into many sins from a depraved habit and afterward was truly converted through constant integrity of life; if he then doubts whether in a general or particular confession made with due diligence he omitted some sin or circumstance, the confessor should forbid him even to think again about his past life, but rather should command him to spend his time in pious meditations." Therefore, in practice, a penitent who seriously and with foundation doubts whether he omitted a mortal sin or a specific circumstance in his last confession, made not so long before, must declare this sin or circumstance in the following confession. But if the penitent doubts about the confession of some sin committed a long time ago and always had the custom of confessing well, he is not bound to manifest this doubtfully confessed sin. The confessor should not permit scrupulous penitents to accuse again sins doubtfully confessed, because otherwise their scruples are customarily increased still further.

[219] *Ibid.*, n. 477.

2. Causes Excusing from Material Integrity

378. Excusing causes can be reduced to two heads, for they are either physical or moral inability. It must be noted, however, that those sins which because of physical or moral inability were not accused in confession must be manifested, not indeed as soon as possible, but **in the following confession**, if the inability has ceased. The reason is that, although those sins were indirectly remitted, nevertheless the divine precept of explicitly confessing all mortal sins not yet directly remitted still remains.[220] But if the inability perseveres, confession does not oblige.

[220] Cf. proposition 11 condemned by Alexander VII, cited below under n. 4.

379. Physical inability is judged to be present in the following or similar cases, namely, if there exists:

1. **Extreme illness.**

Namely, if a man is so infirm and near death that he can no longer speak or think sufficiently. Since contrition is much more necessary than materially complete confession, the confessor approaching a very weak sick person should strive more to elicit with him acts of true contrition than to inquire concerning the material integrity of the confession.[221]

2. **Defect of speech.**

Hence there are excused: a) mute persons who cannot confess by signs or writings all sins and specific circumstances; b) those ignorant of the language when the obligation of confession urges and access to another confessor knowing the language is not open. In this case confession through an interpreter is indeed to be counseled, but not imposed (cf. above, n. 365, 8).

3. **Lack of time because of imminent danger of death.**

For example, when shipwreck or battle is imminent, those in danger of shipwreck or soldiers can be absolved even though they have not confessed all their sins. In other cases, however, lack of time never excuses from material integrity. Hence even amid the greatest concourse of penitents the confessor cannot licitly dispense with the integrity of confession, even if the penitents must then wait longer or even depart without confession. Therefore Innocent XI condemned proposition 56: "It is lawful sacramentally to absolve those only half-confessed because of a great concourse of penitents, such as can occur, for example, on the day of some great feast or indulgence."[222]

4. **Invincible ignorance or forgetfulness.**

Therefore a penitent who cannot remember some sin committed is validly and licitly absolved. It is evident of itself, however, that such a penitent is bound to employ serious diligence in order to remember all the sins committed, and must accuse himself of them if afterward the sins again come to mind. Therefore Alexander VII condemned proposition 11: "We are not bound in the following confession to declare sins omitted or forgotten in confession because of imminent danger of life or because of another cause."[223]

Many authors[224] teach that a grave sin omitted through forgetfulness but afterward coming to mind must be submitted to the keys of the Church before Communion, because according to the Council of Trent[225] no one conscious of mortal sin can approach the Most Holy Eucharist. But such a man is still conscious of mortal sin. This doctrine is assuredly to be commended if it can be put into execution without inconvenience; but if repeated confession cannot be made without inconvenience, it suffices and is required that this omitted sin be declared at least in the following confession. This opinion rightly seems to St. Alphonsus[226] altogether consonant with reason, because such a sin omitted through forgetfulness was certainly remitted and the penitent is in the state of sanctifying grace.

There is no strict obligation of committing sins to writing lest they slip from memory. For this is judged by several authors to be an extraordinary means; cf., however, below, n. 384.

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[221] Cf. above, n. 326.

[222] Denz., n. 1209.

[223] Denz., n. 1111.

[224] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 257.

[225] Sess. 13, c. 7, *On the Eucharist* (Denz., n. 880).

[226] *Theol. mor.* l. 6, n. 257.

380. Moral inability is present if the material integrity of confession cannot be had without a great moral inconvenience which is external to the confession itself and joined with it *per accidens* here and now. It is very necessary to observe, however, that not every inconvenience internal to confession excuses from its material integrity, for example, great repugnance and shame, loss of one's own reputation with the confessor, and so forth. Therefore the conditions required for this moral inability are the following: 1. that from particular and external circumstances of the confession there arise a grave inconvenience, corporal or spiritual, either to the penitent, the confessor, or a third person; 2. that this confession cannot be deferred without grave inconvenience, for example, because the necessity of communicating or celebrating urges; 3. that this confession cannot be made without grave inconvenience before another confessor with whom the same difficulties do not arise. Examples of such moral inability are:

1. **Excessive scrupulosity of the penitent.** Cf. above, I, n. 323, concerning the so-called privileges of the scrupulous.

2. **Danger to the life of the penitent, the confessor, or a third person.**

For example, if during a plague the confessor fears contagion; if during a persecution the penitent gravely fears agents sent against him.

3. **Danger of scandal or a fall, either on the part of the penitent or on the part of the confessor.**

For example, a woman cannot confess except before a priest whom she knows with certainty to be very prone to lust. If this woman were now to manifest her own lustful desires toward the priest, he would very probably sin. In this case the woman must conceal these sinful desires. In practice such a case is exceedingly rare. According to certain authors this excuse also exists if a venerable pastor falls into a shameful sin against chastity which he must confess to a young vicar fragile in virtue. For perhaps the pastor could persuade himself that the vicar, hearing that a sin of this kind had been perpetrated by a respected priest, would imitate the evil example heard or would altogether lose heart.[227]

4. **Danger of violating the seal.**

For example, a confessor cannot confess his own sin without manifesting the sins of some person heard in confession; or if a somewhat deaf person confesses while others are standing nearby; or if the confessor speaks too loudly in the confessional; or if a gravely ill person who cannot be left by his attendants confesses; or if the penitent fears that the confessor will indirectly violate the seal, which case can indeed be supposed only very rarely. According to certain authors, such an excuse exists if a vicar living with the pastor falls into a very great sin of lust and cannot confess except before the pastor, concerning whom he justly fears that he will use the knowledge had from confession and will treat him badly.[228]

5. **Danger to the reputation either of the penitent himself before other persons or of a third person.**

The reputation of the penitent which is endangered before the confessor alone does not excuse from material integrity, as was already said above; but the reputation of the penitent which is endangered before other persons does, for example, if he cannot confess without others standing nearby hearing his sins, or without something sinister being suspected concerning him because of the altogether unusual length or circumstance of the confession. The reputation of a third person is endangered especially if the sin committed cannot be perfectly declared without the confessor recognizing the person of the accomplice.

Authors do not agree whether it is lawful to omit a grave sin in confession in order to avoid the defamation of an accomplice before the confessor. The reason for doubting is this: on the one hand, natural law commands that the reputation of one's neighbor not be injured without a grave cause; but on the other hand, the divine precept commands the integrity of confession. The following things seem to be established:

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[227] Cf. Génicot, *Theol. mor.* II, 193, 4, and *Cas. consc.* II, 214.

[228] Cf. Lehmkuhl, *Cas. consc.* II, n. 157.

381. a) The name of the accomplice is to be concealed whenever this can be done without grave inconvenience. Hence it is not lawful to manifest the name of the accomplice in order to declare a venial sin

or even a mortal sin already directly remitted elsewhere. Likewise, the penitent is bound to confess a sin of this kind before a confessor who does not know the accomplice, if this can be done without grave inconvenience.

b) **It is certain that a confessor objectively sins gravely if he directly inquires into the name of the accomplice, although he does this for a good end**, for example, in order to amend the accomplice. For thus Benedict XIV repeatedly established.[229] The Code of Canon Law, c. 888, § 2, commands: "Let the confessor beware altogether lest he inquire into the name of the accomplice." The sole exception is a most grave cause of the common good or of a third person. Hence, for example, if a boy living in a college accuses himself of a grave sin of lust committed with a fellow student, he must be obliged in confession to denounce that fellow student, not indeed to the confessor himself but to the competent superior, if otherwise a grave and imminent danger of the perversion of other boys cannot be averted. It is evident, however, that manifestation of the accomplice is not lawful if the danger can be forestalled in another way.[230] Confessors unjustly requiring the name of an accomplice under penalty of denying absolution not only sin gravely, but can also be suspended by the bishop from hearing confessions.

c) **The confessor can licitly inquire into circumstances of sins which must necessarily be declared and into an existing proximate occasion, and so forth, although he then indirectly obtains knowledge of the accomplice.** The reason is that the obligation of procuring according to his strength the integrity of confession rests upon the confessor.

d) **Since it is lawful from a just and proportionate cause to manifest a true offense of one's neighbor, theologians commonly teach that the penitent can confess his own sin completely, even though his neighbor and the neighbor's offense thereby become known indirectly to the confessor, provided that a sufficient cause is present.** The following are regarded as sufficient causes: a) if danger of death or the precept of annual confession urges; b) if it is grave for the penitent to omit confession or Communion; c) if someone opens his conscience to another confessor only with difficulty; d) if someone must otherwise remain in mortal sin and this is grave for him; e) if much better spiritual direction is had before the confessor to whom the accomplice is known.[231]

e) **The penitent not only can but also must confess his own sin completely, although the name of the accomplice thereby becomes known indirectly to the confessor.** St. Alphonsus[232] calls this opinion common and himself follows it with Gonet, Palao, Concina, Juénin, the Salmanticenses, St. Bonaventure, St. Antoninus, Cajetan, Suarez, Lugo, and others. St. Thomas[233] also defends this opinion, saying: "If the penitent ... cannot express the species of the sin except by expressing the person with whom he sinned, for example, if he lay with his sister, it is necessary that in expressing the species of the sin he express the person. But if it can be done, he must seek such a confessor as does not know the person of his sister at all." And St. Bernard[234] teaches the same: "Speak sinisterly of no one ... except in confession ... where you cannot otherwise manifest your sin." The reason for this doctrine is that the penitent ought not to have greater care for the reputation of another than for his own reputation. But he is bound to confess his sin even though his own reputation is injured. Therefore the same must be said even if the reputation of another is diminished by the confession. Moreover, this injury to reputation must implicitly be permitted by the accomplice, since he could well have foreseen this obligation of confession when he freely consented to the sin. Finally, this injury to reputation is not so harmful to the accomplice, since the confessor is most strictly bound to the sacramental seal. Nevertheless, the opposite opinion, which in this case exempts from the integrity of confession, is not without at least extrinsic probability,[235] and therefore if someone wishes to follow it, he is not to be disturbed. But the intrinsic reason adduced for this opinion seems weak. For they say: The natural law of not injuring another's

reputation prevails over the positive law of confessing completely. But it is easily answered: natural law prohibits only the unjust injury of another's reputation, but it by no means forbids that, from a just and proportionate cause, such as the precept of confessing completely, the offense of another person become known. Since these things are so, the penitent should indeed preserve according to his strength the reputation of the accomplice unharmed, especially if there is question of manifesting a shameful crime; but he is not to be disturbed if from a reasonable cause he confesses his sins before a confessor who thereby indirectly learns the name of the accomplice.

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[229] Brief of July 7, 1745; Constitution *Ubi primum* of June 2, 1746; Constitution *Ad eradicandum* of September 28, 1746.

[230] Cf. concerning the order to be observed in fraternal correction above, I, n. 602, and *S. theol.* 2, 2, q. 33, a. 7.

[231] Cf. Noldin-Schmitt, *De sacr.*[17], n. 287.

[232] *Theol. mor.* l. 6, n. 480.

[233] *Opusc.* 12, *Ad lectorem Bisuntinum*, q. 6, near the end.

[234] Among the spurious works of St. Bernard, in Migne, *Patr. lat.* 184, 1173.

[235] Cf. Busembaum in St. Alphonsus, *l.c.*, n. 488.

382. Admonition of St. Alphonsus.[236] "No one doubts that a penitent is sometimes bound to manifest an accomplice in order to prevent some grave harm. But in view of so rigorous a prohibition of the Pontiff [Benedict XIV], for the purpose of avoiding the infamy of one's neighbor, injury to the sacrament, violation of the seal, scandal, and so forth, it is not lawful for the confessor to inquire into the name of the accomplice for the purpose of making a correction. Hence, in a case in which the penitent is truly bound to disclose the accomplice, the confessor will be able only to impose upon the penitent in general that he reveal the accomplice to someone who can prevent the scandal; but it will never be lawful for the confessor to say: Reveal him to me. But if the penitent of himself and of his own accord were to ask the confessor to correct the accomplice, then the confessor has need of great prudence; for, ordinarily speaking, it is not expedient that he involve himself in a matter of this kind. For it rests upon him only to take care of the harm of his own penitent, not that of another, and only within confession, not outside it; and on the other hand, the confessor will with difficulty undertake this office of correcting without danger of scandal and of offense to the sacred ministry."

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[236] *L.c.*, n. 492.

3. Means for Obtaining the Integrity of Confession

There are two means for obtaining the integrity of confession, namely, one *per se*, which is the examination of conscience, and the other *per accidens*, namely, the repetition of confession or general confession, when some sin was omitted in previous confessions. We shall treat this second means in the following paragraph.

383. 1. Necessity of the examination of conscience. The penitent is regularly bound under grave obligation to make a diligent examination of conscience before he confesses.

Hence the Council of Trent[237] admonishes penitents to recount in confession all mortal sins of which they have consciousness after a diligent examination of themselves. The reason for this obligation is evident of itself. For how could the penitent accuse himself of all mortal sins according to species and number unless he had first diligently recalled them to memory? I said, however: he is regularly bound, because a) if time or strength is lacking, as in grave illness or at the point of death, so great an examination of conscience is not

required, just as neither is so great an integrity of confession then necessary. Likewise b) there is no grave obligation of examining the conscience for those who are morally certain that they have not sinned gravely since their last confession. Therefore they should strive rather to elicit true contrition concerning the free matter adduced than to search their conscience at length concerning the smallest sins or imperfections.

[237] Sess. 14, c. 5, *On Penance* (Denz., n. 899).

384. 2. In this examination there is required not the greatest diligence, but that which prudent men are accustomed to employ in a grave matter.

Therefore this diligence is to be measured: a) **According to the length of time** which has elapsed since the last confession. For a greater examination of conscience is required, for example, to find sins committed during an entire year than during two months. b) **According to the condition of persons.** Thus, for example, uninstructed men are not bound to make as great an examination as instructed and cultivated men. Hence an uninstructed man coming into the confessional without a sufficient examination of conscience is not to be dismissed, but is to be assisted by the confessor himself. For if he were dismissed, either he would lose heart and perhaps no longer return, or, if he did return, the result of the examination made would scarcely be better. Therefore the confessor himself should then assist the penitent in making the examination by putting a few but well-adapted questions. But if a well-instructed penitent has failed from mere negligence to make an examination of conscience, he is ordinarily to be dismissed and exhorted to make a better examination. Concerning this matter the Roman Catechism[238] writes: "If the priest recognizes men of this kind to be altogether unprepared, he will dismiss them from him with most humane words and exhort them to take some time to think over their sins and then return. But if perhaps they affirm that they have devoted every effort to this matter, since the priest must especially fear lest, once dismissed, they no longer return, they are to be heard, especially if they show some zeal for amending their life and can be induced to accuse themselves of their negligence, which they promise to compensate at another time by an accurate meditation." Those who lie gravely ill and because of lack of strength or the bitterness of their pains cannot think over their past life are neither to be obliged to a longer examination of conscience nor to be examined excessively by the confessor himself. It is much better that, after accusing themselves of the sins which came to mind without great labor, they strive according to their strength to elicit perfect contrition. But afterward, if perhaps health is recovered, the confession of those sins which were omitted must be supplied. Moreover, pastors and preachers should often admonish the faithful that the sick not defer making confession until the extremity of life, when the powers of soul and body are already most diminished.

Those who with grave negligence make an examination of a conscience burdened with mortal sins sin gravely, because they cannot then obtain that integrity of confession which is required under grave precept. Moreover, one who negligently makes the examination of conscience is also accustomed to elicit contrition negligently and thus to receive the sacrament of penance sacrilegiously.

Several theologians taught that a penitent who because of a weak memory foresees that he will forget some sins in confession nevertheless is not bound to write his sins on paper. The reason is that such writing is an extraordinary means and, moreover, can easily be lost or come to the knowledge of others. But the ancient moralists indeed seem rightly to have called writing an extraordinary means, because at that time fewer men knew the art of writing; today, however, in our regions almost anyone can write without any difficulty, and scarcely any danger of losing the writing exists for a diligent man. Therefore writing is no longer always an extraordinary means for obtaining the integrity of confession.[239]

[238] P. 2, c. 5, q. 60.

[239] Cf. above, n. 365, and St. Alphonsus, *Theol. mor.* l. 6, nn. 429, 479, 493.

385. 3. The method to be observed in the examination of conscience is determined by no positive precept.

Therefore let each one follow whatever method he prefers. The following things seem worthy of observation:

a) The best custom is to make an examination of conscience every day. For then a man will know very well the state of his soul and at the time of confession will easily obtain the necessary integrity.

b) When the time of confession approaches, the penitent should invoke the Holy Spirit, who enlightens human hearts. Then in a quiet place he should think over his life since his last confession, preserving a clear order. Simple faithful who do not confess so frequently can usefully employ the so-called catalogue of sins,[240] such as is found in many books of devotion. But the faithful who confess frequently will better recognize the state of their conscience if they think over how they have fulfilled the obligations of their state, their obligations toward their neighbor, their religious obligations, and so forth.

[240] Commonly, *Beichtspiegel.*

§ 3. On the Repetition of Confessions and on General Confession

1. A very careful distinction must be made between an invalid confession and an incomplete confession. A confession is **invalid** if something essential is lacking, for example, if formal integrity is lacking, that is, if someone culpably omitted a grave sin in confession. A confession is **incomplete** if material integrity alone is lacking, that is, when some grave sin was indeed omitted, but inculpably.

386. a) An incomplete confession must be completed by the accusation of that sin which was omitted.

If someone still remaining in the confessional after receiving absolution remembers a grave sin omitted, he must immediately accuse himself of it and receive a new absolution, as was already said above, n. 192. Thus holds the common practice. For the penitent must certainly accuse himself of this sin, and there is not customarily a sufficient reason for deferring its accusation until the following confession. If, however, a sufficient reason is present, for example, because the penitent thinks that he can better declare this sin to another confessor, he can refrain from accusing himself of it until the following confession. But if the penitent, now outside the confessional, remembers a sin omitted through forgetfulness, he can indeed, but is not bound to, return before Communion to accuse himself of this sin. The reason is that this sin, as indirectly remitted, does not obstruct the worthy reception of the Most Holy Eucharist, and only the obligation of confessing it in the following confession remains.[241]

If the penitent knows with certainty that some grave sin of his was not understood by the confessor because of the latter's deafness, drowsiness, distraction, ignorance of the language, and so forth, he is bound to confess that sin again in the following confession. For the former confession was incomplete.

[241] Cf. above, n. 379.

387. b) A certainly invalid confession must be repeated in its entirety, for through it no sin was remitted; indeed, if the confession was not only invalid but also sacrilegious, besides the sins

already committed, the grave sin of sacrilege must additionally be submitted to the keys of the Church.

A confession is invalid whenever an essential part of the sacrament of penance is lacking, which can happen chiefly in the following ways:

a) On the part of the confessor, who lacks the power of order or jurisdiction; who omitted or substantially changed the form of absolution; who does not have the intention of absolving; who understands no sin of the penitent at all because of sleep or ignorance of the language, so that he lacks matter for absolution.

b) On the part of the penitent, who did not have sufficient contrition; or who did not wish to fulfill the due satisfaction imposed; but especially who in confession sacrilegiously omitted a grave sin or its specific circumstance.

For the most part it is not the fault of the penitent if the confession was null because of an essential defect of the confessor. Therefore it is piously believed that the penitent who is in good faith then obtains sanctifying grace through contrition, which with the assistance of divine grace or by means of Holy Communion he will elicit. Nevertheless, if the penitent notices the nullity of the confession, he must submit the sins thus accused again to the keys of the Church.

If the confession was invalid because of a defect of the **penitent**, for the most part it is also sacrilegious, and therefore this sacrilege together with all other mortal sins not yet remitted must be accused again, either before the same or before another confessor. If the first confessor still remembers at least in a confused manner the sins heard, the penitent confesses sufficiently by saying: I accuse myself again of the sins already manifested in the former confession, and in addition I accuse myself of these sins sacrilegiously concealed. But if the first confessor does not remember, not even in a confused manner, the state of the penitent, then, as St. Alphonsus testifies,[242] "Suarez and St. Antoninus, Sylvester, and Paludanus in Croix say that it suffices if he remembers having imposed a penance"; but the Holy Doctor himself says: "I do not acquiesce in this, because the priest, when he pronounces sentence, must form a judgment at least concerning the state of the penitent's conscience.... If, however, he were then to absolve after a confession made in general, he would absolve validly." Therefore absolution in this case is valid, although the confessor knows nothing else except that the penitent made a confession before him. Indeed, several authors, such as Lugo,[243] Ballerini-Palmieri,[244] Tanquerey,[245] and Génicot,[246] think that the confessor can then absolve not only validly but also licitly. "For it seems to suffice that the priest knows that he previously judged concerning those sins, and indeed determined that the penitent was to be absolved." Thus Génicot in the place cited. Nevertheless, in practice one must not depart from the opinion of St. Alphonsus, since scarcely ever can there be a sufficient reason for treating so benignly a penitent who confessed sacrilegiously.

But an invalid confession must be repeated completely when the penitent approaches another confessor, since the latter certainly cannot judge concerning the state of a penitent who does not accuse himself of all grave sins not yet remitted.

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[242] *L.c.*, n. 502, dub. 3.

[243] *De sacr. poenit.*, disp. 16, n. 636.

[244] *Opus theol.*, *De poenit.*, n. 472.

[245] *Synopsis Theol. mor.*, *De poenit.*, n. 324.

[246] *Theol. mor.* II, 306.

388. 2. General confession is the repetition of some or all the confessions of one's past life. Sometimes it is a) necessary; b) harmful; c) useful.

a) **General confession is necessary** whenever it is morally certain that some former confessions were invalid, for example, because of a culpable defect of contrition or of the formal integrity of confession. In a necessary general confession, those things which were stated above are to be observed. The confessor should procure equally the formal integrity and the sincere contrition of the penitent, so that when the confession has been completed it may be morally certain to the penitent that all his sins are now truly remitted.

b) **General confession is harmful** when new anxieties or other inconveniences arise from it. Hence general confession is to be prohibited for those who are scrupulous and have already made general confessions repeatedly without greater peace of soul having arisen from them. Likewise, general confession, or at least an accurate accusation, is often to be prohibited for those who have sinned much and gravely against chastity. For it is established by experience that a man who thinks over in detail sins of lust committed often falls into new temptations. Therefore, in these cases, when all carnal sins have already once been submitted to the power of the keys, it is not expedient to think them over again in detail and confess them. Let the accusation then be generic, but the contrition very intense.

c) **General confession is useful and therefore to be counseled** to all those who indeed are not bound to it but receive great fruits of soul from it. The utility of a general confession duly made is manifold: contrition is more intense and efficacious; the state of one's own soul is known more clearly; a firmer purpose is elicited; peace of soul and confidence in divine mercy are increased. Therefore general confession is to be counseled:

a) To penitents who reasonably doubt the validity of past confessions, in order to obtain greater security. The scrupulous and fearful are excepted, as was said above.

b) In dangerous illness, provided, however, that the strength of the sick person is not thereby too greatly consumed. For when death is imminent, a man must strive with all his strength that all sins and their punishment be destroyed.

c) At certain periods of life in which a greater infusion of grace is desired, for example, before First Communion, before contracting matrimony, before receiving major orders, during a mission, spiritual exercises, a jubilee, and so forth.

389. Note. In counseling or permitting a general confession, the following things are to be observed:

a) General confession, unless it is necessary, is to be forced upon no one, because a general confession not willingly accepted is customarily harmful rather than profitable. Therefore those confessors act badly who, whenever they obtain a new penitent, immediately or soon impel him to make a general confession, as though it were necessary for rightly directing him in the spiritual life. Therefore the confessor should wait until the penitent himself expresses a desire to make a general confession.

b) If the penitent expresses a desire of this kind, the confessor must beware of two opposite extremes: one is that he not immediately deny this faculty to the penitent, as though he were tormented by empty scruples; the other is that he not immediately admit an unknown penitent to general confession, because perhaps it will not merely be useful but rather harmful. Therefore the confessor should first inquire with most humane words from what motives the penitent desires a general confession; if these are sufficient, he should admit it, but otherwise deny it.

The method to be observed in general confession is different according as it is necessary or only useful. If general confession is only useful, the confessor should admonish the penitent explicitly that the integrity of the accusation is not so necessary, and indeed that sins already accused elsewhere can freely be omitted. But if general confession is necessary, then both integrity and contrition must be procured diligently. By suitable questions and exhortations the confessor should assist the penitent in this sufficiently arduous work. In every general confession, sins perpetrated since the last confession are first to be accused, so that the confessor can better judge both concerning the present state of the penitent and concerning the formal integrity of the confession.

390. Scholion. On a catalogue of sins useful for general confession. Certain authors, for example, Gury and Lehmkuhl, here append a catalogue of sins according to which the confessor may question penitents while hearing confessions. Every confessor is truly bound to know in some measure a catalogue of sins of this kind, but it is much better that he himself, with the counsel of a prudent priest, write for himself such a catalogue in the vernacular language. For it is of great importance that the confessor know not only what things are to be asked, but also how they are to be asked. But especially the manner of questioning in the matter of the sixth commandment must be learned with great prudence and differs according to diverse languages. Therefore I judge a Latin catalogue of sins less useful and accordingly omit it. He who desires a Latin catalogue should consult Gury or Lehmkuhl.

Article III. On Satisfaction

We divide this article into four paragraphs: 1. on the nature and divisions of satisfaction; 2. on the necessity of imposing satisfaction; 3. on the necessity of accepting and fulfilling satisfaction; 4. on the commutation of satisfaction.

§ 1. On the Nature and Divisions of Satisfaction

391. Notion. Satisfaction, according to the force of the name, is a certain compensation; if it is made in material things taken away by theft or damaged, it is called restitution, but if it is made to compensate for an offense or injury inflicted, it is properly called satisfaction. Therefore **satisfaction is compensation for an injury inflicted upon another**. But since through sin the greatest injury is inflicted upon God, satisfaction, as we speak of it here, is compensation for the injury inflicted upon God through sin. Now no creature can offer sufficient compensation to God offended. Therefore the human race, liable to sins, needed Christ the Savior, who through His redemption offered condign satisfaction to God offended. By virtue of this redemption, in the sacrament of penance satisfaction is made for the guilt and eternal punishment due for sin. But even after the guilt and eternal punishment have been remitted, temporal punishment still often remains, for the destruction of which satisfaction to be performed by the sinner is principally ordained. Therefore this satisfaction can be defined: **compensation for the temporal punishment due to sin through good and penal works freely performed**. It is said: freely performed; for if a man pays the temporal punishment under compulsion, as happens in purgatory or through other punishments inflicted by God in this life, it is not properly satisfaction but rather *satispassion*. From what has been said, it is evident that satisfaction is an act both of the virtue and of the sacrament of penance. Insofar as it is an act of the virtue of penance, the definition already given belongs to it, and it is customarily called extrasacramental satisfaction; but insofar as it is a part of the sacrament of penance, it can be defined: compensation for the temporal punishment due to sins through good and penal works assessed by the confessor and voluntarily accepted by the penitent.

Satisfaction for sins committed is greatly to be commended. Hence St. John the Baptist said to the Jews approaching him for the sake of penance: "Who hath showed you to flee from the wrath to come? Bring forth therefore fruits worthy of penance."[247] St. Pius V condemned proposition 77 of Baius: "The laborious satisfactions of the justified are not able to expiate condignly the temporal punishment remaining after the guilt has been forgiven."[248] St. Augustine[249] teaches: "It does not suffice to change one's conduct for the better and to depart from evil deeds, unless satisfaction is also made to God for those things which have been done, through the sorrow of penance, through the groaning of humility, through the sacrifice of a contrite heart, with alms cooperating." Although extrasacramental satisfaction is excellent and necessary, nevertheless it does not produce its effect except *ex opere operantis*; but sacramental satisfaction, as a part of the sacrament, destroys the punishments due *ex opere operato*, and therefore is much more efficacious.

[247] Luke 3:7 f.

[248] Denz., n. 1077.

[249] Sermon 351 (otherwise 50), in Migne, *Patr. lat.* 39, 1549.

392. Fruits. According to the Council of Trent,[250] the fruit of satisfaction is fourfold, since satisfaction:

1. efficaciously impresses upon the sinner that sin is a great evil worthy of dire punishment, for it is, as it were, vengeance for sins;
2. renders the sinner more cautious and vigilant lest he fall again into the same sins;
3. heals the remnants of sins and uproots acquired evil habits, for it is not only a vindicative punishment but also a medicinal and preservative punishment;
4. makes the penitent man conformable to Christ, who made satisfaction for our sins.

[250] Sess. 14, c. 8, *On Penance* (Denz., n. 904).

393. Divisions. 1. Satisfaction is sacramental or extrasacramental, according as it is imposed and accepted in the sacrament of penance itself, or is undertaken outside the sacrament.

2. Sacramental satisfaction is either **public**, such as was in use in ancient times, or **private**, such as prevails today.
3. Sacramental satisfaction is performed either ***in voto*** or ***in re***. Satisfaction *in voto* is the sincere will to accept and fulfill the penance enjoined by the confessor. This is an essential part of the sacrament and pertains to the three acts of the penitent which are the proximate matter of the sacrament of penance. Therefore if this satisfaction *in voto* is lacking, the sacrament is null. Satisfaction *in re* is the actual fulfillment of the penance enjoined. This is not an essential but an integral part of the sacrament, which therefore is valid even if the penance enjoined is not actually fulfilled. Hence sins remitted through absolution do not revive, nor must they be accused again, even if the penance previously accepted is afterward voluntarily omitted; but in this case a new sin arises, as will be stated below.

§ 2. On the Necessity of Imposing Satisfaction

394. Principle 1. The confessor not only can, but also regularly must impose satisfaction upon the penitent.

The confessor can impose a satisfaction of this kind both because he has the power not only of loosing from punishment but also of binding to punishment, and because his operation must be conformed to the operation of God, whose minister he is. But God, after remitting eternal punishment, still inflicts temporal punishments.

The confessor regularly **must** impose satisfaction, because otherwise he both acts against the intention of God and greatly harms the penitent, since the latter is deprived of the great goods enumerated in the preceding paragraph as effects of sacramental satisfaction. Hence the Council of Trent[251] establishes: "Therefore the priests of the Lord must impose salutary and suitable satisfactions, according as spirit and prudence shall suggest, with regard both to the character of the crimes and to the capacity of the penitents, lest, if perhaps they connive at sins and deal too indulgently with penitents by imposing certain very light works for most grave offenses, they become participants in the sins of others." It is said, however: regularly, because *per accidens* the confessor is not bound to impose satisfaction, for example, if satisfaction is impossible for the penitent, as at the extreme point of death when the penitent is so weak that he can no longer perform any act. Nevertheless, even in this case it is expedient to impose a very light satisfaction which the priest himself immediately performs with the penitent, for example, to invoke the name of Jesus or to kiss an image of the Crucified. Besides this case of extreme infirmity, certain authors adduce two others: 1. when the confessor knows by divine revelation that all the temporal punishment of the penitent has already been remitted; 2. when the penitent, after absolution has already been received, again accuses himself of necessary matter and again receives absolution. It is better, however, in this second case to impose a new, although light, penance, or at least to impose anew the penance imposed because of this matter accused. St. Alphonsus,[252] however, does not admit this last course, because the same work cannot be imposed again under the same title.

[251] *L.c.* (Denz., n. 905). The same is established by the Code of Canon Law, c. 887.

[252] *Theol. mor.* l. 6, n. 513, dub. 2.

395. The gravity of this obligation certainly exists *per se* if there is question of satisfaction to be imposed for mortal sins not yet directly remitted. Thus all teach. Hence a confessor sins gravely who knowingly neglects to impose satisfaction upon a penitent who has confessed grave sins, unless, however, it is impossible for the penitent to fulfill any satisfaction, as if he is deprived of his senses or near death.

The controversy among theologians concerning the obligation of imposing satisfaction if the penitent accuses himself only of venial sins or of mortal sins already remitted has no practical utility, since all admit that satisfaction must always be imposed upon a penitent capable of fulfilling it. For the confessor would fail in his office, would irreverently deprive the sacrament of an integral part, and would harm the penitent if he voluntarily omitted imposing a penance.[253]

Satisfaction is to be imposed **before absolution**, as the Roman Ritual rightly prescribes. For the penitent must accept the penance to be fulfilled before he is worthy of absolution. Hence those confessors act wrongly who are accustomed to enjoin the penance after absolution. If, however, the confessor has perhaps forgotten to impose the penance before absolution, he can afterward supply this.

[253] Lugo (*De sacr. poenit.*, disp. 25, n. 49), Noldin-Schmitt (*De sacr.*[17], n. 301), and others teach that the confessor has only a light obligation to impose satisfaction upon a penitent who has confessed light sins.

396. Principle 2. The quantity and quality of the penance must be determined both according to the character and number of the crimes and according to the capacity of the penitents. Thus the Council of Trent[254] and the Code of Canon Law, c. 887.

Therefore for a grave sin a grave satisfaction must also *per se* be imposed, and a confessor who without a just cause imposed a very light satisfaction for grave offenses would without doubt sin. The more numerous and greater the offenses committed are, the greater the satisfaction to be imposed; but one must not proceed mathematically, so that, for example, one who confessed ten mortal sins would receive a penance ten times graver than if he had accused himself of one mortal sin. Hence it is better to impose upon the penitent a lighter satisfaction which will be willingly and perfectly fulfilled than to exact a greater one which will be neglected or fulfilled defectively. Hence that saying of Gerson: It is safer with a small penance which is willingly undertaken and will more probably be fulfilled to lead those who have confessed into purgatory than with a great penance which will not be fulfilled to cast them headlong into hell.[255] In the ancient Church severe penances were customarily imposed for grave sins, as is evident from the ancient Penitential Canons. From the present practice of the Church, however, that penance is considered grave which, if it were otherwise commanded by the Church, would bind under grave obligation. Hence a grave satisfaction is, for example, to hear Mass, to fast for one day, to recite five decades of the Rosary or the Litany of All Saints with its prayers, and other similar things. But the recitation of the Litany of Loreto, three decades of the Rosary, or the Psalm *Miserere* is not considered a grave penance. It is evident of itself that a penance which in itself is light, such as five Our Fathers, becomes grave if the penitent must fulfill it repeatedly, for example, for a month.

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[254] Sess. 14, c. 8 (Denz., n. 905).

[255] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 510.

397. Satisfaction can be diminished for many causes, since attention must be given not only to the gravity of the sins but also to the capacity of the penitent. Causes of this kind are chiefly:

a) **Bodily infirmity.**

Hence light penances ought to be enjoined upon the sick, nor is it ordinarily expedient to impose upon them some penance which they must fulfill after health has been recovered. It is salutary, however, if the confessor counsels them patiently to endure the pains of illness in satisfaction for their sins.

b) **Spiritual infirmity.**

Namely, if it is rightly feared that a graver penance would harm rather than profit the soul of the penitent. St. Thomas[256] wisely notes to the point: "It seems sufficiently fitting that the priest not burden the penitent with a grave burden of satisfaction, because, just as a small fire is easily extinguished by many pieces of wood placed upon it, so it could happen that the small effect of contrition recently aroused in the penitent would be extinguished because of a grave burden of satisfaction, with the sinner falling altogether into despair." When the confessor fears that the penitent will not accept a graver penance, he acts prudently if he imposes a work already commanded from elsewhere, for example, the hearing of Sunday Mass.

c) **Great and extraordinary contrition.**

For it is thought already to have destroyed all temporal punishments. Thus Cajetan[257] and others. Nevertheless, a penitent who has truly been struck by so great a contrition willingly accepts a suitable satisfaction, and therefore then, unless other reasons are added, it is not fitting to diminish the penance, since the penitent would thus be deprived of an efficacious spiritual good.

d) **A time of jubilee or of plenary indulgence.**

Certain older theologians are reported to have taught[258] that satisfaction should not be imposed upon those penitents who intend to gain a plenary indulgence; but Benedict XIV rejected this doctrine.[259] The reason is that no one can be certain that the indulgence was truly received, and moreover, although the penitent gains the indulgence, he must still fulfill the satisfaction lest the sacrament remain incomplete. The confessor acts excellently if he enjoins prayers enriched with indulgences as penances, or if he counsels the penitent to strive to gain indulgences. For then the penitent simultaneously performs the penance and gains the indulgence.[260]

e) **Satisfaction to be rendered by the confessor himself for the penitent.**

Certain confessors, led by fervent zeal and imitating the example of Christ, who made satisfaction for the sins of the whole world, have made and do make satisfactions for penitents. Although proposition 15, "that the penitent can by his own authority substitute another for himself who may fulfill the penance in his place,"[261] was proscribed by Alexander VII, nevertheless nothing prevents the confessor himself from assuming not the whole but a partial satisfaction of the penitent. For because of the communion of saints, vicarious satisfaction is given.

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[256] *Quodl.* 3, q. 13, a. 28.

[257] *Summula*, s.v. "satisfactio."

[258] St. Alphonsus (*Theol. mor.* l. 6, n. 519) cites for this opinion Lugo, Suarez, Toletus, and even St. Thomas (*Suppl.*, q. 25, a. 1 ad 3 and 4), but the mind of these authors is not so clearly established, and especially St. Thomas does not seem to teach it.

[259] Constitution *Inter praeteritos*, § 65, December 3, 1749; cf. the Constitution of Leo XII, *Caritate Christi.*

[260] Sacred Congregation of Indulgences, June 14, 1901; Code of Canon Law, c. 932.

[261] Denz., n. 1115.

398. The quality of satisfaction must be conformed to the condition of the penitent. In general, all good works can be enjoined as a salutary penance, but especially works of religion, charity, and mortification, or prayer, almsgiving, and fasting.[262]

a) *Per se*, nothing indeed prevents a merely internal work, such as meditation, from being enjoined as a salutary penance, since in the present state of affairs even acts of the mind are laborious. Nevertheless, in practice it is better to impose, besides a merely internal work, also some sensible work as satisfaction, because satisfaction pertains to the sensible sign of the sacrament at least as an integral part.

b) *Per se*, even cessation from a good work which is not necessary could be imposed, for example, to omit Mass on weekdays. For then the penance would not be the cessation itself, but the act of humility and obedience exercised through this cessation. Such a penance is rarely expedient, however, at least if it is imposed alone.[263]

c) Even a work to be offered **for the departed** can be a salutary penance, because then the impetratory effect accrues to the departed, but the satisfactory effect returns to the penitent.[264]

d) Even a work already commanded from elsewhere can, when a just cause exists, be imposed as a salutary penance, as St. Alphonsus[264a] teaches with many authors against a few. For that work can be elevated through the keys to the merit of sacramental satisfaction. Therefore, just as one who on a feast day hears Mass which is also due by vow has a twofold merit, so one who fulfills as a penance a work commanded from elsewhere acquires a twofold merit. Nevertheless, ordinarily this is not to be done, and unless the confessor expressly declares that he is enjoining a work already prescribed from elsewhere, the penance is presumed to be a work of supererogation. Hence a penitent who received as a salutary penance the hearing of Mass on Sunday is bound to hear two Masses. But if the confessor expressly imposed a work due from elsewhere, and

nevertheless the penitent voluntarily omitted it, there is a twofold sin, namely, transgression of the law and omission of the penance.

e) In general, it is not expedient to impose a **public penance**, either for occult sins, as the Roman Ritual establishes, or for public sins, because such public penances are accustomed to render the sacrament odious. If, however, the sin committed was public and truly scandalous, then it is left to the prudence of the confessor to impose a public penance for the reparation of the scandal.

f) **Unsuitable penances** are all those which are not proportioned to the capacity of the penitent, for example, fasts for children, country people, or laborers; lengthy prayers or pilgrimages for children of a family; penances repugnant to nature, such as making the sign of the cross upon the ground with the tongue, or visiting enemies. St. Alphonsus[265] exclaims: "How imprudently confessors conduct themselves who impose great penances which they foresee the penitents will not fulfill!"

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[262] Cf. St. Thomas, *Suppl.*, q. 15, a. 3.

[263] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 514.

[264] Cf. *Catech. Rom.* P. 2, c. 5, at the end of q. 63.

[264a] *L.c.*, n. 513.

[265] *Theol. mor.* l. 6, n. 510.

§ 3. On the Necessity of Accepting and Fulfilling Satisfaction

399. 1. The penitent is bound to accept the satisfaction reasonably imposed upon him by the confessor.

The reason is that, just as the confessor is bound to impose a penance, so also the penitent ought to accept it. Moreover, satisfaction is at least an integral part of the sacrament of penance. Now the penitent no less than the confessor ought to furnish an integral part of the sacrament. But it is not necessary to accept an unreasonable satisfaction, that is, one which, in view of the present discipline of the Church, does not correspond to the capacity of the penitent. Therefore a person who has confessed can either ask the confessor for another penance, or depart without absolution, or indeed accept the satisfaction here and now, yet with the intention of afterward asking another confessor for a commutation. In general, in practice it is expedient that the confessor acquiesce in a penitent asking for a penance other than that imposed, unless, however, this petition is certainly unreasonable.

400. 2. The penitent must not only accept but also fulfill the satisfaction which has been legitimately imposed.

The reason is the same as for acceptance. Moreover, one who accepted a satisfaction which he afterward voluntarily failed to fulfill without an excusing cause would, as it were, bring the sacrament into mockery. Now the confessor is considered to enjoin satisfaction under grave obligation when a) mortal sins not yet remitted have been accused, and b) the matter imposed is grave. For the gravity of the obligation ordinarily corresponds to the gravity of the matter. If a grave satisfaction has been imposed for light sins, its fulfillment binds under light obligation. According to certain authors, the confessor can for a grave fault enjoin a grave penance which nevertheless binds only under light obligation. All rightly note, however, that this manner of acting is not expedient unless another penance under grave obligation has already been imposed.[266]

Therefore three conditions are required for the penitent to be bound under grave obligation to fulfill the satisfaction:

a) **That the satisfaction be imposed for a grave guilt not yet directly remitted.** For a penance binding gravely cannot be imposed for venial sins or for mortal sins already remitted.

b) **That the matter of the satisfaction imposed be grave in itself.** For light matter does not induce a grave obligation.

c) **That the confessor have intended to bind gravely, which nevertheless in practice is always to be presumed in grave matter.**

If these three conditions are present, and nevertheless the penitent through his own fault omits the satisfaction or a notable part of it, he sins gravely; in all other cases the neglect of satisfaction is a venial sin.

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[266] Cf. St. Alphonsus, *l.c.*, n. 518.

401. If anyone has forgotten the satisfaction accepted, he is bound to approach the same confessor, if this can conveniently be done, in order to learn what satisfaction he must fulfill. The reason is that the fulfillment of such satisfaction is still morally possible, and therefore it must be performed. But if the penitent cannot conveniently return, he is not bound to confess again. For in this case sacramental satisfaction has become morally impossible for him. It is expedient, however, that he then voluntarily impose some suitable satisfaction upon himself. When, after the penitent's return, the confessor no longer remembers the satisfaction imposed nor even the sins heard, he is not bound to require a new confession, at least not a complete one, but it suffices that he be able to judge in some manner concerning the state of the penitent before imposing a new sacramental satisfaction.

The penitent himself, and not his representative, must fulfill the satisfaction imposed. For just as the penitent himself, and not a representative, committed and accused the sins, so also the penitent himself, and not one acting in his place, must make satisfaction for the sins committed.[267]

Concerning the time and manner of fulfilling the penance, the following things are to be noted:

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[267] Cf. proposition 15 condemned by Alexander VII, cited above at n. 397(e).

402. 1. The penance must be fulfilled at the time assigned, and if no time was assigned, as soon as this can morally be done.

It is not required that the penance be fulfilled before absolution or before Communion, as Peter of Osma, the Jansenists, and others wished.[268] When the penance was not discharged at the time assigned, it must be performed afterward, because the time was assigned not to terminate but to urge the obligation. Hence, for example, one who received a penance of assisting at Mass for eight consecutive days, if on one or another day he neglected this obligation, must afterward hear the Masses omitted. To defer without sufficient reason a grave penance enjoined is a sin, and indeed a grave one if inability to fulfill it afterward is foreseen or if there is danger of forgetfulness. But what delay of a penance is of itself gravely sinful cannot be determined; hence, while certain authors think a delay of eight days to be grave, others, on the contrary, for example Diana, judge that a delay is not grave unless it is of one year.[269] In practice the confessor should earnestly exhort penitents to discharge the satisfaction imposed immediately after confession, if this is possible.

It is a difficult question whether a penitent who discharges the work enjoined in the state of mortal sin satisfies the obligation. Theologians depart into various opinions. "The doctors agree that he does not sin

mortally. Some ... say that he does not sin in any way, because, as they say, there is no fault in placing an obstacle only to the remission of punishment. Others, however, more probably hold that he sins venially, because placing an obstacle to a partial effect of the sacrament cannot be excused from every fault. But Wigandt, the Salmanticenses, and Antoine say that, when the obstacle ceases, the penance then has the effect of satisfaction, contrary to Scotus, Medina, Bonacina, and Vasquez, who judge that it has the effect when it is fulfilled." Thus St. Alphonsus.[270] Nothing certain can be said concerning this matter. There are difficulties on every side. For it is difficult to understand how a good work performed in the state of mortal sin, since it is a dead work, can obtain from God the remission of temporal punishment, and this all the more because such a man is worthy of eternal punishment. Then it is still more difficult to understand how a dead work, which never lived, can revive when the obstacle has been removed. Whatever the case, one can conclude with Billuart:[271] "It is probable that through a work in the state of mortal sin the precept of the confessor is satisfied, and that it need not be repeated, because it is satisfactory in some manner. It is at least the more common opinion and the common sense of the faithful, who are not accustomed to accuse themselves that they fulfilled satisfaction outside charity, and this seems to be the intention of confessors, especially when they impose penances to endure for a long time. Nevertheless, because it is not absolutely certain that God accepts these works for satisfaction, it is advisable that confessors always enjoin at least some part of the penance to be fulfilled immediately."

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[268] Cf. the condemned propositions in Denz., nn. 728, 1306, 1312, 1437, 1535.

[269] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 525.

[270] *Ibid.*, n. 523.

[271] *De poenit.*, diss. 9, a. 7.

403. 2. The manner of discharging the penance ought to be conformed to the precept or intention of the confessor.

Hence, if the confessor commands prayers to be recited on bended knees or before a particular altar, these circumstances must be observed. Ordinarily, however, to neglect circumstances of this kind is not a grave sin, unless they render the performance of the work much more difficult. Unless the mind of the confessor is known, his intention is to be explained in the same manner as ecclesiastical laws. Hence, if the penitent must hear Mass each day as a satisfaction, he is not bound to hear two Masses on Sundays and feast days; if he must recite the Rosary, he can do this alternately with a companion or with the people; prayers to be recited as satisfaction can be said during a Mass of precept, and so forth. It is not required that the penitent, when performing the work enjoined, have an explicit intention of making satisfaction, provided, however, that he does not have a contrary intention.

§ 4. On the Commutation of an Imposed Satisfaction

404. 1. For requesting or granting the commutation of a penance, a reasonable cause is required, namely, the spiritual good of the penitent. Before absolution has been received, the satisfaction can more easily be commuted for the penitent, since the sacramental judgment is not yet complete. Indeed, if the confessor were unwilling to acquiesce in the petition, the penitent could, provided that a reasonable cause exists, leave the confessional and confess again to another confessor and be absolved.

2. After absolution has already been received, the penitent can for a just cause obtain a change of the satisfaction enjoined, either from the same or from another confessor, but not from himself or

from another person who does not have jurisdiction to hear confessions.

The reason is that satisfaction is the complement of sacramental absolution, and therefore it must always have a relation to it, and no one except one who is able to impart absolution can commute the satisfaction.

From this principle it follows: a) that the penitent or a lay person can never commute sacramental satisfaction, not even into an evidently better work. Thus all authors. b) That a penance imposed for reserved sins ordinarily cannot be commuted by another confessor who is unable to absolve from those reserved sins, unless, however, recourse to the superior is difficult. For then it is permissible to presume the requisite permission and to grant the commutation. Thus the more common opinion, which pleases St. Alphonsus.[272]

3. The same confessor certainly can make a commutation immediately after absolution, since the judgment still morally continues. Several authors, for example Lugo, Ballerini, Noldin, and others, think that the confessor can commute the satisfaction imposed even outside the sacrament, and indeed for as long as the change is morally united with the sacramental judgment, for example, for some days, or even, according to Lugo,[273] after "a long time," even if the confessor no longer remembers the sins. Whatever may be the probability of that opinion, it must more truly be held with St. Alphonsus[274] that this commutation is not permissible except immediately after absolution; and therefore, if the penitent returns after some days asking for a commutation, he must be absolved again after at least a general accusation of sins has been made beforehand.

4. Another confessor, however, cannot commute the satisfaction except by virtue of absolution to be given either now or afterward. In this case, however, it suffices that the penitent manifest the state of his soul to the confessor in a general manner, so that he may be able to receive absolution. For it is not necessary that the confessor judge concerning the individual sins which have already been duly accused and remitted. Nevertheless, some theologians teach with sufficient probability that a penance can be changed by another confessor without the sins being accused again.[275]

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[272] *L.c.*, n. 529, dub. 2.

[273] *De sacr. poenit.*, disp. 25, n. 112.

[274] *Theol. mor.* l. 6, n. 529, dub. 3.

[275] St. Alphonsus, *l.c.*, n. 529, dub. 3.

Chapter III. On the Minister of the Sacrament of Penance

We divide this chapter into four articles, namely: 1. on the power of the minister; 2. on his duties and obligations; 3. on the manner of acting with habitual sinners, those in occasions of sin, and recidivists; 4. on the abuse of confession.

Article I. On the Power of the Minister

The power of the minister includes two essential elements: priestly order and competent jurisdiction. Concerning jurisdiction, which according to the discipline now in force is customarily granted together with approbation, certain questions occur which must be treated separately. Hence in this article we shall treat: 1. the power of order; 2. jurisdiction in general; 3. putative, doubtful, and probable jurisdiction; 4. the jurisdiction of religious and over religious; 5. the restriction of jurisdiction; 6. absolution from reserved cases.

§ 1. On the Power of Order

405. Principle. For the valid administration of the sacrament of penance, the power of priestly order is required by divine law.

It was defined as of faith in the Council of Trent:[276] "If anyone says that priests who are in mortal sin do not have the power of binding and loosing; or that priests alone are not the ministers of absolution, but that to each and every one of the faithful of Christ it was said: 'Whatsoever you shall bind upon earth shall be bound also in heaven, and whatsoever you shall loose upon earth shall be loosed also in heaven'; and: 'Whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained'; by virtue of which words anyone may absolve sins, public sins indeed merely through correction, if the person corrected acquiesces, but secret sins through voluntary confession: let him be anathema."

Errors in this matter were committed by: a) the Montanists, who taught that only the spiritual, that is, those inspired by the Holy Ghost, could forgive sins; b) the Waldensians and Wycliffites, who attributed the faculty of absolving even to good laymen, but not to bad priests; c) the Protestants, who altogether denied a proper power of the keys; d) certain Catholics in the Middle Ages, who thought that in a case of necessity a deacon was an extraordinary minister of the sacrament of penance, just as he is also a minister of baptism or the Eucharist.[277] Without any reasonable doubt, in ancient times there existed the custom, in extreme necessity when a priest was lacking, of sometimes confessing to a deacon, or even to a layman or a woman. But scarcely any theologian can be adduced who clearly taught that a confession of this kind was a true sacrament. Several, however, commended this confession as most useful, as a sign of great humility and contrition. Especially the commentators on the Decree of Gratian acted thus because of a text of the Decree which they falsely attributed to St. Augustine: "So great, therefore, is the force of confession that, if a priest is lacking, one should confess to one's neighbor.... Although he to whom one confesses does not have the power of loosing, nevertheless he who confesses his crime to his companion is made worthy of pardon by his desire for a priest."[278] But since this manner of confessing to laymen at the point of death could have many disadvantages, it gradually passed out of use.

Corollaries. Since a priest alone can validly impart sacramental absolution, it follows: a) that a priest whose ordination is invalid also absolves invalidly; b) that the Church cannot grant a deacon the faculty of absolving from sins, because the Church cannot change the essence of any sacrament; c) that a man is never bound to confess his sins to anyone who is not a priest. Therefore the Church in our days has also gravely prohibited superiors of religious institutes from requiring a manifestation of conscience from their subjects.

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[276] Sess. 14, can. 10, *On Penance* (Denz., n. 920); cf. Code of Canon Law, c. 871.

[277] Cf. Gromer, *Die Laienbeicht im Mittelalter* (Munich, 1909); Laurain, *De l'intervention des laiques, des diacres et des abbesses dans l'administration de la penitence* (Paris, 1897).

[278] *De vera et falsa poenitentia* (Migne, *Patr. lat.* 40, 1122).

§ 2. On Jurisdiction in General

406. Notion. Jurisdiction in the general sense is the moral power of governing some human society, and it includes the power of teaching, judging, and coercing. But the power of governing the domestic society of the family is not jurisdiction but dominative power, since the father or head of the family in many matters has dominion over the very wills of the members of the household. **Ecclesiastical jurisdiction is the**

power of governing, judging, and coercing baptized men in relation to supernatural holiness and beatitude.

407. Divisions. 1. Jurisdiction of the internal forum and of the external forum. The former orders the internal moral relations of the faithful with God. It is sometimes called jurisdiction in the forum of the pole, or in the individual forum, because God ought to be the pole toward which all human actions must be directed. The other jurisdiction, namely, that of the external forum, which is also called jurisdiction in the forum of the forum or in the social forum, orders the external social relations of the faithful with the Church and is publicly exercised.

The internal forum is taken either in the strict sense, when jurisdiction is exercised in the sacrament of penance alone; it is then called the sacramental forum; or in a broader sense, when jurisdiction is exercised even outside the sacrament of penance, but for the conscience of a private man alone. It is then called jurisdiction in the forum of conscience, or extrasacramental jurisdiction. This distinction must be attended to especially in dispensations, which sometimes cannot be given except in the act of sacramental confession, but at other times can lawfully be granted even outside the sacrament for the forum of conscience.

2. Ordinary and delegated jurisdiction. The former is that which is connected with an ecclesiastical office itself duly obtained.[279] Such jurisdiction is possessed by: the Pope in the whole Church, and also the Cardinals of the Holy Roman Church for hearing confessions;[280] bishops and their vicars general; the canon penitentiary in the whole diocese; exempt religious superiors for their subjects; pastors for their parishioners, as will be stated more fully below. Those who have ordinary jurisdiction can absolve their subjects everywhere in the world, and therefore even outside their own territory.[281] The other jurisdiction, namely, delegated jurisdiction, is that which, without an ecclesiastical office, is freely conferred upon some cleric either by law or by a man. Simple confessors have such delegated jurisdiction.

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[279] Code of Canon Law, c. 197, § 1.

[280] *Ibid.*, c. 873, § 1.

[281] *Ibid.*, c. 861, § 2.

408. Necessity. Jurisdiction is necessary by divine law for valid absolution in the sacrament of penance.

The Council of Trent[282] establishes: "Since, therefore, the nature and character of a judgment require that sentence be pronounced only upon subjects, it has always been held as certain in the Church of God, and this Synod confirms it to be most true, that the absolution which a priest pronounces upon one over whom he does not have ordinary or subdelegated jurisdiction ought to be of no force." Since the necessity of jurisdiction follows from the very nature of sacramental judgment, it is evident that it is from divine law and not from ecclesiastical law. Hence Boniface VIII[283] says: "It can be introduced by no custom that anyone, without the permission of his superior, may choose for himself a confessor who can loose or bind him." But what can be introduced by no custom is prohibited by divine or natural law. Hence jurisdiction is also altogether necessary for sacramentally absolving from venial sins, or in general for giving any sacramental absolution whatsoever. If St. Thomas is said to have taught the contrary,[284] namely, that a simple priest can absolve from venial sins, he must be explained either from the fact that at that time there existed a general custom approved by the Supreme Pontiffs, by virtue of which jurisdiction for absolving venial sins was conferred upon all priests, or from the fact that the Angelic Doctor speaks of the extrasacramental remission of venial sins. If such general jurisdiction truly existed in the time of St. Thomas, nevertheless it was abolished by Innocent XI on February

12, 1679, by the Decree *Cum ad aures*: "Let bishops not permit the confession of venial sins to be made to a simple priest not approved by the bishop or Ordinary. If confessors, even regulars, or any other priests act otherwise, let them know that they will render an account to God Almighty, and that the just and rigorous punishment of bishops and Ordinaries against transgressors will not be lacking."

By ecclesiastical law it is established that the grant of jurisdiction: a) be express, either orally or in writing; hence a tacit or presumed grant does not suffice; b) be given gratuitously, that is, without remuneration.[285]

[282] Sess. 14, c. 7, *On Penance* (Denz., n. 903); cf. Code of Canon Law, c. 872.

[283] c. 2, V, 10, in VI°.

[284] *In 4*, dist. 18, q. 2, a. 3, sol. 1 ad 3.

[285] Code of Canon Law, c. 879.

409. Ordinary jurisdiction. It was briefly stated above who enjoy ordinary jurisdiction in the tribunal of penance. Concerning the individual persons, the following things are still to be noted:

1. The Supreme Pontiff has the most ample ordinary jurisdiction in the whole world. The Cardinals participate in this jurisdiction for the internal forum; nevertheless, they cannot absolve from the four censures reserved in the most special manner to the Holy See, nor from those which are attached to the revelation of the secret of the Holy Office.[286] Legates *a latere*, nuncios, and apostolic delegates do not have ordinary jurisdiction, but delegated jurisdiction within the boundaries of the territory committed to them.[286a]

Theologians encounter difficulties in explaining the manner of jurisdiction possessed by the confessor of the Pope himself. A reasonable explanation seems to be this: the Pope as Pope commits jurisdiction to his confessor, who then by virtue of this jurisdiction absolves the Pope as a sinful man.

2. The local Ordinary has ordinary jurisdiction in his territory, but in such a manner that the Pope can limit it or even suspend it for most grave reasons. Such ordinary jurisdiction is possessed by a residential bishop, a vicar general, and, when the see is vacant, a capitular vicar; an abbot and prelate *nullius*; a vicar and prefect apostolic. Likewise, those who, when the aforesaid are lacking, meanwhile succeed to the government according to the prescription of law or approved constitutions.[287]

3. The penitentiary of a cathedral or collegiate church also has ordinary jurisdiction to hear confessions for the whole diocese; and therefore he can even outside the diocese hear the confessions of all the faithful who have a domicile or quasi-domicile in his diocese; but he cannot delegate this jurisdiction to others.[288]

[286] *Ibid.*, c. 239, § 1, n. 1.

[286a] *Ibid.*, c. 267.

[287] Code of Canon Law, c. 198, § 1.

[288] Thus Benedict XIV, *De syn. dioec.* l. 3, c. 4, n. 3; Code of Canon Law, c. 401, § 1; c. 873, § 2.

410. 4. A pastor has ordinary jurisdiction, but dependently upon the bishop, who can limit or suspend it.[289] *Per se*, indeed, a pastor has approbation and jurisdiction for his parish alone, so that he can sacramentally absolve no one except his parishioners, wherever in the world they may be, and others who wish to confess within his parochial territory. A sufficiently common custom today, however, is that the bishop gives pastors the faculty of hearing confessions throughout the whole diocese. Bishops are also

accustomed to grant a general permission that pastors may summon priests of neighboring dioceses for hearing confessions. But then, as is evident, the bishop, and not the pastor, gives approbation and jurisdiction to those priests summoned, since the pastor cannot by his own authority delegate the faculty of hearing the confessions of his subjects.[290]

The following are equivalent to pastors: a) quasi-pastors; b) actual vicars; c) vicar administrators; d) assistant vicars; e) substitute vicars.

5. Religious superiors in exempt clerical religious institutes have ordinary jurisdiction for hearing the confessions of their subjects.[291] But not only professed religious are considered subjects, but also a) novices, b) postulants, and c) those who continually share the common table. Hence religious confessors duly approved by their own superior can hear the confessions both of servants residing in the monastery and of resident students without the approbation of the diocesan bishop.[292] But day laborers who live outside the monastery and so-called external students are not considered to belong to the household, and therefore the approbation of the bishop is required for hearing their confessions. Religious superiors can delegate both secular and regular priests to hear the confessions of their own subjects.[293] The manner in which this delegation is to be made is customarily defined in individual orders by particular law. For the rest, discussion of the confessions of religious will return below.

6. Military pastors and bishops, who in certain kingdoms have been granted by the Supreme Pontiffs, are accustomed to have ordinary jurisdiction over soldiers and their wives and children. The particular statutes enacted concerning this matter must be attended to.

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[289] Certain authors did not wish to concede strictly ordinary jurisdiction to pastors, because jurisdiction in the external forum does not pertain to them. Therefore they called the jurisdiction of the pastor quasi-ordinary.

[290] Code of Canon Law, c. 874, § 1; Pontifical Commission, October 16, 1919 (*Acta Ap. Sed.* XI, 477).

[291] Code of Canon Law, c. 874, § 1.

[292] *Ibid.*, c. 875.

[293] *Ibid.*

411. Delegated jurisdiction can be obtained in two ways, namely, from a man and from the law. From a man, that is, from someone who has ordinary jurisdiction and the faculty of delegating,[294] jurisdiction is customarily granted to all confessors who lack ordinary jurisdiction. By the law, whether written or customary, jurisdiction is delegated in certain cases, namely:

1. Any priest, even one suspended, schismatic, or apostate, can absolve a penitent situated at the point of death or in grave danger of death from any sins and censures whatsoever, but for the internal forum alone.[294a] Nevertheless, if a dying person thus absolved afterward recovers, recourse is sometimes necessary, as will be stated more fully below at n. 424. Absolution granted in the same danger of death by a priest not approved is also valid, even when an approved priest is present.[295] All soldiers mobilized or called to war are also considered to be situated in grave danger of death.[295a]

2. Jurisdiction for hearing confessions is granted to all priests undertaking a sea voyage, provided that they have the faculty of hearing confessions either from their own local Ordinary,[296] or from the Ordinary of the port at which they board the ship, or even from the Ordinary of any intermediate port, so that throughout the whole voyage they can hear on the ship, or in a port at which they incidentally disembark, the confessions of any of the faithful and can absolve them even from cases reserved to the local Ordinary.[296a] If,

however, those priests remain beyond three days at an intermediate port, after three days they must seek permission from the local Ordinary, if this can easily be done.[297]

3. Jurisdiction over travelers and vagrants is now granted by law, so that they can everywhere be absolved by any priest duly approved by the Ordinary of the place where the confession is made.[298]

4. Jurisdiction is delegated to those confessors whom bishops,[299] Cardinals,[300] and others having the privilege of confessing to any worthy priest have chosen for themselves.

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[294] Cardinals, pastors, and penitentiaries cannot delegate jurisdiction.

[294a] Pontifical Commission, December 27, 1927 (*Acta Ap. Sed.* XX, 61).

[295] Code of Canon Law, c. 882.

[295a] Sacred Penitentiary, March 18 and May 29, 1915.

[296] Pontifical Commission, July 30, 1934 (*Acta Ap. Sed.* XXVI, 494).

[296a] Code of Canon Law, c. 883, § 2.

[297] Pontifical Commission, May 20, 1923 (*Acta Ap. Sed.* XVI, 114).

[298] Code of Canon Law, c. 881.

[299] *Ibid.*, c. 349.

[300] *Ibid.*, c. 239, § 1, n. 2.

412. Cessation of jurisdiction. Jurisdiction ceases:

a) by revocation by the delegator or his legitimate successor;[301]

b) by expiration of the time appointed, when jurisdiction was given for a determinate time; if, however, through inadvertence the confessor gives absolution after the time has elapsed or the number of cases has been exhausted, the absolution is valid;[302]

c) by certain censures or penalties, namely, if someone is excommunicated by a condemnatory or declaratory sentence, or suspended from office, or interdicted;[303]

d) by loss of office through resignation, privation, removal, or transfer, if there is question of ordinary jurisdiction;

e) by the physical or moral death of the delegator, if jurisdiction was given with these or similar clauses: "at our good pleasure,"[304] "during my tenure of office." Hence, if the bishop dies or is removed from his see, jurisdictions granted under these clauses expire. But if jurisdiction was given "until revocation," it lasts until it is expressly revoked. For the rest, the clauses appended are to be understood according to the mind of each bishop who appended them.

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[301] Since this revocation is something odious, it cannot licitly be made without a grave cause; indeed, it is not even valid if the bishop, without consulting the Apostolic See, takes jurisdiction away simultaneously from all the confessors of some formed religious house (Code of Canon Law, c. 880).

[302] Code of Canon Law, c. 207, § 2.

[303] *Ibid.*, c. 873.

[304] Code of Canon Law, c. 183, § 2.

§ 3. On Putative, Doubtful, and Probable Jurisdiction

413. Putative jurisdiction is that which in reality is not present, but is thought to be present. The Church supplies jurisdiction if common error is present, but not merely private error.

An error is called **common** which affects almost all the inhabitants of some place; but if it reaches only a few among the many of the same place, it is called a **private** error. In order that someone be regarded as a confessor through common error, some fact is required, for example, the exercise of the office of confessor undertaken by commission, from which the faithful of the place commonly regard him as a confessor; it does not suffice that someone once hear confessions after the manner of others.[305] Formerly, in addition to common error, a colored title, or at least a supposed title, was required; but now the Code of Canon Law, c. 209, establishes simply: "In common error ... the Church supplies jurisdiction for both the external and the internal forum." Therefore no title is now required, and common error alone suffices for the Church to supply putative jurisdiction. The reason for this law is that otherwise many of the faithful would suffer spiritual harm from an inculpable error, namely, all the absolutions received would be invalid. Therefore, even if jurisdiction was granted for a determinate time or for a determinate number of reserved cases, a confessor who through inadvertence absolves after this time has elapsed or this number has been exhausted absolves validly, as has already been stated. But if a confessor, well knowing that his jurisdiction has already expired, nevertheless hears confessions, he indeed absolves validly when common error on the part of the faithful exists; but he himself incurs suspension *a divinis*.[306] He does not, however, incur this censure, nor does he act wrongly, if he hears confessions in order to avoid a grave inconvenience. Thus, for example, an assistant curate can validly and licitly hear confessions if, on a day of a great concourse of penitents, he suddenly remembers that his jurisdiction has expired and there is not time to seek its prolongation.

Corollaries. 1. The faithful are not to be obliged to repeat confessions made in good faith to a priest who, from common error, was reputed to be a confessor. It is otherwise if someone, knowing of the common error, nevertheless confessed.

2. It is certain that the Church does not supply jurisdiction if the error is private. For then the common good is not harmed. Thus nearly all authors.

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[305] Cf. Noldin-Schmitt, *De sacr.*[17], n. 347, and, against him, Cappello, *De poenit.*, n. 490.

[306] Code of Canon Law, c. 2366.

414. Doubtful and probable jurisdiction. Doubtful jurisdiction can arise either from a doubt of law or from a doubt of fact. In the first case, probable jurisdiction is rather present; but in the latter event doubtful jurisdiction is present, which can occur especially: a) if it is doubted whether the superior gave jurisdiction; b) whether the time of jurisdiction has expired; c) whether such a sin or such a censure is reserved.

Formerly there existed grave controversies concerning the validity and use of doubtful or probable jurisdiction, which have now ceased, since the Code of Canon Law, c. 209, establishes: "In a positive and probable doubt, whether of law or of fact, the Church supplies jurisdiction for both the external and the internal forum." Therefore, in practice, absolution can be granted validly and licitly when doubtful or probable jurisdiction exists. Nevertheless, as is evident of itself, care must be taken that the doubt which has arisen concerning jurisdiction be resolved and give place to certain jurisdiction.

§ 4. On the Jurisdiction of Religious and over Religious

Ecclesiastical law establishes special provisions: 1. concerning confessors from the religious clergy; 2. concerning penitents who live in the religious state.

415. 1. Confessors from the religious clergy for secular penitents. Religious are understood here to mean not only those who have solemn vows, but also all religious who enjoy the privilege of exemption from episcopal jurisdiction. Religious confessors of this kind receive jurisdiction to hear the confessions both of secular persons and of religious from the local Ordinary, and not immediately from the Holy See, as many authors formerly taught. But religious priests should not ordinarily use it without at least the presumed permission of their superior.[307] If, however, they give absolution even against the will of the superior, they nevertheless absolve validly, and even licitly if there was a legitimate cause.

In an exempt clerical religious institute, its own religious superior also confers delegated jurisdiction for hearing the confessions of subjects, that is, of the professed and of residents, and this not only upon priests of his own religious institute, but also upon other priests.[308]

Religious superiors who have the power of hearing confessions can, with those things which must be observed by law being observed, hear the confessions of subjects who ask this of them spontaneously and of their own motion; but without a grave cause they should not do this habitually. The master of novices and his associate, and the superior of a seminary or college, should not hear the sacramental confessions of their pupils dwelling with them in the same house, unless in particular cases the pupils spontaneously ask this for a grave and urgent cause.[309]

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[307] Code of Canon Law, c. 874, § 1.

[308] *Ibid.*, c. 875, § 1.

[309] *Ibid.*, c. 518, § 2; c. 891.

416. 2. Penitents from the religious state. For the sake of clarity, we distinguish the provisions enacted: a) concerning the confessions of religious men; b) concerning the confessions of religious women.

a) Concerning the confessions of **religious men**, the old law[310] established that all religious men had to confess either to their own superior or to confessors legitimately delegated by him. A confession otherwise made was not only illicit but also invalid. Superiors could reserve certain cases to themselves; nevertheless, they had to commit to at least some confessors the faculty of absolving even from these reserved cases; but if they denied this faculty, then any confessor could licitly and validly absolve from the reserved cases. Religious traveling had to confess to a companion legitimately designated, unless greater liberty was granted by particular law. The **new law** establishes that jurisdiction for hearing the confessions of religious is conferred either by the local Ordinary or by the religious superior in exempt clerical religious institutes. This religious superior can grant this jurisdiction even to priests of the secular clergy or of another religious institute, who can then hear the confessions not only of the professed and novices, but also of all who dwell in the religious house day and night, for example, for the purpose of service.[311]

The ancient constitutions which command or counsel that the confession of religious be made at fixed times to determined confessors have not indeed been abrogated, but it is granted[312] that **any religious**, even a novice,[313] can validly and licitly, for the peace of his conscience, confess to any confessor approved by the local Ordinary, that is, by the bishop and his vicar, the abbot *nullius*, and so forth. Such a confessor can absolve a

religious in the internal forum even from sins and censures reserved within the religious institute. But concerning absolution in the external forum, the old discipline remains intact.

In lay religious institutes of men, for example, among the Brothers of Charity, individual religious can indeed validly and licitly, when a just cause exists, confess to any confessor approved by the local Ordinary; but an ordinary and an extraordinary confessor are to be appointed for their houses in a manner similar to that for communities of religious women, with this difference, however, that these religious men, with the exception of novices, are not bound to approach the extraordinary confessor.

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[310] Clement VIII, May 26, 1593; Urban VIII, September 21, 1624; and several decisions of the Roman Congregations.

[311] Code of Canon Law, c. 514, § 1; c. 874; c. 875.

[312] Sacred Congregation of Religious, August 5, 1913 (*Acta Ap. Sed.* V, 431); Code of Canon Law, c. 519.

[313] Sacred Congregation of Religious, May 3, 1914 (*Acta Ap. Sed.* VI, 232).

417. b) Concerning the confessions of religious women, whether with solemn or simple vows, or even without vows, the old law has likewise been abolished. The principal provisions of the new law[314] are the following:

1. Only one ordinary confessor is ordinarily to be appointed for each religious community, unless, because of the great number of religious women or another just cause, it is necessary that another or several confessors be given. Therefore no one can hear the confessions of a religious community unless he has special jurisdiction granted by the local Ordinary for this religious community. Cardinals, however, have a privilege. According to certain authors, there is no obligation to name an ordinary confessor if there are not six sisters in a religious community.[315] But sisters for whom no ordinary confessor has been determined can confess freely, like the secular faithful. The ordinary confessor must have the following conditions:

a) He must be at least forty years of age, unless the Ordinary for a reasonable cause dispenses from this condition of age; he must be eminent in integrity of morals and prudence.[316]

b) He must ordinarily be appointed for no longer than a three-year term. The bishop, or Ordinary, can dispense from this condition for a second or even a third three-year term if there is a scarcity of suitable priests, or if the greater part of the religious women request this by secret votes. When the three-year term, or by dispensation the second and third three-year terms, of the ordinary confessor has ended, the same confessor cannot be appointed to the same office in the same community except after one year. An extraordinary confessor, however, can immediately be chosen as ordinary, but not vice versa.[317]

c) He must be from either the secular or regular clergy, provided, however, that he has no power in the external forum over the same religious women. Therefore bishops, vicars general, regular superiors, and so forth, are excluded from the office of confessor, whether ordinary or extraordinary, for their subjects.[318]

2. Several times a year, at least four times, an extraordinary confessor is to be given to each religious community, whom all the religious women must approach, at least to receive a blessing if they do not wish to confess to him. The office of extraordinary confessor is not limited as to time. He must be endowed with the same qualities as the ordinary confessor.[319]

3. Besides the ordinary and extraordinary confessor, several supplementary confessors are to be appointed by the local Ordinary for each religious house, whom the religious women can easily summon in particular cases for the purpose of making a confession.[320]

4. On an occasional confessor. For the tranquility of their conscience, religious women can make their confession in any church or oratory, even a semi-public one,[321] or in another place legitimately designated for the confessions of women, but not in another place, and not even validly,[322] to any confessor approved for women. The superior can neither prohibit this nor inquire concerning it, not even indirectly; nor are the religious women bound to report anything to the superior concerning the confession made.[323]

5. Even a special confessor, who is not included among those enumerated above, is to be readily granted by the Ordinary if and for as long as some religious woman requests this for the peace of her soul and greater progress in the way of God.[324] Indeed, religious women who are gravely ill can, even without the permission of the Ordinary and of the superior, summon for the purpose of confession any priest approved for hearing the confessions of women. Nothing prevents an ordinary confessor who has not yet completed a year from the cessation of his office[325] from being granted as a special confessor or director of conscience.

6. The appointment of the ordinary or extraordinary confessor pertains to the bishop of the place. But if a religious community is subject to the jurisdiction of a regular superior, then it is his office to present confessors, while it pertains to the bishop of the place to grant the power of hearing confessions to the confessors presented.[326]

7. Let absolutely all confessors refrain from involving themselves in the internal or external government of the community.[327]

8. The local Ordinary can for a grave cause remove any confessor of religious women; nor is he bound to communicate the cause of removal to anyone, except to the Holy See if required by it. He must, however, notify the regular superior of the removal if the nuns are subject to regulars.[328]

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[314] Sacred Congregation of Religious, February 3, 1913 (*Acta Ap. Sed.* V, 62 ff.): "This Decree must be observed by all religious families of women with either solemn or simple vows, by Oblates and other pious communities which are bound by no vows, even if they are only diocesan institutes. It also binds communities which are under the jurisdiction of a regular prelate; if he does not take care for the faithful observance of this decree, the bishop or Ordinary of that place is himself to do so as a delegate of the Apostolic See." Code of Canon Law, c. 520 ff. and c. 675.

[315] Sacred Congregation of Religious, July 3, 1916, ad III (*Linzer Theol. Quartalschr.* 1916, p. 398); cf., however, our *Man. iur. can.*[6], q. 190.

[316] Code of Canon Law, c. 524, § 1.

[317] *Ibid.*, § 2.

[318] *Ibid.*, § 1.

[319] *Ibid.*, c. 521.

[320] *Ibid.*, § 2.

[321] Cf. Sacred Congregation of Religious, July 3, 1916, ad I.

[322] Pontifical Commission, November 24, 1920, and December 28, 1927 (*Acta Ap. Sed.* XII, 575; XX, 61), and February 12, 1935 (*Acta Ap. Sed.* XXVII, 99).

[323] Code of Canon Law, c. 522.

[324] Cf. Sacred Congregation of Religious, April 22, 1917 (*Acta Ap. Sed.* IX, 277), and Code of Canon Law, c. 520, § 2.

[325] Cf. above, 1 b.

[326] Code of Canon Law, c. 525.

[327] *Ibid.*, c. 524, § 3.

[328] *Ibid.*, c. 527.

§ 5. On the Restriction of Jurisdiction

Preliminary note. Jurisdiction can be restricted or limited in diverse ways, namely: as to **persons**, if, for example, nuns are excepted from the jurisdiction; as to **place**, if, for example, jurisdiction is limited to a particular district; as to **time**, if the power of hearing confessions is granted, for example, for a three-year term; as to **certain sins**, if the confessor cannot absolve from them. This last restriction of jurisdiction is customarily called the **reservation of cases**, which must now be treated, leaving aside the other three restrictions, which are easily understood without a special explanation.

418. Reservation of cases. The reservation of cases, as we now speak of it, is the avocation of some case, whether a sin or a censure, to the proper tribunal of the one reserving it, so that no one can impart absolution except the one reserving it, his successor or superior in office, or his delegate.

The reservation of cases is defined by certain authors as the denial of the power of absolving from certain sins when the power of absolving from the others has been granted. But this definition expresses not the primary but the secondary effect of reservation, since its primary note is avocation to a proper and special tribunal.[329] Whether the primary or the secondary effect of reservation is considered, however, reservation immediately and primarily affects the **confessor**, whose power is limited; mediately it also reaches the penitent, who must approach the tribunal of the superior in order to obtain absolution.

[329] Code of Canon Law, c. 893.

419. Manner of reservation. A twofold manner of reservation is distinguished, namely, by reason of censure and by reason of sin. The former reservations are called reserved censures, but the latter reserved sins. According to the discipline now in force, all cases reserved to the Supreme Pontiff are reserved censures, with one exception. On the contrary, cases reserved by bishops themselves are customarily reserved sins. For, besides the censures reserved to bishops by law, bishops indeed can impose other censures and reserve them, but are not accustomed to do so. In practice each manner of reservation must be carefully distinguished, since in each manner diverse things are required both for incurring the reservation and for absolution from it.

420. The end of reservation is the good discipline of the Christian people, who in this manner are salutarily deterred from more atrocious sins and are more efficaciously healed when they have committed them.

Concerning this matter the Council of Trent[330] teaches: "It seemed to our most holy fathers to pertain greatly to the discipline of the Christian people that certain more atrocious and graver crimes should be absolved not by any priests whatsoever, but only by the highest priests." This discipline is most excellently obtained both on the part of the confessor and on the part of the penitent. For in this manner certain graver and more pernicious sins are reserved to superior judges endowed with more excellent prudence and experience; while penitents burdened with these sins receive a medicinal punishment, because they must undertake the burden of having recourse to a higher confessor, who is not accustomed to impart absolution unless a greater salutary penance has been imposed. Nevertheless, although the reservation of cases is excellent in itself, today it is to be employed sparingly, since faith has become so cold that penitents often care little about reservation, and since no small burden accrues to the confessor from reserved cases which occur. Therefore the Holy Office exhorts Ordinaries that, "speaking generally, they should not wish to apply their hands to this extraordinary remedy unless, after the matter has been discussed in the diocesan synod, or, outside the synod, after the

Cathedral Chapter and some of the more approved and prudent curators of souls of their diocese have been heard, they are convinced in the Lord of the true necessity or utility of the reservation."[331]

[330] Sess. 14, c. 7, *On Penance* (Denz., n. 903).

[331] Instruction of July 13, 1916 (*Acta Ap. Sed.* VIII, 313 ff.). The same is established by the Code of Canon Law, c. 895.

421. The power of reserving cases belongs:

a) **To the Supreme Pontiff for the whole Church**, who has reserved to himself several censures, but only one sin, namely, the calumnious denunciation of a confessor.[332] Cases which are reserved to the Supreme Pontiff are customarily called papal cases.

b) **To bishops for their own diocese.**[333] But let these episcopal cases be: 1. only sins which are truly more atrocious and external, and specifically determined, such as homicide, perjury, the grave striking of parents, and so forth; 2. not too numerous, at most four;[334] 3. not cases which are already reserved to the Supreme Pontiff, or to which a censure, even if reserved to no one, is imposed by law. Bishops can, however, reserve these latter cases to themselves, that is, cases to which a censure reserved to no one is attached by law, if this seems altogether necessary.[335] Not without reason do several authors judge that a reservation by which a bishop reserves to himself a case already reserved to the Roman Pontiff is both illicit and invalid, because it seems incongruous that a bishop should reserve to himself a case from which not even he can absolve by his own authority. Hence Noldin-Schmitt[336] infers: "Therefore confessors who have the power of absolving from papal cases can absolve from these, even if the bishop has reserved them to himself."

A capitular vicar cannot reserve cases; nor can a vicar general do this unless he has a special mandate.[337]

c) **To the superiors general of exempt clerical religious institutes and to an abbot *sui iuris*.**[338]

Ordinarily they could reserve to themselves only the eleven cases called Clementine cases:[339] 1. apostasy from the religious institute; 2. nocturnal and furtive departure from the monastery; 3. poisonings; 4. ownership contrary to the vow of poverty which is a mortal sin; 5. mortal theft of the goods of the monastery; 6. a voluntary carnal lapse consummated in act; 7. a false oath in a legitimate judgment; 8. procurement, counsel, or assistance toward the abortion of an animated fetus, even when the effect did not follow; 9. the killing, wounding, or grave striking of any person; 10. falsification of the handwriting or seal of the officials of the monastery; 11. the malicious obstruction, delay, or opening of letters directed from superiors to inferiors or from inferiors to superiors. If there was a grave cause for reserving other cases, the consent of the general council was required. Today, however, religious superiors do not seem able to reserve to themselves more than three, or at most four, cases; indeed, cases reserved by the particular law of religious orders seem to be of little practical utility, since any confessor approved by the local Ordinary can absolve from them, as was stated above at n. 416.

[332] Cf. below, n. 467.

[333] Thus it is evident from the Council of Trent, sess. 14, can. 11, *On Penance*: "If anyone says that bishops do not have the right of reserving cases to themselves except with regard to external governance, and therefore that the reservation of cases does not prevent a priest from truly absolving from reserved cases: let him be anathema" (Denz., n. 921).

[334] Thus the Holy Office in the Instruction cited above, n. 2; Code of Canon Law, c. 897.

[335] Thus the Holy Office, *l.c.*, n. 4; Code of Canon Law, c. 898.

[336] *De sacr.*[17], n. 373.

[337] Code of Canon Law, c. 893.

[338] *Ibid.*, c. 896.

[339] Constitution of Clement VIII *Sanctissimus*, May 26, 1593.

422. Conditions required for reservation.[340] In order that a sin be considered reserved, it is required that it be:

a) **Mortal.**

For it would be useless to reserve a venial sin, since no one is bound to confess it.

b) **External, even if occult.**

Although the Church can reserve even internal sins, nevertheless it never does this, since such a reservation would be of little utility.[341]

c) **Specifically determined.**

Namely, it is required that the words of reservation be verified in the strict sense. Hence, for example, if incest is a reserved sin, it is required that true carnal intercourse have occurred and that it was knowingly incestuous. Therefore, if only impure touches were performed, or if intercourse indeed occurred but without knowledge of the incest, the sin is not reserved.

d) **Certain.**

Therefore, if the sin was doubtful or doubtfully mortal, it is not reserved.

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[340] Code of Canon Law, c. 897.

[341] Cf. Benedict XIV, *De syn. dioec.* l. 5, c. 5, n. 5; Dominic Soto, *In 4*, dist. 18, q. 2, a. 5; Instruction of the Holy Office, July 13, 1916.

423. Ignorance of the reservation. The celebrated question is whether reservation is incurred by one who indeed committed the sin, but with ignorance of the reservation which was not gravely culpable.

The answer is made with a distinction: negatively, if there is question of censures reserved by common law; affirmatively, in sins which the bishop by his proper law reserves to himself, unless, however, he himself has established otherwise.

The first part of the answer is today taught most commonly by theologians, at least if the censure itself is unknown without grave fault.[342]

The reason is that none are punished with a censure except the contumacious, that is, those knowingly transgressing ecclesiastical law.[343] But if the bishop himself, by his proper law, reserves to himself a sin together with a censure, which rarely happens, then the intention of the bishop himself must be attended to, since it depends upon him alone whether he wishes to bind those who are ignorant.

The other part of the answer is indeed not certain, but is more probable; and therefore the reservation of a) a sin which the bishop reserves to himself **without a censure**, and b) the sin of the calumnious denunciation of a confessor, insofar as it is a sin reserved to the Holy See, is incurred even by those ignorant of this reservation.

Thus St. Alphonsus.[344] The reason is: a) because reservation is not only a medicinal punishment, but is also, and indeed principally, a **bond upon the confessor**, whose jurisdiction is limited in this case; b) because

reservation seems to be after the manner of an invalidating or disqualifying law, from which no ignorance excuses.[345] Hence in practice a penitent who committed such a sin reserved to the bishop is not to be absolved by a simple confessor unless a case of necessity is present.[346] Sometimes, however, the bishop tacitly or expressly exempts those who are ignorant from the reservation. A tacit exemption can be admitted if the bishop permits the opinion concerning excusing ignorance to be taught in his seminary. In practice today almost all bishops explicitly declare whether or not they wish ignorance of the reservation to excuse. Thus, for example, before the Code, the bishops of Trier, Brixen, Lausanne, Basel, St. Gall, Chur, and others declared that ignorance did not excuse; on the contrary, the archbishop of Cologne, the bishop of Sion, and others declared that it did excuse. Therefore the practice of each diocese must be attended to in this matter. For the rest, the Code of Canon Law, c. 899, § 1, commands that Ordinaries take care, in whatever manner seems best to them, that the reservations be brought to the certain knowledge of the faithful. Many Ordinaries, however, now establish no reservations, since in some regions they bring little or no utility.

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[342] Cf. Code of Canon Law, c. 2229. If, however, someone knowing of the censure was ignorant that it was reserved, he more probably incurs the reservation. Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 580.

[343] Cf. below in the tract on censures.

[344] *Theol. mor.* l. 6, n. 581. Göpfert-Staab, *Moraltheol.*[8] II, 147, teaches the contrary.

[345] Code of Canon Law, c. 16, § 1.

[346] Cf. below, n. 427.

§ 6. On Absolution from Reserved Cases

424. I. At the point, or even in the danger,[347] of death, every reservation ceases, so that any priest whatsoever (even when a confessor having the faculty is present[348]) can absolve for the internal forum from any sin and from any censure whatsoever.

For thus the Council of Trent[349] establishes: "Very piously, lest anyone perish on this very occasion, it has always been observed in the same Church of God that there is no reservation at the point of death, and therefore all priests can absolve any penitents whatsoever from any sins and censures whatsoever."

If, however, such a dying person afterward recovers, then, if he was absolved from a censure either imposed by a man or reserved in the most special manner to the Roman Pontiff, after he has recovered he must (within a month), under pain of falling again into the same censure, either personally or through the confessor have recourse to the Sacred Penitentiary and obey its mandates, or seek absolution anew from one having the faculty of absolving from censures of this kind.[350] This last manner of acting is certainly preferable if such a confessor can easily be found. A dying person who was absolved from any other case whatsoever (and notably from a sin reserved to the Supreme Pontiff without a censure) is thereafter bound to no recourse.

Note. It is evident of itself that recourse is always necessary:

a) If there is question of a **censure imposed by a man**, because then definitive absolution cannot be given except by the one who imposed the censure, or by his superior or successor, or by one specially delegated.

b) If there is question of **notorious censures**, because then the scandal must be repaired according as the legitimate superior shall have determined.

II. Outside the point of death, diverse provisions have been established according as there is question of the absolution of papal or episcopal cases.

[347] The danger of death is judged to be any case in which life is probably feared for, even though it afterward becomes known that there was no true foundation for the fear. Such danger of death exists, for example, in grave illness, in a difficult childbirth, in an imminent battle, and in the state of wartime mobilization. To the question of the bishop of Verdun: "Can any soldier whatsoever placed in the state of wartime mobilization, as they call it, be by that very fact equated with those who are in danger of death, so that he can be absolved by any priest he encounters?" the Sacred Penitentiary answered on March 18, 1912, and May 29, 1915: "Affirmatively, according to the rules handed down by approved authors" (*Acta Ap. Sed.* VII, 282).

[348] Cf. Holy Office, July 29, 1891: "Those are not to be disturbed who hold that absolution granted at the point of death by an unapproved priest is valid, even when an approved priest could easily have been summoned or could have been present." From these words it is not obscurely perceived that an absolution of this kind by a simple priest is not only valid, but also licit when a reasonable cause is present (cf. Code of Canon Law, c. 882).

[349] Sess. 14, c. 7, *On Penance* (Denz., n. 903).

[350] Code of Canon Law, cc. 882 and 2252. Once recovery has been attained, recourse seems to have to be made within a month, since it is prescribed that it be made according to the norm for recourse in more urgent cases.

425. 1. Absolution of papal cases.

a) **Cardinals**, by a privilege granted and attached to the cardinalitial dignity itself after the manner of a prerogative, can everywhere in the world absolve any penitents whatsoever from any sins and censures whatsoever, except only alpha) censures reserved in the most special manner to the Apostolic See, and beta) those which are attached to the revelation of the secret of the Holy Office.[351]

b) **Bishops or Ordinaries** (for example, Provincials in exempt clerical religious institutes) can, in occult cases, personally or through another delegated by them remit all penalties and censures *latae sententiae* established by common law, except censures reserved in the most special or special manner to the Apostolic See.[352] Recourse afterward to the Holy See is not necessary, as is evident.

How a bishop can absolve from heresy, and so forth, in the external forum will be stated below at n. 507.

c) **Any confessor whatsoever, in more urgent cases in which absolution cannot be deferred without grave inconvenience to the penitent, can directly absolve from all cases reserved by law (and not by a man),** but under this law: that the person absolved is bound, under pain of falling again, either personally or through the confessor to have recourse within a month (c. 34, § 3) to the Sacred Penitentiary or to a bishop having special faculties, or to seek a new absolution from a confessor having the power of absolving from these cases. If, however, this recourse is morally impossible, the censure is then simply removed without any other obligation of recourse;[353] see, however, below under e).

More urgent cases of this kind exist, for example, when everything has been prepared for a wedding which consequently cannot be deferred, and either one of the betrothed confesses a reserved sin; or if a priest absolved his accomplice and cannot abstain from saying Mass without scandal or defamation. It is also judged a sufficient reason and a more urgent case if it is hard for the penitent to remain in the state of mortal sin during the time necessary for the petition and grant of the faculty of absolving from reserved cases,[354] for example, for two days or even one day.

For the absolution of the crime committed through the calumnious denunciation of a confessor, special conditions have been attached, as will be stated below at n. 468.

Local superiors and religious confessors by common law now have no special faculty in the absolution of cases reserved to the Supreme Pontiff with respect to penitents, even those belonging to their own order.[355] What their power may be by particular law or by special indult depends upon the privilege obtained. Major

superiors, however, for example Provincials, in exempt clerical religious institutes, inasmuch as they are true Ordinaries, can in occult cases absolve their subjects from censures reserved simply to the Holy See.

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[351] Cf. below, n. 494.

[352] Code of Canon Law, c. 2237, § 2.

[353] Thus the Holy Office, June 23, 1886; August 19, 1891; November 9, 1898; September 5, 1900; September 6, 1909; Code of Canon Law, c. 2254. Here papal cases are understood to mean: all sins and censures reserved to the Supreme Pontiff, and those irregularities which follow upon the violation of these censures.

[354] Holy Office, June 16, 1897.

[355] Sacred Penitentiary, December 5, 1873.

426. Things to be noted concerning recourse. a) Recourse to the Sacred Penitentiary or to a bishop having special faculties can be made either by the penitent himself or by some confessor whom the penitent has chosen.

b) If recourse is made to the bishop or his vicar general, care must be taken above all that the sacramental seal not be violated.

c) Recourse to a privileged confessor who has the faculty of absolving from papal cases does not suffice.[356] Nevertheless, nothing prevents the penitent from approaching such a confessor, confessing the reserved sin, and receiving absolution from him. Once this has been obtained, the penitent is no longer bound afterward to comply with other mandates subsequently coming from the superior to whom recourse had perhaps already been made.[357]

d) Recourse essentially comprises two things, namely: submitting the case to the competent superior and complying with his mandates. If the penitent through grave negligence omitted either one, he falls again into the same censure. Hence, for example, if through grave negligence the penitent does not return to the confessor who wrote to the Sacred Penitentiary in his name, he seems to incur the same censure again; cf. below, n. 430.

e) If recourse is morally impossible, which is accustomed to occur in Missions, Retreats, and other cases when a lay penitent cannot return to the same confessor without grave inconvenience, absolution can be given without the obligation of recourse. The confessor, however, must then observe two things: 1. he must enjoin those things which are to be enjoined by law, for example, the reparation of damage or scandal which may have arisen, the avoidance of the proximate occasion of sinning, and so forth; 2. for the censure incurred he must impose a special penance and satisfaction, to be performed within a fitting time determined by the confessor under pain of falling again into the censure.[358] Nevertheless, if the penitent without grave fault does not perform this satisfaction and penance within the determined time, for example because of illness, he does not seem to fall again into the censure, since it is not inflicted except on account of grave fault. But a penitent who is a priest and who absolved his accomplice in a shameful sin is not excused from recourse, at least if he can write to Rome and seek a response under a fictitious name without truly grave inconvenience.[359]

f) Although it is not altogether necessary, it is nevertheless much better to write letters to the Sacred Penitentiary in the Latin language, of this or a similar tenor:

Most Eminent Prince,

Titius incurred a censure reserved in the most special manner to the Apostolic See on account of the attempted absolution of an accomplice, which he did three times. He likewise incurred an irregularity, because he violated the censure by exercising sacred orders. But he has now been absolved from this offense and the attached censure for the first (or now the third) time. For, since absolution could not be deferred because infamy was to be avoided, and Titius was otherwise rightly disposed, he received absolution. Now, however, he presents himself to obey the mandates of the Church. May Your Eminence be pleased to send the rescript to the confessor written below.

Fribourg (Switzerland) N. N., pastor Rue de Romont 10 March 1, 1928.

The outer inscription of the letter: "To the Most Eminent Cardinal Major Penitentiary. Palace of the Holy Office. Rome." It is better, although it is not necessary, to enclose in the letter the postal expenses which are necessary for the dispatch of the rescript. The rescript itself, however, is always granted gratis by the Sacred Penitentiary, which sometimes sends it to the confessor indeed named below, but with a double envelope. The inner envelope, secured with a seal, is inscribed: "To the discreet man, a confessor from among those approved by the Ordinary of the place." Then the confessor cannot himself open this inner envelope without the explicit or implicit permission of the penitent, to whom he must deliver it and whose part it will be to choose for its execution whichever confessor he prefers from among those approved. In practice, however, the penitent is accustomed to choose the first confessor for this execution.

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[356] Holy Office, December 19, 1900.

[357] Code of Canon Law, c. 2254, § 2.

[358] Code of Canon Law, *l.c.*

[359] Holy Office, June 3, 1899; Code of Canon Law, c. 2254, § 3; cf. Cappello, *De censuris*[3], n. 131.

427. 2. Absolution of episcopal cases.

First of all, the cases which are reserved to bishops **by law** (namely, the nine set forth below at n. 522) must be distinguished from cases which a bishop reserves to himself by his own authority. Among these latter, cases which are reserved with a censure must again be distinguished from those which are reserved as sins.

a) Cases which **by law** are reserved to a bishop with a censure can be absolved in the same manner as papal cases. This opinion, according to the prescription of the Code of Canon Law, is today certain and safe in practice.

Therefore, in danger of death they can be absolved without any further obligation; but in more urgent cases, under pain of falling again, unless recourse is made to the bishop within a month. The reason for this solution is the response of the Holy Office of June 23, 1886, which entirely changed the old practice concerning the absolution of reserved cases, and which was confirmed in the Code of Canon Law, c. 2254. For there all censures without distinction are indicated as to be absolved.

The more probable opinion, and one safe in practice, teaches that mendicant religious confessors and all those who participate in the privileges of mendicants can absolve from cases reserved to a bishop by law;[360] but religious cannot, without a special faculty having been obtained, absolve from cases which the bishop has reserved to himself by his own authority.[361]

b) Cases which the bishop by his proper law reserves to himself by reason of sin,[362] can be directly absolved:

by a simple confessor: alpha) whenever the faculty cannot be sought from the legitimate superior without grave inconvenience to the penitent or without danger of violation of the sacramental seal; beta) when such cases are accused by the sick who are unable to leave the house; or gamma) by betrothed persons confessing for the sake of contracting marriage; delta) when the legitimate superior has denied the faculty of absolving requested for some determined case; epsilon) outside the territory of the one reserving, even if the penitent departed from it merely to obtain absolution;[363]

by Missionaries during the time when sacred Missions happen to be held among some people. The same seems to hold for the time of spiritual retreats, which are equated with Missions;

by the pastor and others who in law are reckoned as pastors, during the entire time useful for fulfilling the Easter precept;

by the canon penitentiary and vicars forane (commonly rural deans). For the faculty of absolving belongs to the canon penitentiary himself by law; but it must be committed to the vicars forane by the bishop, who should also grant them permission to subdelegate this faculty within their own district for a particular case.[364]

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[360] Cf. our *Man. iur. can.*[6], q. 245 (c); Noldin, *De poenis eccl.*[12], n. 95.

[361] Constitution of Clement X *Superna*, June 21, 1670.

[362] They are sometimes called cases "reserved by Us."

[363] Code of Canon Law, c. 900.

[364] Thus the Instruction of the Holy Office cited above, July 13, 1916, n. 7, and Code of Canon Law, c. 899, § 2.

428. Note. 1. If a confessor (even with crass ignorance), ignorant of or not adverting to the reservation, absolves a penitent from the censure and the sin, the absolution from the censure is valid, provided that it is not a censure imposed by a man or a censure reserved in the most special manner to the Holy See.[365] Indeed, even the absolution from the sin is valid; for if someone has been absolved from the censure, the reservation of the sin entirely ceases.[366] The same is believed (although some contradict it) if an ignorant confessor absolves from a reserved sin without a censure.[366a]

2. A penitent who through **inculpable forgetfulness** omitted a reserved sin in a confession made to a privileged confessor is validly absolved. Nevertheless, he is afterward bound to manifest in confession the omitted sin, which, however, is no longer reserved. The reason is that the privileged confessor is judged to absolve a penitent rightly disposed. But a penitent inculpably forgetting a reserved sin was rightly disposed. Therefore he has been absolved from every sin, even the reserved one. The same seems to have to be said if a confession was made in this manner to a simple confessor, unless, however, there is question of a censure reserved in the most special manner to the Holy See.[367] The matter stands otherwise if the penitent confessed **sacrilegiously**. For if he sacrilegiously **concealed** the reserved sin, it has not been remitted;[368] but if he candidly manifested the reserved sin and committed the sacrilege for another cause, the reservation itself seems to have been removed, since one having the faculty of absolving judged concerning it properly and imposed a fitting satisfaction. Therefore, in the following confession the penitent must repeat the entire accusation and confess the sacrilege committed, but he can now be absolved by a simple confessor. On this matter St. Alphonsus says most excellently:[369] "The end of confession is one thing, the end of reservation another. The end of confession is that the sin be remitted; but the principal and direct end of reservation is that those committing reserved sins of this kind be subjected to the judgment of the superior. Therefore, when

a subject reports his sin to the superior and accepts the penance imposed by him, even if he confesses sacrilegiously, the end of reservation is already obtained, although the sin is not remitted. But that the sinner derives an advantage from such wickedness occurs accidentally. For although the superior according to his interpretative will would not wish to remove the reservation if he knew the sacrilege, nevertheless according to his actual will he then already wishes to remove it." An exception is made if someone in the time of a jubilee sacrilegiously confessed a reserved sin to a simple confessor; for in the time of a jubilee only those penitents enjoy the privilege of receiving absolution from any confessor whatsoever who wish to fulfill all the things which are prescribed for gaining the jubilee. But, first of all, a good confession is prescribed. Therefore, on account of the sacrilegious confession, the penitent loses all the graces and all the privileges of the jubilee.

3. A confessor who knowingly or with affected ignorance, without necessity, absolves from reserved cases from which he does not have the faculty of absolving sins gravely, both because he violates a grave law of the Church and because he exposes the sacrament of penance to nullity; moreover, he is *ipso facto* suspended from hearing confessions.[370] Indeed, if he should presume unlawfully to absolve from cases reserved in the most special or special manner to the Supreme Pontiff, he would incur an excommunication reserved simply to the Pope, as will be stated below at n. 520 in the tract on censures.

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[365] Code of Canon Law, c. 2247, § 3.

[366] *Ibid.*, c. 2246, § 3.

[366a] Cf. Cappello, *l.c.*, n. 593.

[367] Code of Canon Law, c. 2249, § 2.

[368] *Ibid.*

[369] *Theol. mor.* l. 6, n. 598.

[370] Code of Canon Law, c. 2366.

429. There was a special difficulty concerning the absolution of travelers from reserved cases. Today, however, this alone is the true general rule: Travelers are absolved in altogether the same manner as natives.

Thus especially the *Vindiciae Alphonsianae*, p. 552, rightly taught against the Ballerinian attacks. If there is question of papal cases, all theologians admit this rule, since then the jurisdiction is delegated by the Supreme Pontiff himself, who is equally the superior of natives and travelers. But if there is question of episcopal cases, there was formerly great disagreement among authors. The more common and true opinion, however, which is also observed in practice, teaches that the jurisdiction is then delegated by law and limited according to the faculties granted by the bishop of the place where the confession is made. Accordingly, confessors are no longer accustomed to ask penitents whether they are natives or travelers, but treat each one as a native. Hence, for example, Peter, a traveler from diocese A, where the sin of sodomy is reserved, confessing this sin in diocese B, where this sin is not reserved, is always validly and licitly absolved by a simple confessor.[371] On the contrary, if the same sin is not reserved in diocese A but is reserved in diocese B, Peter confessing in this diocese B cannot be absolved by a simple confessor, since his jurisdiction has been limited by the diocesan bishop with regard to the sin of sodomy. The reason is that the penitent is regarded as an accused person. But an accused person appearing in a tribunal is judged not according to the laws of his homeland, but according to the laws of the tribunal where he appears. Therefore, a traveler is bound by the reservations of the place where he confesses,[372] unless, however, he confesses to his own pastor or Ordinary traveling in the same place.

[371] This doctrine has today been defined by the Holy Office, which establishes: "They can be absolved from sins reserved in some diocese in another diocese where they are not reserved, by any confessor, whether secular or regular, even if they went there precisely to obtain absolution." Instruction of July 13, 1916, cited above. Therefore penitents can validly and licitly be absolved from reserved sins, even though, in fraud of the law, they migrated to another diocese for the sake of confessing (Code of Canon Law, c. 900, n. 3).

[372] Pontifical Commission, November 24, 1920 (*Acta Ap. Sed.* XII, 575).

430. Things to be noted in practice. 1. A confessor hearing a case reserved by law to the Holy See or to the Ordinary should first investigate whether all the conditions required for reservation are present, namely: knowledge of the censure, and that the sin is grave, external, consummated, and certain. But if some founded doubt remains, the case is not reserved. If, however, all the required conditions are present, it must then be investigated whether or not it is a more urgent case. If it is not a more urgent case, the penitent cannot be absolved, but must either be sent to another privileged confessor or the faculty of absolving must first be sought. But if it is a more urgent case, the penitent must then be admonished concerning the reservation and the obligation of having recourse within a month to the Sacred Penitentiary or to the bishop. If he promises that he will render obedience, he can be absolved; otherwise not. The penitent can, however, also present himself to another confessor having special faculties and seek absolution. When the penitent does not fulfill those things which were enjoined by the Sacred Penitentiary, he indeed sins, but he does not incur the censure again unless a) there was grave negligence, or b) the Sacred Penitentiary gave its mandates under pain of falling again into the censure. But what is to be said if the penitent, notwithstanding his firm promise, does not return to hear the mandates of the Sacred Penitentiary or of the bishop? If he does this through culpable negligence, he seems to incur the censure again, because he makes little of the gravely prescribed recourse, which is not completed until the penitent has accepted the mandates.[373] If, however, he could not return to the confessor without great inconvenience, the recourse seems to have become morally impossible and consequently no longer to bind, and the censure to have been absolutely removed.

2. A confessor hearing some sin which a bishop has reserved to himself by his proper law can almost always grant absolution to a penitent rightly disposed, since grave inconvenience almost always arises for him from the delay of absolution. Moreover, often there are other causes related above on account of which the episcopal reservation ceases.

[373] Cf. De Smet, *De casibus reserv.*, n. 56, and Holy Office, March 30, 1892, ad 3.

Article II. On the Duties and Obligations of the Confessor

431. The office of the confessor is fourfold, namely, that of judge, teacher, physician, and father. But his principal office is the office of judge, since the sacrament of penance was instituted by Christ after the manner of a judgment. Since the sacramental judgment is not a condemnatory judgment but a liberative one and for the benefit of the penitent, the confessor must treat the penitent with paternal affection, heal his wounds as a good physician, and dispel his ignorance as a teacher. In exercising his office, the confessor must keep before his eyes a) the **honor of God**, and consequently the good of the sacrament, so that with great diligence he procures not only the validity but also the liceity of the sacrament; b) the **good of the penitent**. For the sacraments are for men.[374]

In order, however, that we may discuss all the duties of the confessor in a clear order, we shall treat: 1. his duties before the act of confession; 2. in the act of confession itself; 3. after confession.

[374] Code of Canon Law, c. 888, § 1.

§ 1. On the Duties of the Confessor Before the Act of Confession

The confessor must prepare himself for hearing confessions by acquiring for himself: 1. sufficient knowledge; 2. necessary prudence; 3. Christian virtues.

432. 1. Knowledge necessary for the confessor.

St. Alphonsus says:[375] "I affirm that the confessor who exposes himself to hearing confessions without sufficient knowledge is in the state of damnation." The reason is that otherwise the confessor exposes himself to the proximate danger of badly administering so venerable a sacrament, with great harm to penitents. Hence Christ says: "And if the blind lead the blind, both fall into the pit."[376]

That knowledge is judged sufficient which renders the priest fit to administer the sacrament worthily and fruitfully. Accordingly, equal knowledge is not required in all confessors. Thus, in a case of grave necessity, any priest whatsoever has sufficient knowledge, especially since today no one is accustomed to be admitted to the priesthood who has not devoted himself to theological studies for at least four years. But even outside a case of necessity, a confessor hearing confessions in a humble village, where penitents almost never bring difficult cases, does not need as much knowledge as is needed by a confessor hearing confessions in great cities, where penitents of every kind are accustomed to assemble. This can be held as a general rule: **That confessor is endowed with sufficient knowledge who a) knows how to resolve cases which commonly occur, and b) knows how to doubt prudently concerning more difficult ones.** The confessor is not bound always to judge concerning individual sins whether they are mortal or venial, since this is sometimes truly impossible.

To possess sufficient knowledge of moral theology, it does not suffice that the confessor once passed a good examination, but he is also bound continually to preserve and increase the knowledge acquired by new study. For every year new decisions of the Roman Congregations are issued, which must be attended to by the confessor. But this is impossible if the confessor is not assiduous in study. Nor should it be said that sound sense or natural prudence suffices for resolving cases, because so many positive laws in the matter of the sacraments, justice, the precepts, and so forth, must be applied that natural prudence is altogether insufficient. Nor does experience alone suffice; for unless continual study directs experience, many errors are necessarily committed. Hence someone rightly said: "The long experience of a confessor who lacks study and knowledge is the old age of error"; and Benedict XIV says:[377] "Some priests, who at the beginning had undertaken the office of confessor most excellently, afterward, after a long time with all care for studies neglected, lose their former knowledge of moral theology, so that those who had been most skilled in an art of this kind are at last, instructed with a scanty and confused knowledge of the art itself and with its first rudiments, scarcely numbered among novices." Since these things are so, a confessor who for a long time neglects the study of moral theology sins, because he exposes himself to the proximate danger of committing grave errors and harming penitents. To foster moral knowledge in priests, ecclesiastical law prescribes that pastoral collations or conferences, in which moral matters are treated, be held several times in the year.[378]

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[375] *Praxis confess.*, n. 18.

[376] Matt. 15:14.

[377] *Instit.* 32, n. 4.

[378] Code of Canon Law, cc. 131, 448, 591.

433. 2. Prudence must be added to knowledge.

For the governance of souls is the art of arts. Prudence is right reason concerning things to be done, that is, it chooses the best means for obtaining the end. But the end to be obtained by the confessor is principally the salvation of souls. Therefore let the confessor take care to counsel and prescribe suitable means of salvation for each penitent. But this is impossible if the confessor does not know the character of each penitent. Therefore let the confessor be prudent: a) **in asking questions**, especially in matters which concern the sixth precept of the Decalogue; b) **in rendering judgment**, insofar as he attentively considers all the circumstances both of the sins and of the sinner; c) **in suggesting remedies**; d) **in giving counsels**; e) **in imposing satisfactions**.

The means by which prudence is acquired are principally: a) **prayer**; therefore the confessor acts most excellently who, before the administration of the sacrament of penance, devoutly says the prayer set forth above at n. 329, note 2; b) **purity of intention**, which strives to please God alone and not men; for God enlightens those who seek nothing except divine things; c) **docility of mind**, which is especially necessary for younger confessors and which demands that in more difficult cases the confessor seek the counsel of wise men; but let him seriously beware lest the seal be injured.

434. 3. Christian virtues are exceedingly necessary for the salutary exercise of the office of confessor.

The confessor not only must himself be in the state of sanctifying grace, but must also direct penitents in the way of the virtues. But he who knows the way of virtue from theory alone and not from his own experience is not accustomed to be a suitable guide. The principal virtues which become a confessor are:

a) **An ardent zeal for souls**, which urges him so that he becomes all things to all men.

b) **Unfailing patience**, which is certainly necessary for instructing the unlearned, arousing the tepid, and assisting those insufficiently prepared.

c) **Fortitude**, which does not fear to admonish the rich and the powerful, in season and out of season, if this is necessary.

d) **Exceptional purity.** For even in our days "all flesh had corrupted its way upon the earth."[379] Very often the confessor must hear the foulest sins. But if his mind is not then most chaste, the depraved motions which arise allure him to consent. Especially, however, in hearing the confessions of women, every prudence and purity is necessary, because otherwise grave danger arises both for the confessor himself and for the penitents.

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[379] Gen. 6:12.

§ 2. On the Duties of the Confessor in the Act of Confession

435. 1. The first duty which is incumbent upon the confessor in the act of confession is to judge rightly both concerning the sins heard and concerning the absolution to be given or refused.

For judging rightly, not only sufficient knowledge of moral theology is required, but also the **integrity of the confession**. Accordingly, the Roman Ritual admonishes:[380] "If the penitent has not expressed the number and species of the sins and the circumstances necessary to be explained, let the priest question him prudently." But questioning must always be: a) **Moderate**, because excessive questions are accustomed to exasperate the penitent and bring upon the confessor the reproach of curiosity. b) **Discreet and prudent**, both concerning the matters about which he questions and in the manner of questioning. The confessor must avoid everything

by which penitents could justly be scandalized.[381] c) **Opportune.** Generally it is not expedient to question the penitent before the accusation has been entirely completed, because otherwise sins are easily omitted through forgetfulness. If, however, the confessor perceives that the penitent accuses himself so imperfectly that as many questions must necessarily be posed as the memory is unable to retain, he can also question the penitent during the accusation.

[380] Tit. 3, c. 1, n. 16.

[381] Cf. Code of Canon Law, c. 888, § 2.

436. 2. The second duty of the confessor is to teach and admonish the penitent.

The confessor must **teach** the penitent those truths which are necessary for rightly receiving the sacrament; therefore not only the truths which are necessary by a necessity of means, but also all those things which necessarily pertain to contrition, purpose, confession, satisfaction, and so forth.[382] It is evident of itself that unlearned penitents do not need an altogether perfect knowledge of these truths, but that it suffices if they know at least the substance according to their capacity. Sometimes the confessor is also bound to instruct penitents concerning the duties of their state, for example, concerning the obligations of spouses.

If the penitent judges from an erroneous conscience that something is a sin which in truth is not such, or a grave sin which in fact is light, he must be instructed; for such an error is very harmful to him. But if the penitent thinks that something is **licit** which in truth is illicit, or that something is a light sin which in truth is grave, then a distinction must be made. If such ignorance is **vincible and culpable**, the penitent must be instructed, because he already sins from the fact that he did not expel this ignorance. But if such ignorance is **invincible**, the penitent must be instructed whenever good fruit is hoped from it; for otherwise the penitent would commit a material sin, which it is not lawful to permit without a grave cause. But whenever greater inconveniences are prudently feared from the instruction, whether for the penitent himself, for a third person, or for the community, the penitent can and must be left in good faith; for otherwise formal sins would be made from material sins. This case sometimes occurs in a putative marriage. For if the putative spouses are in good faith and their union can neither be dissolved nor changed into a legitimate marriage, it is preferable that they be left in good faith.

The confessor must **admonish** the penitent concerning obligations which must necessarily be fulfilled, for example, concerning restitution to be made, the proximate occasion to be avoided, and so forth.

[382] Cf. Roman Ritual, *ibid.*, n. 14.

437. 3. The third duty of the confessor is to dispose the penitent to true contrition and amendment.

Concerning this matter the Roman Ritual admonishes:[383] "And [the confessor] shall endeavor by efficacious words to lead him to sorrow and contrition, and shall induce him to amend his life and institute it better, and shall hand down remedies for sins." If the confessor prudently judges that the penitent is well disposed, he is strictly bound to nothing else except giving absolution, but it is almost always expedient to suggest to all some motive of contrition and good purpose. If the confessor doubts concerning the sufficient contrition of the penitent, he cannot absolve him unless he first rightly disposes him. St. Alphonsus teaches that this obligation is grave,[384] saying: "Therefore I do not know how those indolent confessors can be excused from fault who, as soon as they have learned that the penitent is not sufficiently disposed, dismiss him, with no diligence or very little diligence first employed for curing him. For I say that the confessor is bound by a rigorous obligation of charity to dispose him insofar as he is able."

Since the confessor is not only a judge and teacher but also a physician, he must investigate the cause of the spiritual illness and then prescribe suitable remedies for amendment, for example, the frequent reception of the sacraments of penance and the Eucharist, determinate prayers, flight from the occasion, certain mortifications, and so forth.

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[383] Tit. 3, c. 1, n. 18.

[384] *Theol. mor.* l. 6, n. 608.

438. 4. The fourth duty of the confessor is to give, deny, or defer absolution.

Concerning these things, the following are to be noted:

a) **Absolution must be given to a penitent rightly confessed and disposed, who asks for it here and now, or who does not readily consent to a delay.**[385]

For the confessor, by freely hearing the confession of the penitent, enters into a quasi-contract of giving absolution if the penitent is rightly disposed. Hence, if after hearing the confession of a rightly disposed penitent he denies absolution, he breaks the contract and sins gravely, at least if the penitent is thereby compelled to remain in the state of mortal sin and bears this with difficulty. For a just cause, for example, for the sake of medicine or trial, absolution can sometimes be deferred for a brief time even for one well disposed and consenting, as will be stated below, because this can sometimes be useful to the penitent. Thus also in the ancient Church absolution was sometimes delayed for penitents.

b) **Absolution must be denied to those who are certainly unworthy or incapable.**

The reason is that otherwise the sacrament would certainly be frustrated, which is not lawful even in extreme necessity. The **unworthy or indisposed** are those who lack true contrition and a sincere and firm purpose, for example, those who are unwilling to leave a voluntary proximate occasion of sinning; who are unwilling to put aside grave enmities or hatred of their neighbor; who are unwilling to make necessary restitution, although they can do so; who are unwilling to remove the scandal which they give to others; who refuse to leave gravely sinful arts or occupations, and so forth. Those **incapable** of absolution are, for example, the unbaptized, the dead, the perpetually insane, the absent, and so forth.

Note. Whenever the confessor must deny absolution, let him not employ harsh words, but in a kind and tranquil manner let him manifest to the penitent the reason why absolution cannot be granted. Moreover, let the confessor first endeavor with prudent diligence to dispose unprepared penitents, and only after useless attempts let him deny absolution.

c) **Absolution must be deferred if the disposition of the penitent is plainly doubtful and there is no urgent cause for absolving him conditionally; it can be deferred for a brief time for a penitent rightly disposed if alpha) the confessor rightly judges this to be useful for his amendment, and beta) the penitent consents to the delay.**

The reason for the first part is that otherwise the sacrament would be exposed to the danger of nullity, which certainly is not lawful except in grave necessity. Furthermore, penitents are judged doubtfully disposed whose contrition seems very suspect, for example, recidivists who always return with the same sins and have not employed the remedies prescribed by the confessor; penitents who narrate grave sins very cursorily and coldly, without any sense of contrition; those who approach the sacrament of penance from custom or from reverential fear of parents or masters; those who refuse to accept a moderate penance proportioned to their strength, and so forth. In practice it is sometimes most difficult to judge concerning the sufficient disposition

of the penitent. When the confessor remains in doubt, he can usefully employ this rule: If he prudently judges that the delay of absolution will be useful to the penitent, since after a brief time he will return better disposed, let him defer absolution; but if he seriously fears that the penitent will become worse from the delayed absolution or that he will no longer return to confession, let him impart absolution, at least conditionally, after a diligent exhortation to contrition and firm purpose has first been given. For the rest, discussion will return to this matter below, when recidivists and habitual sinners are treated.

The reason for the other part is that a rightly disposed penitent indeed has a right to absolution, but not that absolution be granted to him **immediately**. Furthermore, the confessor as physician can employ delayed absolution as an efficacious remedy for curing the tepidity of the penitent. Such a practice of deferring absolution existed in the ancient Church and produced good fruits. Nevertheless, let the delay be **brief** (that is, ordinarily not beyond a week), especially if the penitent is in the state of mortal sin; for a long delay cannot but harm the penitent, who then lacks many graces. Then let it not be done **unless the penitent consents**.[386] For the Code of Canon Law, c. 886, establishes: "If the confessor cannot doubt concerning the dispositions of the penitent and the latter seeks absolution, absolution is neither to be denied nor deferred." The reason is that a delay of absolution which a penitent certainly rightly disposed and burdened with mortal sins accepts not willingly but under compulsion will very rarely produce good fruits; on the contrary, it is sometimes very harmful.

St. Alphonsus wisely admonishes:[387] "For the rest, each one in this matter of imparting or deferring absolution must direct himself according to the light given to him by God. This is certain: in this matter those who are more lenient than is right err just as those who are more rigid than is right in absolving. Either extreme is pernicious; for many confessors on account of excessive facility in absolving are the cause that more souls go to perdition, but others on account of excessive rigidity are of no less detriment. Hence I hardly know whether it ought to be a matter of less scruple for the confessor to absolve the indisposed than to dismiss the disposed."

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[385] Code of Canon Law, c. 886. Cf. Cappello, *l.c.*, n. 487.

[386] Thus also Noldin-Schmitt (*De sacr.*[17], n. 392), nor is the contrary efficaciously proved by Ter Haar (*De occasionariis et recidivis*, thesis 20).

[387] *Theol. mor.* l. 6, n. 464.

§ 3. On the Duties of the Minister After Confession

439. Two duties are incumbent upon the confessor after confession: one *per se*, namely, to preserve the seal; the other *per accidens*, namely, to correct defects and errors, if any have occurred.

1. On the Obligation of Correcting Defects or Errors

An error or defect can occur: a) concerning the **validity** of the sacrament, for example, if the confessor omitted the essential words of absolution; b) concerning the **integrity** of the sacrament, for example, if the confessor omitted to question concerning the species and specific circumstances of sins; c) concerning the **obligations of the penitent**, for example, if the confessor omitted to admonish him concerning restitution to be made.

440. a) Concerning the validity of the sacrament, if the confessor erred in such a way that the sacrament administered was null, he is obliged to correct the error. But the gravity of this obligation

must be measured: alpha) from the gravity of the harm which otherwise will befall the penitent; beta) from the gravity of the fault or negligence which the confessor committed by frustrating the sacrament.

Not only the pastor and other curators of souls are bound **from justice** validly to administer the sacrament to one who has rightly confessed, but also any confessor whatsoever, although not in the same degree. For a confessor who is not a curator of souls indeed hears a confession from charity; but once the confession has been heard, by reason of an onerous quasi-contract, and therefore from justice, he is bound validly to administer the sacrament. Accordingly, if he does not do this, he is an unjust damager, and a material one if he did this without any fault (which rarely occurs in practice). But if grave harm thereby befalls the penitent, he must prevent it, although not with great harm to himself. When, however, through his own grave fault he frustrated the sacrament and inflicted grave harm, he is a formal unjust damager and is bound to repair the evil which arose even with grave harm to himself.

The matter becomes clear from examples. 1. A confessor hearing the grave sins of a dying person in confession forgets to give absolution. If the confessor does not correct this error, great harm befalls the dying person, since he has not been absolved and it is not certain that his sins are removed by the reception of Viaticum. The penitent, therefore, will perhaps be damned in hell unless the confessor corrects the error. Moreover, the confessor can scarcely be excused from grave negligence if in such a case he forgets to give absolution. Therefore he is bound under grave sin to correct the error if he can. 2. A confessor forgets to give absolution to a penitent burdened only with light sins. The harm to the penitent is not so grave, and consequently the confessor is not bound under grave sin to correct the error. 3. A confessor forgets to give absolution to a penitent burdened with grave sins; but since alpha) it is piously believed that such a penitent, being attrite, becomes contrite in Communion and receives the remission of sins; and since beta) it is certain that in the following confession these sins will be absolved indirectly, harm not so great befalls the penitent, and consequently the confessor is not obliged to correct the error committed with grave inconvenience. Nevertheless, let every confessor be exceedingly diligent in practice lest he ever commit an error concerning the validity of the sacrament.

441. b) Concerning the integrity of confession, if the confessor committed a defect, a distinction is necessary. Either he conducted himself **negatively** (that is, he omitted to question concerning the species, number, and specific circumstances, or to impose a penance), and then he is indeed bound to repair the defect within this confession or the following one, but he is bound to nothing outside confession. The reason is that a defect of this kind is easily repaired within confession, but not outside confession. On the other hand, no great harm befalls the penitent from such an omission, since he was validly absolved if he was in good faith. Or he conducted himself **positively** (that is, he expressly said: this is not a grave sin, or it is not necessary to accuse all mortal sins), and then he is bound to correct this error both within confession and also outside it, although in this latter case the permission of the penitent to speak concerning matters heard in confession must first be obtained. The reason is that the confessor culpably induced the penitent into a pernicious error.

442. c) Concerning the obligations of the penitent, if the confessor committed a defect, the same distinction must be employed. Either he **omitted** to admonish the penitent concerning some obligation, for example, concerning restitution to be made, the proximate occasion to be avoided, and so forth; and then from charity (and not under grave sin) he is bound to correct the error, because the sacrament was validly administered and no great harm arose which the confessor was strictly bound to prevent. Hence, *a fortiori*, a confessor who was silent concerning the obligation of making restitution is not bound personally to make restitution to the third person, because he is not bound from justice to take care that the harm to the third person be repaired.[388] Or he **positively and culpably** induced the penitent into error, for example, by saying

that he was not bound to restitution; and then from justice he is bound to repair the harm caused. For he is an unjust damager as one counseling the harm. Therefore, when with grave fault he falsely induced the penitent to make restitution or falsely drew him away from it, he is bound to retract the error; and if he does not do this, he himself must make restitution either to the penitent or to the third person.

But if the confessor erred through light negligence, or if he caused only a small harm, the obligation of retracting the error and preventing or repairing the harm is not so great. Nevertheless, in practice that confessor can scarcely be free from grave fault who positively induced someone falsely to make or omit restitution. For then he either has an altogether insufficient knowledge of moral theology or acted very precipitately and imprudently. And there is no reason why such a confessor should merit excessive indulgence.

[388] St. Alphonsus, *Theol. mor.* l. 6, n. 621.

2. On the Obligation of the Seal of Confession

443. a) Notion of the seal. The sacramental seal, or the seal of confession, is the strictest obligation of preserving secrecy concerning all those things which were said by the penitent in order to sacramental absolution and the revelation of which would render the sacrament burdensome or odious. This definition, commonly given by theologians, will be explained more fully in treating the subject, matter, obligation, and violation of the seal.[389]

b) The primary subject of the seal is indeed the confessor; but secondarily all those who (fortuitously or deliberately, legitimately or illegitimately) heard something from a sacramental confession;[390] but not the penitent himself.

Therefore the following are bound to the seal: a man who hears confessions while pretending that he is a priest;[391] a confessor who is consulted, even outside the sacrament of penance, concerning sins accused; one who reads the written confession of another, at least if it is found in the hands of the confessor or in the proper place of confession, that is, in the place where the confessor sits;[392] an interpreter employed for the confession; those standing near the confessional who by chance or deliberately hear the things which are accused; the superior from whom the faculty of absolving from reserved cases is sought; a counselor to whom the case is referred with the permission of the penitent. Thus at least more probably.[393] Although the penitent himself is not bound by the sacramental secret, because the seal was introduced in his favor and not in that of the confessor, nevertheless he is bound by the **natural and entrusted secret** concerning those things which the confessor said to him in confession, if harm would arise to the confessor from their revelation. And in truth, a penitent who speaks concerning the statements of the confessor often acts exceedingly unbecomingly and illicitly, since the confessor, bound by the seal, can in no way defend himself. Nevertheless, since experience testifies that penitents not rarely speak concerning things heard in the tribunal of penance, the greatest prudence is necessary for the confessor, lest he say anything which could cause inconvenience to himself.

[389] St. Thomas briefly says: "The seal of confession is nothing other than the duty of concealing a confession" (*In 4 Sent.*, dist. 21, q. 3, a. 4, sol. 3). Bertrand Kurtscheid, O.F.M., learnedly treats the history of the seal of confession in *Das Beichtsiegel in seiner geschichtl. Entwicklung* (Freiburg, 1912).

[390] Code of Canon Law, c. 889, § 2.

[391] Concerning this matter St. Thomas writes: "The seal of confession belongs to the priest insofar as he is the minister of this sacrament.... Nevertheless, just as someone who is not a priest in some case participates in the act of the key when he hears a confession because of necessity, so he participates in the act of the seal of confession and is bound to conceal it, although, properly speaking, he does not have the seal of confession" (*In 4 Sent.*, dist. 21, q. 3, a. 1, sol. 3).

[392] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 650.

[393] Cf. St. Thomas, *l.c.*, and a. 2 ad 4; St. Alphonsus, *Theol. mor.* l. 6, n. 648.

444. c) The object of the seal, or its matter, consists of: alpha) all mortal sins accused in general and in species, and venial sins accused in species (unless they are known to the confessor from elsewhere); beta) all those things which became known by reason of sacramental confession and the revelation of which would redound to the burden of the penitent, for example, the circumstances of sins, accomplices, and defects of the penitent.

But those things whose revelation does not redound to the burden of the penitent or to hatred of the sacrament are not matter of the seal, such as the gifts and virtues of the penitent. Nevertheless, even these sometimes fall under the natural secret.

You will resolve:

1. The confessor is bound to the seal even if he had to deny absolution to the penitent; for a sacramental confession was present, although the sacrament was not completed. For the root from which the seal arises is not sacramental absolution, but the "penitential judgment," as the Fourth Lateran Council says.[394]

2. The **penance imposed** is also an object of the seal (at least if it is grave), since from the penance someone could conclude the gravity of the sins accused; likewise, knowledge of an accomplice obtained from confession; likewise, absolution denied, but not (ordinarily) absolution given. Nevertheless, in practice let the confessor not say or write: I absolved such a penitent. Cf. below, n. 447, on writing a certificate of confession.

3. The **natural defects** of the penitent, for example, scrupulosity, illegitimate birth, and so forth, are matter of the seal if they are known from confession alone and if the penitent endeavors to conceal them outside confession.

4. A confessor, after hearing the confession of some notorious thief, can indeed speak concerning those thefts as things already known to himself and to others from elsewhere; but he can by no means say: The public thief confessed his thefts to me. For in no case is it lawful for him to say that he heard something in confession.[395]

5. It is indeed not directly contrary to the seal if the confessor says: The penitent lives so innocently that he scarcely confesses venial sins, because every man commits venial sins; nevertheless, locutions of this kind must also be avoided, as also narratives concerning the virtues and gifts of the penitent, because otherwise some indirect violation of the seal can easily occur, and, moreover, because penitents are accustomed to bear such narratives with difficulty.

6. It is not contrary to the sacramental seal if the confessor, in a process of canonization, testifies concerning the sanctity of his penitent. For such testimony neither redounds to the burden of the penitent, since it is given after his death, nor renders confession odious. Nevertheless, the Code of Canon Law, c. 1757, § 3, n. 2, wisely establishes: "Priests are incapable [of giving testimony] with regard to all those things which became known to them from sacramental confession, even if they have been released from the bond of the seal."

7. The confessor is not bound to the seal if the penitent narrated his sins not for the sake of confessing sacramentally, but **from another motive**, for example, to test the confessor, to obtain his assistance or

counsel, to mock him, and so forth. The reason is that **sacramental confession alone is the root from which the obligation of the sacramental seal arises.**

Note. Outside confession the confessor cannot licitly speak concerning confessed sins even with the penitent himself **unless the permission of the penitent has first been obtained, and that altogether freely granted**; but in confession itself the confessor can speak even concerning sins declared in previous confessions. When the penitent of his own accord speaks outside confession concerning his sins, by that very fact he gives the confessor permission to speak concerning the same sins, but not concerning others declared previously.

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[394] c. 12, X 5, 38.

[395] Cf. St. Thomas, *Suppl.*, q. 11, a. 5 ad 2.

445. d) The obligation of the seal, which arises from a threefold source, namely, from natural, divine, and ecclesiastical law, is most strict, so that it admits no exception.

Natural law demands the seal, because the penitent does not manifest his sins except under the condition of secrecy. Therefore a quasi-contract intervenes between the penitent and the confessor. Then, from the injury of the seal, great harm would often arise to the penitent. Therefore natural law demands the seal. Nevertheless, from natural law it cannot be strictly proved that the seal admits no exception, although this can be shown to some extent by the following argument:[396] A confessor who violates the seal of confession lies. But natural law prohibits lying at any time. Therefore it is never lawful to violate the seal of confession. A confessor who violates the seal seems to lie, because he who affirms something which he does not know commits a lie. But the confessor knows the sins not as a man, but as the vicar of God.[397] When, however, he relates them, he no longer acts as the vicar of God, since this would be blasphemy, but as a man. But as a man he does not know the sins; and consequently, if he speaks concerning them, he says something which he does not know and therefore lies.

Divine law, indeed not explicit but implicit, demands the seal. For although Christ explicitly determined nothing concerning the sacramental seal, nevertheless, in instituting the sacrament of penance after the manner of a judgment in which the faithful are bound to accuse their own sins, He implicitly instituted the seal. And in truth, if the most strict obligation of the seal did not exist, confession would often become odious, scandalous, and truly harmful. For if sins heard in confession were manifested, the reputation of the penitent would be endangered, great harm would often arise to him, and social and domestic peace would perish. Therefore Christ, in instituting the confession of all sins, implicitly willed that sins accused in confession be preserved in secret. In the first centuries, indeed, public penance flourished in the Church and at that time produced good fruits because of the fervor of Christians, but today public confession would be dangerous.

Ecclesiastical law. In the Decree of Gratian[398] it is stated: "Before all things let the priest beware lest he recount to anyone the sins of those who confess to him.... For if he does this, let him be deposed and let him go on wandering ignominiously all the days of his life."[399] The Fourth Lateran Council (a. 1215) thus established: "But let [the priest] beware altogether lest by word or sign or any other manner whatsoever he in any way betray the sinner. But if he should need more prudent counsel, let him cautiously seek it without any expression of the person, since we decree that he who should presume to reveal a sin disclosed to him in the penitential judgment is not only to be deposed from the priestly office, but is also to be thrust into a strict monastery to perform perpetual penance."[400] The Code of Canon Law, c. 889, § 1, establishes: "The sacramental

seal is inviolable; therefore let the confessor diligently beware lest by word or sign or any other manner whatsoever and for any cause whatsoever he in any way betray the sinner."

The obligation of the sacramental seal is so strict that neither dispensation nor epikeia can be admitted in it. The penitent alone can grant permission for the confessor to speak concerning the matter of the seal outside confession. Thus the certain and most common opinion, which St. Thomas already taught[401] and which Alexander of Hales,[402] Scotus,[403] and a few others groundlessly denied, teaching that not even the penitent can grant permission to the confessor. According to the present discipline, absolutely no case is given in which it is lawful to make external use of knowledge of sins obtained from sacramental confession. In ancient times several authors excepted certain cases,[404] but today their opinion is not safe. For Clement VIII, on May 26, 1593, prescribed to religious: "Both superiors existing at the time and confessors who afterward have been promoted to the grade of superior are to beware most diligently lest they use for external governance that knowledge which they obtained in confession concerning the sins of others."[405] And the Sacred Congregation of the Inquisition on November 18, 1682, condemned the proposition: "It is lawful to use knowledge acquired from confession, provided that it is done without direct or indirect revelation and without burden to the penitent, unless something else much graver should follow from not using it, in comparison with which the former is deservedly held of little account."[406]

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[396] This argument is impugned by Scotus and others.

[397] Cf. St. Thomas, *l.c.*, a. 1 ad 1.

[398] c. 2, dist. 6, *De poenit.*

[399] That decree is not indeed found in St. Gregory the Great, as Gratian seems to indicate, but something similar was defined at the Second Council of Douzy in the Province of Reims in the year 874: "All clerics as well as laymen or women who confess their sins to priests in secret confession and deplore them with the satisfaction of worthy penance are by no means to be betrayed, and their sins are to be manifested by the priest to no one by any signification whatsoever, except to the Lord alone in secret prayer." Cf. Sebastian Berardi, *Gratiani Canones genuini et apocryphi*, P. 2, t. 2, p. 179, where other particular Councils are also adduced.

[400] It is contained in c. 12, X 5, 38.

[401] *In 4 Sent.*, dist. 21, q. 3, a. 2 ad 1.

[402] *S. theol.*, P. 4, q. 19, membr. 2, a. 3.

[403] *In 4 Sent.*, dist. 21, q. 2, n. 18.

[404] Several older authors, for example, Huguccio; St. Raymond of Penafort (*Summa, de poenit. et matr.* l. 3, tit. 38, § 60); Alexander of Hales (*S. theol.* P. 4, q. 19, membr. 2, a. 2); Innocent IV (*Apparatus ad 5 libr. Decretal.*, c. 12, X 5, 38); and Sylvester Prierias (*Summa Summ.*, s.v. "Confessio" III, n. 5), think that the sacramental seal extends only to past sins. But if some penitent in sacramental confession were to reveal that he wished to commit a grave crime, then the confessor could denounce the penitent if no other means of preventing the crime were present. This doctrine seems to have arisen from a text of the Decree of Gratian (c. 8, C. 22, q. 5) accepted too universally and unduly extended to sacramental confession. Cf. Kurtscheid, *Das Beichtsiegel*, pp. 71 ff.

[405] Cf. also Code of Canon Law, c. 890.

[406] Denz., n. 1220.

446. From these things it follows that the use of knowledge from confession with a burden to the penitent is prohibited, even:

a) **For the greatest spiritual or temporal good of the confessor.**

Hence a confessor cannot confess some sin of his own whose accusation would involve a violation of the seal. A confessor, knowing from confession that death threatens himself, can indeed oblige the penitent under

grave sin to manifest this to him outside confession; but if the latter refuses, the confessor can now do nothing except entrust himself to the assistance of God. Nevertheless, there are several authors who in this case permit the confessor to free himself from an imminent danger to his life or from great harm,[407] provided this is done without burden to the penitent. But almost always at least some burden to the penitent is present, and confession is rendered odious if the confessor, against the will of the penitent, externally uses knowledge derived from confession. Therefore the opposite opinion is to be followed in practice, and consequently it is lawful to injure the seal of confession for the avoidance of no evil whatsoever. - A parish priest who knows from confession alone that his own maid is pregnant or continually commits thefts cannot dismiss her from the house. - A confessor, knowing from confession that someone is not a priest, is nevertheless bound to continue confessing to such a pretended priest who was his ordinary confessor. Thus St. Alphonsus.[408]

b) **For the good of the commonwealth.**

Hence a confessor who knows from confession that someone is a traitor to his country cannot manifest this; or that someone is a murderer, he cannot betray him in order to save the life of some innocent person.

c) **For the good of religion.**

Thus a confessor who knows from the confession of the bridegroom a sin of the bride, although she sacrilegiously conceals this sin, must give her absolution and afterward also Communion, although he knows her to be in the state of mortal sin. There are indeed some older authors who say that in this case the confessor not only can but must deny Communion if it is sought secretly. For, on the one hand, the precept of not giving what is holy to dogs then presses; but on the other hand, no violation of the seal intervenes, nor would confession be rendered odious to one truly penitent; for confession would perhaps be rendered odious only to the most wicked men, who themselves ought to confess that the priest acted rightly. The same authors teach that a bishop ought to deny orders to one known from confession to be unworthy, and that a parish priest ought to refuse assistance at a marriage in which he knows from confession that a diriment impediment is present. But deservedly St. Alphonsus[409] calls the opposite opinion true and altogether to be held today, because Innocent XI, by the decree of the Sacred Inquisition cited above, prohibited every use of knowledge obtained from confession with a burden to the penitent.

Note. So strict is the obligation of preserving the sacramental seal that in this matter it is not lawful to follow merely probable opinions,[410] because here there is no longer question of a merely private licitness, but of avoiding the spiritual harm of the whole Christian community.

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[407] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 659.

[408] *Ibid.*, n. 660.

[409] *Ibid.*, n. 658.

[410] *Ibid.*, n. 633.

447. e) Injury to the seal can occur in two ways: directly and indirectly. The seal is **directly** violated if the matter of the seal and the person of the penitent are revealed; for example, a confessor says: Peter confessed to me the sin of homicide. The seal is **indirectly** injured if, from those things which the confessor says or does, a proximate danger arises of learning the sin of the penitent or of rendering the sacrament odious. Hence, for an indirect violation of the seal it is not required that the penitent and his sin actually be manifested, but it suffices that this can probably occur.

alpha) A **direct violation of the seal** admits no smallness of matter and is always a grave sin both against **justice**, because the confessor injures the quasi-contract of concealment entered into and not rarely diminishes the reputation of the penitent, and against **religion**, because he renders the sacrament of penance odious. A confessor who presumes directly to violate the sacramental seal is punished with an excommunication reserved in a most special manner to the Supreme Pontiff.[411]

beta) An **indirect violation of the seal** admits smallness of matter, because the danger arising from it can be very slight and therefore does not always constitute grave fault. But if grave fault was present, this violation can be punished with the gravest penalties, namely, with the same penalties as the crime of solicitation to shameful things, for example, suspension from the celebration of Mass and from hearing confessions, privation of benefices and dignities, and so forth.[412]

Some ways in which the seal is indirectly violated:

1. If the confessor relates that sins of lust are rampant in some college or convent or small village, which he indeed does not know except from confession. For then infamy redounds upon the whole community, and it can rather easily be suspected who committed such a sin. Hence a confessor addressing a small community ought not to describe some particular sin in such a way that the penitents rightly think this is done because of confession. But if the community is large, for example, containing more than 3,000 inhabitants, and the confessor has heard a great number of confessions, he would not injure the seal if he spoke concerning some particular sin heard; but even then he would act most imprudently.
2. If, in relating something from confession, the confessor describes such circumstances that the penitent can probably be recognized. Celebrated is that example of a parish priest who, after twenty-five years of priesthood, relates in company that his first penitent confessed adultery to him. A little afterward a man enters and relates in the hearing of all: I was your first penitent.
3. If the confessor admonishes parents that they should watch their daughter especially in these circumstances, while he knows from confession that the daughter sinned in these circumstances.
4. If the confessor, after hearing a confession, changes his manner of acting toward the penitent, for example, by addressing him with harsher words, taking the keys away from him, or rebuking the accomplice of the penitent.
5. If the confessor refuses a "certificate of confession" where such a certificate is in use. For from this it is easily inferred that the penitent was not absolved. Therefore the confessor is bound to give a certificate even to an indisposed penitent who insistently seeks it (provided he truly and not fictitiously confessed); but on it he should not write: received absolution, but: confessed.
6. If the confessor refuses to hear the confession of some penitent for the sole reason that he knows him from a preceding confession to be scrupulous or indisposed.

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[411] Code of Canon Law, c. 2369, § 1.

[412] *Ibid.*

448. Admonition. Most excellently, in an Instruction of the Holy Office sent on June 9, 1915, to all local Ordinaries and Superiors of religious and regular Institutes, confessors are commanded "never to dare to touch, especially on the occasion of Missions and Spiritual Exercises, upon anything belonging to the matter

of sacramental confession, under any form and under any pretext whatsoever, not even in passing and neither directly nor indirectly ... in their public or private discourses." Hence let confessors never intermix in common conversations words concerning things heard in confession, nor relate the scruples, inward vexations, and absurdities of those confessing, even when the name of the penitent is withheld, under the pretext that things of this kind are not sins. In one word: **Let the confessor speak concerning matters of confession only with God, by praying for the penitents.** For the sake of obtaining counsel, he can indeed sometimes prudently consult another learned confessor, but let him avoid every danger of injury to the seal. Otherwise, let him first obtain the permission of the penitent. Let him not use knowledge drawn from confessions except for procuring his own salvation more efficaciously and for exercising greater dexterity in the governance of souls. But every other use of this knowledge which is joined with a burden to the penitent is gravely prohibited, although danger of revelation of the sacramental secret is absent. Hence such knowledge can in no way be employed for external governance.[413]

[413] Code of Canon Law, c. 890.

Article III. On the Manner of Acting with Those in Occasions of Sin, Habitual Sinners, and Recidivists

449. Those in occasions of sin are called those who are situated in an occasion of sinning. Now an occasion of sinning is something extrinsic (a person, thing, book, spectacle, dances, and so forth) which entices to sin and affords an opportunity of sinning.[414] Therefore an occasion of sinning is not a disordered passion or the frailty of the penitent, since these are something intrinsic.

Division of occasions:

a) A **remote occasion**, which carries with it only a light danger of sinning and in which a man is accustomed to sin rarely. Such remote occasions exist everywhere on earth, and a man neither ought nor can flee from them. b) A **proximate occasion**, which causes a grave and pressing external danger of sinning, in which a man frequently sins mortally in fact; for example, visiting a tavern for a man greatly addicted to the vice of drunkenness.

A proximate occasion is subdivided: alpha) One is **absolute, or *per se***; another is **relative, or *per accidens***. The former is that in which all men generally are accustomed to sin gravely, for example, to look lingeringly without reasonable cause at very shameful things. The latter is that which induces a proximate danger of sinning not for all, but for some determinate man because of his special frailty or an aroused passion, for example, entering a tavern for a drunken man.

beta) One is **voluntary**; another **necessary**. The former is said to be that which can easily, or with light inconvenience, be removed, for example, a dangerous courtship between lovers. The latter is that which cannot be removed physically or morally. In a **physically necessary** occasion there live, for example, in the same house children of a family who sin with one another; men imprisoned who sin with one another. In a **morally necessary** occasion there live in the same house children of a family who sin with the maid of their own family. For the maid can more easily leave the house than a son of the family. Therefore a necessary occasion is one which cannot be removed without great harm and great external difficulty. But what is truly great harm must be weighed from the diverse circumstances of persons.

gamma) One occasion is **continuous, or *in esse***; another is **interrupted, or *non in esse***. The former is that in which someone is always situated, for example, a concubine living in the house of her master, onanistic

spouses; the latter is said to be that in which someone indeed does not always live but which he can easily have, for example, a tavern for a drunken man; a mistress for a lustful man.

[414] An occasion of sinning and scandal agree in this, that both entice to sin; but they differ: a) because scandal is always a human act, while an occasion can also be an external physical thing; b) because an occasion affords an opportunity of sinning, but scandal does not always do so.

450. 1. Absolution of Those in Occasions of Sin.

Rule 1. Absolution is not to be denied to a penitent existing in a remote occasion.

The reason is that all of us live in a remote occasion of sinning, which, if we had to avoid it, would require us to go out of the world, which is wholly filled with dangers of sinning. Therefore to avoid remote occasions of sinning is impossible, and consequently is not necessary.

Rule 2. Absolution is not to be denied to a penitent who is situated in a necessary proximate occasion, provided that he is truly contrite and prepared to employ the prescribed means, so that the occasion materially proximate becomes formally remote.

The reason is that the confessor cannot demand from the penitent that which is physically or morally impossible. But, on the other hand, it can safely be hoped that the penitent who employs the prescribed remedies will conquer the temptations with the help of God, "who will not suffer you to be tempted above that which you are able."[415] The chief means by which a necessary proximate occasion can be rendered formally remote are: fervent prayer, frequent confession, the flight of every familiarity and solitary conversation with the accomplice, and so forth. - But when the penitent refuses to employ remedies of this kind, or when he indeed promised them but afterward neglected them and consequently always relapsed into the same sins, he is to be treated as a recidivist dwelling in a proximate occasion, namely, he is not to be absolved unless he has given extraordinary signs of contrition and has removed the proximate occasion even with the gravest inconvenience. For Christ prescribed: "If thy eye scandalize thee, pluck it out and cast it from thee: it is better for thee having one eye to enter into life, than having two eyes to be cast into the hell of fire."[416]

You will ask. Can a penitent be absolved who, existing in a necessary occasion, always relapses in the same manner after employing the remedies? The response seems easy to us: Such a case is scarcely ever possible; for then the penitent truly does what lies within him. Moreover, God does not deny grace to one doing what lies within him. It can indeed occur that the penitent relapses several times into the same sins; but if he obeys the commands of the confessor, at length he will become constant. For the rest, if the case should nevertheless occur, the penitent would be treated as a habitual recidivist. - A case of a necessary and continuous proximate occasion is the abuse of marriage between spouses. But if that sin is committed again and again by the spouses without any amendment, absolution is to be deferred or denied, since the due disposition of the penitents is then absent.

[415] 1 Cor. 10:13.

[416] Matt. 18:9.

451. Rule 3. Absolution is to be denied to a penitent who refuses to leave a voluntary proximate occasion of sinning gravely.

The reason is that he who wills voluntarily to remain in a proximate occasion loves the danger of sinning, and consequently has neither true contrition concerning past sins nor a true purpose concerning avoiding future

sins. Hence, on March 2, 1679, Innocent XI condemned proposition 61: "He who is situated in a proximate occasion of sinning, which he can and does not will to omit, and indeed directly and deliberately seeks or thrusts himself into, can sometimes be absolved"; proposition 62: "A proximate occasion of sinning is not to be fled when some useful or honorable cause for not fleeing it occurs"; proposition 63: "It is lawful directly to seek a proximate occasion of sinning for our own or our neighbor's spiritual or temporal good."[417]

If someone is situated in a voluntary and continuous proximate occasion, absolution is generally to be **deferred** until the penitent has actually removed this occasion. Hence, for example, a concubinary is not to be absolved before he has cast the concubine out of the house. The reason is that, although the penitent is here and now sufficiently disposed to receive absolution, nevertheless it is greatly to be feared that afterward, unmindful of the promise given and overcome by vehement passion, he will not remove the occasion. But I said: **generally**, because if the confessor has moral conviction of the firm purpose made by the penitent, and especially if the penitent is no longer able to return to the same confessor, he can grant absolution immediately. But if the penitent has already again and again promised in preceding confessions to remove the occasion and has not kept his promises, he is now not only one in an occasion of sin but also a recidivist, and consequently is not to be absolved unless he has given **extraordinary signs** of contrition and an **urgent necessity** of absolving is present.

But if someone is situated in a proximate non-continuous or interrupted occasion, he can be absolved immediately, provided that he seriously promises to leave this occasion. But if he is not only one in an occasion of sin but also a recidivist, he is not to be absolved unless he has given extraordinary signs of contrition, as will be stated below.

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[417] Denz., nn. 1211-1213.

452. 2. Absolution of Habitual Sinners.

A habitual sinner, or one habituated, is said to be one who has contracted the habit of some sin, into which, however, he has not yet relapsed after its confession. But if he has already confessed this sin once or several times and nevertheless has committed it again, he is called a recidivist.[418]

How many acts are necessary for acquiring an evil habit cannot be determined absolutely. For this depends upon many things, namely, upon weakness of will, upon the nature and manner of the sin, and upon the long or short interval within which the individual sins are committed. Thus, for example, a man weak in will more easily contracts an almost invincible habit of sinning than a strong man. According to St. Alphonsus,[419] he is judged to have contracted a habit who is accustomed to commit an external sin five times in a month. But for internal sins a much greater number is required.

A custom of sinning can arise either from external human incitement, that is, from a proximate occasion, and then the habitual sinner is at the same time one in an occasion of sin; or from a diabolical temptation or from a disordered passion, and then he is properly a habitual sinner. Concerning this latter the following rule is valid.

Rule. A habitual sinner can and ought to be absolved when he is truly attrite and sincerely promises to employ the means necessary for conquering the evil custom.

The reason is that an evil custom in no way proves the indisposition of the penitent. Moreover (according to the adage: The penitent is to be believed when speaking both for himself and against himself), a penitent firmly asserting his attrition and his purpose seriously to employ remedies against the evil custom is worthy of belief and capable of absolution. The remedies which are to be employed by the penitent must be

determined according to the quality both of the evil custom and of the man sinning. Proposition 60, condemned by Innocent XI on March 2, 1679, is not opposed to this doctrine: "Absolution is neither to be denied nor deferred to a penitent having a custom of sinning against the law of God, of nature, or of the Church, although no hope of amendment appears, provided that he declares orally that he is sorry and proposes amendment."[420] For in this proposition the essence of the error is situated in those words: "although no hope of amendment appears." Moreover, a habitual sinner who confesses a habit of sinning for the **first time** and **seriously** promises amendment always offers a true hope of amendment. Certainly, if a habitual sinner has already rather often promised amendment and nevertheless always fell in the same manner into the same sins, he offers little hope of amendment; but then he is now not a simple habitual sinner, but a habitual recidivist, who is to be treated otherwise, as will be stated below. For the rest, it is very rare in practice that someone is a simple habitual sinner and not at the same time a recidivist. A simple habitual sinner would be, for example, a man who has not confessed for ten years and within this time has contracted the habit of polluting himself once a week.

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[418] Cf. below, n. 453.

[419] *Praxis confess.*, n. 70.

[420] Denz., n. 1210.

453. 3. Absolution of Recidivists.

In some sense all men are recidivists, for all repeat sins. We are not speaking here of recidivists in this broad material sense. **A recidivist in the strict or formal sense is called one who after confessions so falls into the same mortal sins that from this it is rightly permitted to doubt concerning his disposition in the preceding confessions.** Therefore a recidivist differs from a habitual sinner, since the latter accuses a habit of sin for the first time. Older authors not rarely confuse the habitual sinner with the recidivist; but modern theologians do not describe the characteristic signs of a recidivist in the same manner. Therefore careful attention must be given to the precise sense in which the individual authors accept the words habitual sinner and recidivist. The quasi-characteristic sign of a recidivist seems to be that after repeated confessions (three or four) he has employed no serious effort to guard against some grave sin, so that his persistence in an evil will can prudently be inferred from this.[421]

Rule. A recidivist regularly cannot be absolved unless by special signs he has first dispelled the presumption of indisposition existing against him.

I say: **regularly**, for in a case of necessity the sacrament can be administered even to a man doubtfully disposed. - But the reason for the rule stated is that from a relapse into exactly the same sins without any amendment whatsoever there arises a vehement presumption that the penitent lacks sincere contrition and a firm purpose, since it is scarcely possible that a man, grieving from his inmost heart concerning the sins committed and firmly proposing to employ the means necessary for amendment, should fall in exactly the same manner into the same sins. Therefore this presumption must be destroyed, which assuredly is not done by a simple assertion of the penitent. For if the penitent has already failed again and again to keep his promises, he certainly merits little belief. Therefore he must prove his true contrition and purpose from elsewhere.

The **special signs** of contrition and a sufficient purpose are diverse according to the diverse character of penitents, nor can anything be determined in particular. Thus, for example, tears shed on account of sins committed show a sufficient disposition in a strong man who weeps very rarely, while, on the contrary, they

merit no great belief in certain women who are accustomed frequently to weep at will. Let the general rule be: **After weighing all the circumstances, the confessor must have sufficient certitude of the disposition of the penitent.** - As special signs showing a sufficient disposition there are adduced, for example, the spontaneous flight from a proximate occasion; firmness in a good purpose at least for some time. Hence, if the penitent after the preceding confession abstained for a month from a sin into which he previously fell every week, he offers a special sign of the good purpose he had. Nevertheless, too much trust is not to be placed in those penitents who for human reasons approach Easter confession and then abstain from sins for some time beforehand with the intention of avoiding the denial of absolution. Other special signs are: a spontaneous confession, especially at an unusual time; a pious pilgrimage for the purpose of making a confession; Spiritual Exercises completed. If a recidivist brings none of these or similar signs, he is not immediately to be dismissed without absolution, but is to be disposed to true contrition and a sincere purpose. This must be done especially whenever there is question of sins committed from frailty, for example, of pollution rather often committed by a young man. But if after a suitable exhortation the recidivist remains doubtfully disposed, in a case of necessity he can be absolved under condition; otherwise absolution is to be deferred for a brief time. A delay of eight days suffices for recidivists who sin from frailty; but for recidivists from occasion, absolution is fittingly deferred for fifteen days. It is evident of itself that the confessor ought to address the penitent not with rough but with most humane words. Let him be mindful of that adage: "Firmly in the matter, gently in the manner." In our days absolution is rarely to be deferred unless it is altogether necessary. For because of the weakness of faith under which many penitents labor, delayed absolution often does more harm than good.

[421] Cf. Code of Canon Law, c. 2208, § 1.

Article IV. On the Abuse of Confession

Preliminary Note. A heinous abuse of confession is committed especially in two ways, namely, if a confessor absolves his own accomplice, or if on the occasion of confession he solicits a penitent to shameful things. There was already discussion above, n. 381, of a third abuse of confession, namely, of the illicit inquiry into the name of an accomplice. Since an abuse of confession is a crime inducing suspicion of heresy, judgment concerning it pertains to the Holy Office or its delegate, who by the law itself is the bishop. It is clearer than light that a confessor who, on the occasion of confession, solicits a penitent to shameful things notably abuses confession. But a confessor absolving his own accomplice also, at least ordinarily, gravely abuses confession, since such a criminal priest scarcely ever gives salutary counsels and is not a suitable judge, because he himself is a co-culprit. We shall treat: 1. of the absolution of an accomplice; 2. of solicitation to shameful things.

§ 1. On the Absolution of an Accomplice

454. The law now in force. The Code of Canon Law, c. 2367, establishes: "One who absolves or pretends to absolve an accomplice in a shameful sin incurs *ipso facto* an excommunication reserved in a most special manner to the Apostolic See; and this even in the article of death, if another priest, although not approved for confessions, can receive the confession of the dying person without some grave infamy and scandal that would arise, except the case in which the dying person refuses to confess to another. Nor does one who absolves or pretends to absolve an accomplice escape the same excommunication when the accomplice indeed does not confess the sin of complicity, from which he has not yet been absolved, but conducts himself thus because he was induced to it by the accomplice confessor, either directly or indirectly."

Canon 884 establishes: "The absolution of an accomplice in a shameful sin is invalid except in danger of death; and even in danger of death, outside a case of necessity, it is illicit on the part of the confessor according to the norm of the apostolic constitutions, and by name the constitution of Benedict XIV *Sacramentum Poenitentiae*, June 1, 1741." These are the words of the constitution: "We forbid and prohibit each and every priest, both secular and regular, ... lest any one of them, outside a case of extreme necessity, namely, in the very article of death and with another priest then also lacking who can discharge the office of confessor, dare to receive the sacramental confession of a person who is an accomplice in a shameful and dishonorable sin committed against the sixth precept of the Decalogue, any authority and jurisdiction to absolve any person whatsoever from fault of this kind having therefore been removed from him by the law itself, and this indeed to such a degree that the absolution, if he should impart any, is altogether null and void.... And nevertheless, if any confessor should dare to act otherwise, let him also incur *ipso facto* the penalty of major excommunication...." - Afterward the same Pontiff, through the constitution *Apostolici muneris* of February 28, 1745, explained this law still more. - For explaining these ecclesiastical statutes it is necessary to declare how the following are understood here: 1. a shameful sin; 2. an accomplice; 3. to absolve.

455. 1. A shameful sin is any sin of lust, provided that it is a) grave (objectively and subjectively); b) external; c) certain; d) not yet directly remitted.[422] Therefore the following are excluded:

a) **Sins against other virtues**, for example, theft, homicide, and so forth. Hence a confessor could absolve his accomplice in homicide. But everyone sees how unbecoming even such an absolution would be.

b) **Internal sins against chastity**, such as morose delectations and desires.

c) **Light sins of lust**, whether from the imperfection of the act or from an erroneous conscience. Hence if some boy, from an erroneous conscience, should certainly think that impure touches perpetrated by a priest were not a grave sin, he could be absolved by this priest, who would not incur excommunication. Likewise, kisses, although they are often mortal sins in a particular case, nevertheless in this matter are not held to be certainly mortal from the external object, and therefore it must be judged from the attendant circumstances whether a kiss was lustful and consequently a mortal sin or not. While doubt remains, the censure is not incurred.

d) **Sins already directly remitted beforehand.** Hence, for example, if someone in his youth sinned shamefully with a priest and has already rightly confessed this sin to another confessor and received valid absolution, but now confesses the same sin as free matter to the accomplice priest, he is validly absolved, nor does the priest incur any penalty. But in practice it is greatly to be counseled that a confessor should never hear the confession of his accomplice, because of the danger of temptations and of irreverence toward the sacrament.[423]

Note. It is not required that the shameful sin have been committed **after the priesthood had already been received**. Hence the Sacred Penitentiary taught on January 22, 1879: "A confessor cannot absolve an accomplice with whom he acted shamefully in boyhood before the priesthood, unless he is morally certain that the accomplice has already been directly and validly absolved from the sin of complicity by another confessor."

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[422] Cf. Holy Office, May 18, 1873.

[423] Hence the Holy Office declared on May 29, 1867: "A confessor is free to absolve an accomplice who has already been absolved from the dishonorable sin of complicity by another confessor; nevertheless counsel must always be given to the confessor in

question that, unless necessity compels, he abstain from receiving the sacred confessions of a person, although already absolved from the sin of complicity" (in Bucceroni, *Comm. in Bull. Ap. Sedis*, n. 37).

456. 2. An accomplice (or a partner in crime, that is, one as though entangled in the same crime) can be either a man or a woman, either pubescent or prepubescent, provided that the person is capable of mortal sin. Nor is it required that this sin have been perpetrated by a lustful act between the priest and the accomplice, but it suffices that **both have inwardly and outwardly committed the same grave sin against chastity**. Hence, for example, the sin of complicity seems to be present if a husband agrees with a priest concerning committing adultery with his wife, although the adultery does not in fact occur because of the resistance of the wife. In that case the priest cannot absolve the husband, since he is his accomplice.[424] It is altogether required that the complicity be **formal**, and indeed both at the time of the sin and at the time of absolution. Hence, if a priest sins with a woman who resists, who is totally drunk, or who is insane, formal complicity is not present; or if the confessor during absolution does not recognize his accomplice, or even in the case in which he seriously doubts whether the penitent is his accomplice, he validly and licitly absolves. For he ought indeed cautiously to attempt to dispel that doubt, but he is not bound to ask the penitent: Did you commit that sin with me? Likewise, formal complicity is not present if the priest was known as a priest neither in the act of sin nor afterward. Thus, for example, if a masked priest sinned with a woman who never recognized him and afterward absolves this woman from that sin of lust, he does not incur excommunication. For he is not bound to say to this woman in confession: I am that man with whom you sinned. But the intrinsic reason is that the abuse of the sacrament which ecclesiastical law wishes to prohibit is then not present. Thus commonly the modern authors, for example, Hollweck,[425] Lehmkuhl.[426] Without sufficient reason Gury[427] taught the contrary.

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[424] Thus the truer opinion (cf. Bucceroni, *Comm. in Const. "Sacramentum Poenitentiae"*, n. 69); Noldin-Schmitt (*De sacr.*[17], n. 370) teaches the contrary, saying: "For incurring the case of complicity, immediate complicity in the shameful action itself is required; cooperation, however proximate, in the shameful sin of another does not suffice."

[425] *Die kirchlichen Strafgesetze*, § 274.

[426] *Theol. mor.* II, n. 1202.

[427] *Cas. consc.* II, n. 617.

457. 3. True or at least pretended absolution is required in order that the excommunication be incurred. Hence this penalty is not inflicted: a) if the confessor only heard the confession of the accomplice, provided, however, that he does not simulate absolution. A confessor simulates or pretends absolution if he leads the penitent himself into error, so that he thinks himself truly absolved; b) if the penitent of his own accord concealed the sin of complicity in confession. But if the confessor directly or indirectly induced the accomplice penitent not to confess the sin of complicity, one who absolves or pretends to absolve his accomplice does not escape excommunication. A confessor would induce directly if he said to the penitent: Take care not to confess that sin; but a confessor would induce indirectly if he persuaded the penitent that such a lustful act previously committed with him and thought to be a grave sin was in fact not gravely evil, or was not necessarily to be accused in confession, because the confessor himself already knew that fact from elsewhere.[428]

Gross or supine ignorance does not excuse the confessor from this excommunication.[429] Therefore in practice, as often as a confessor absolves his accomplice, so often does he incur this censure.

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[428] Cf. Sacred Penitentiary, February 19, 1896 (*Collect. de Prop. Fide*, n. 1916).

[429] Holy Office, January 13, 1892, ad 3 (*ibid.*, n. 1777).

458. Exceptions from the censure (and the validity of absolution) are had only in a case of extreme necessity. Such extreme necessity never exists if another priest is present, even one not approved, who can morally receive the confession of the penitent. But if another priest is indeed physically present but cannot be called to hear the confession without grave infamy and public scandal, or if he refuses to hear the confession, it is then the same as if no priest were present. A case of extreme necessity is:

a) **The article or grave danger of death.**

Since in the article or danger of death every reservation ceases, the confessor indeed validly absolves his accomplice; but if any other priest (even one not approved) can hear this confession without grave infamy to the dying person and the accomplice priest and without public scandal, the confessor acts illicitly and incurs excommunication, unless, notwithstanding serious persuasion, the accomplice altogether refuses to confess to another confessor. - Although Benedict XIV and the Code of Canon Law, c. 884, granted the absolution of an accomplice only in the article or danger of death, nevertheless through epikeia this faculty is extended to another case of gravest necessity, namely, if there is present:

b) **Gravest necessity, when the ecclesiastical and divine precepts both of confession and of Communion press, and the accomplice cannot find another confessor for a long time.**

Thus several modern authors rightly teach as probable, for example, Lehmkuhl,[430] Tanquerey,[431] Bucceroni,[432] D'Annibale,[433] Noldin-Schönegger,[434] Joseph Alberti,[435] Ballerini-Palmieri.[436] But the reason is that the positive ecclesiastical law which invalidates the absolution of an accomplice seems in gravest necessity to have to yield both to the divine law of receiving Communion and to the natural law of avoiding scandal. This case can occur in a remote place of the missions to which another priest scarcely ever comes and from which the penitent cannot undertake a long journey to find another confessor. But the absolution granted in this case does not seem to be other than indirect, and consequently the penitent is bound afterward, when it will be possible, to confess the sin of complicity to another confessor.[437]

If the confessor in good faith, that is, without advertence to the sin of complicity, absolves a penitent who is his accomplice, more probably the absolution is valid. For other sins are directly absolved, but the sin of complicity is indirectly remitted. The reason is that the jurisdiction of the priest seems to be restricted only with regard to the sin of complicity, but not with regard to other sins. Nevertheless, there are some authors who teach that the confessor altogether lacks every jurisdiction over his accomplice who has not yet been directly absolved from the sin of complicity.

c) A confessor indeed does not incur excommunication, but acts gravely illicitly, if he attempts to absolve his accomplice: alpha) when the latter is entirely silent concerning the sin of complicity, provided the confessor did not induce him to be silent (either directly or indirectly), as has already been said; beta) when the latter, because of the danger of grave scandal, is unable to confess elsewhere, provided the confessor expressly admonishes him that he does not will to absolve him from the sin of complicity (which must afterward be declared to another confessor), and that he absolves him directly from the other sins.

Authors do not agree whether the absolution given indirectly in this case from the sin of complicity is valid or invalid,[438] but it is probably valid, provided that the other requisites are present.[439] For the Sacred Penitentiary gave this response on May 16, 1877: "The privation of jurisdiction for absolving an accomplice in a shameful sin, and the annexed excommunication insofar as the confessor should absolve him, are in relation to the shameful sin itself in which the same confessor was an accomplice." - From these words the following case is

resolved: Peter, a priest, committed a grave sin of lust with Tullia. Tullia, accompanied by her mother, presents herself at Peter's confessional. Peter plainly says that he neither can nor wills to absolve her from the sin of lust, which must be declared to another confessor. Tullia insists greatly upon having absolution because, if she were not to go immediately after confession with her mother to Holy Communion, a most grave scandal would arise. Peter then gives absolution from the other sins, admonishing Tullia concerning eliciting an act of perfect contrition and concerning the obligation of declaring the sin of lust to another confessor. Peter does not incur excommunication, because he does not absolve from the shameful sin. But D'Annibale says:[440] "No one has ever doubted or doubts that it is forbidden to absolve a penitent from the other sins and to send him to another confessor for this one to be absolved." Therefore it seems that Peter ought to have elicited an act of perfect contrition with Tullia, who then could have approached Communion without absolution.

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[430] *Theol. mor.* II, n. 1205.

[431] *De poenit.*, n. 579.

[432] *Comm. in Bull. Ap. Sedis*, n. 87.

[433] *Summula Theol. mor.* III, n. 324 and n. 38.

[434] *De poenis eccl.*[12], n. 55.

[435] *Theol. pastor.* III, n. 28.

[436] *Opus theol.* V (*de sacr. poenit.*), n. 655.

[437] Cappello, *De censuris*, n. 182, teaches that this absolution is direct.

[438] Cf. Noldin, *De poenis eccl.*, n. 63; Marc-Raus, *Instit. mor.* II, n. 1783; Van der Velden, *Principia Theol. mor.* III, 673.

[439] Thus also Lehmkuhl, *Theol. mor.*[11] II, 1203 note; Ojetti, *Synopsis rer. mor.* I[8], n. 1369.

[440] *Comm. in Const. Ap. Sedis*, n. 86.

459. Absolution from the excommunication incurred. A confessor who (apart from the cases indicated above) absolves his own accomplice incurs an excommunication reserved in a most special manner to the Supreme Pontiff, as has been said.

This excommunication is said to be reserved in a most special manner because it is always judged to be excluded from all delegated faculties, even the most ample, unless it is expressly named,[441] as, for example, on the occasion of the Jubilee granted by Pius XI. Gross and supine ignorance does not excuse from this excommunication,[442] as has already been said. In more urgent cases a simple confessor can indeed absolve from this censure, but then the person absolved must within a month (if this is not altogether impossible) have recourse[443] to the Sacred Penitentiary, which is accustomed to impose rather severe penances. Indeed, if a priest has three or more times since the last absolution already obtained[443a] absolved his accomplice, he is commanded to lay aside the office of confessor in perpetuity. But since this is often morally impossible, both because of the very great scandal that would otherwise arise and because of the scarcity of priests, it is expedient that in the letters to be sent to the Sacred Penitentiary a supplication be made that the confessor may remain in his office. This supplication is accustomed to be heard if the confessor has proved serious amendment within six or twelve months.

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[441] Holy Office, June 27, 1866.

[442] Holy Office, January 13, 1892, ad 3.

[443] Cf. the specimen of this recourse above, n. 426.

[443a] Sacred Penitentiary, March 5, 1925.

§ 2. On Solicitation to Shameful Things

460. Preliminary Note. Benedict XIV in the same Constitution *Sacramentum Poenitentiae* condemned another abuse of the sacrament of penance, namely, solicitation to shameful things. Pius IV[444] and Gregory XV[445] had already previously made laws concerning this matter. The present discipline is explained in the cited Constitution of Benedict XIV, in the Instruction of the Holy Office of February 20, 1867,[446] and in the Code of Canon Law, cc. 894, 904, 2363, 2368. The manner of conducting an examination against soliciting priests is indicated by the Instruction of the Holy Office of July 20, 1890.[447] These are the words of Benedict XIV, who commands bishops to proceed "against each and every priest, both secular and regular, ... who should have attempted to solicit or provoke any penitent, whoever that person may be, to dishonorable and shameful things, either in the act of sacramental confession, or before or immediately after confession, or on the occasion or pretext of confession, or even outside the occasion of confession in the confessional, or in another place designated or chosen for hearing confessions, with the simulation of hearing a confession there, whether by words, signs, nods, touch, or writing to be read either then or afterward, or who should have held illicit and dishonorable conversations or dealings with them by rash daring.... Let each and every priest appointed to hear confessions remember, moreover, that they are bound and obliged diligently to admonish their penitents whom they know to have been solicited by others, as above, ... concerning the obligation of denouncing to the inquisitors or the aforesaid local Ordinaries the person who committed the solicitation, even if he is a priest who lacks jurisdiction for validly imparting absolution, or if the solicitation between the confessor and penitent was mutual, whether the penitent consented to the solicitation or by no means gave consent, or a long time has now elapsed after the solicitation itself, or the solicitation was performed by the confessor not for himself but for another person."

The Pontifical Constitutions concerning the absolution of an accomplice and solicitation to shameful things also bind Orientals.[448]

For a clearer understanding of this law, it is useful to explain: 1. the conditions required in order that the crime of solicitation truly be present; 2. the obligation of denouncing; 3. the manner of denouncing; 4. the penalties which are to be inflicted upon a soliciting priest.

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[444] Constitution *Cum sicut nuper*, April 15, 1561.

[445] Bull *Universi*, August 30, 1622.

[446] *Collect. de Prop. Fide*, n. 1282.

[447] *Ibid.*, n. 1732.

[448] Thus the Sacred Congregation for the Propagation of the Faith, August 6, 1885 (*Collect. de Prop. Fide*, n. 1640).

461. 1. Conditions Required for the Crime of Solicitation.

Notion. The crime of solicitation is a provocation to a grave sin of lust made by a priest abusing for this end a true or simulated sacramental confession. Therefore it is required:

a) **That the provocation be made to a grave sin against chastity.**

Solicitation is not judged to be present: alpha) if the provocation was made to another sin, for example, to theft; or beta) if it was made to something dishonorable which nevertheless is not certainly and objectively a mortal sin, for example, if the confessor kissed a woman in passing immediately after confession. For although

a kiss is often gravely culpable because of the danger of venereal delectation, scandal, a depraved intention, and so forth, nevertheless, considered objectively, it is not a mortal sin, and consequently that solicitation to shameful things of which we speak here is not judged to be present,[449] unless, however, it is established that the kiss was given from lustful affection. Sometimes it can be judged with difficulty whether more or less indecent words uttered by the confessor contain solicitation to shameful things or not. See the various expressions judged by St. Alphonsus.[450] - It is not required, however: alpha) that the solicitation be efficacious, or that the person solicited consent to the sin. Hence, for example, a confessor inviting a spouse to adultery would commit solicitation even if the spouse altogether refused this sin. Likewise it is not required: beta) that the confessor immediately solicit the person with whom the sin of lust is to be committed, or that the confessor solicit the person to sin with the one soliciting.[451] Hence the crime of solicitation would be present if, for example, the confessor sought the assistance of a brother in order to sin with his sister, or if he incited a young man to sin with some girl; but from positive law there would not be an obligation to denounce a confessor who gave a maidservant making her confession sealed letters to be delivered to her mistress and containing a solicitation. For the maidservant is not a formal accomplice in the sin, while the mistress is not here and now a penitent.

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[449] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 683. Aemilius Berardi teaches the contrary (*De sollicit.*, n. 47): "In the case of which we treat, kisses and touches (less honorable) ought to be considered as mortal; for in practice things of this kind would be done from no honorable motive, and ordinarily not even from mere jest, but to satisfy lust.... Woe if things of this kind and other similar things could be considered as mere trifles and as by no means subject to denunciation!" - Certainly these things are not mere trifles, but are greatly to be reproved. But from this it by no means follows that they are always mortal sins and that they induce a grave obligation under pain of excommunication to denounce the confessor who did such things. For an odious law, such as the obligation of denouncing is judged to be, is of strict interpretation. Father Cerato treats this matter excellently in *De delicto sollicitationis*, n. 39.

[450] *Theol. mor.* l. 6, n. 704.

[451] This is established from the following response of the Sacred Penitentiary of September 2, 1904: "Tibullus, hearing the confessions of women whose husbands are often accustomed to be absent and who do not easily contain themselves, teaches and persuades the same women that they do not sin in the following cases: 1. If, while desiring their own absent husband, they suffer a sensual commotion or pollution. 2. If they desire to experience this same pollution in themselves from ardent love of the absent husband. 3. If they excite pollution in themselves by touches performed upon themselves, provided that they refer these acts to the absent husband. - The Sacred Penitentiary adds to the beloved one in X ... who wrote: that a response concerning this matter had already twice been given by this sacred Tribunal, that acts of this kind are gravely illicit, and that a confessor approving them is to be denounced."

462. b) That the solicitation be made by a priest as confessor.

Hence that crime is not present if a cleric or layman pretends to be a confessor and then provokes the penitent to shameful things. Some authors teach that even a bishop soliciting to shameful things is not to be denounced, since in odious matters, for example, in penalties enacted against priests, bishops are not included unless this is expressly stated. This opinion is perhaps probable. Therefore perhaps there would not be a strict obligation from ecclesiastical law to denounce a soliciting bishop, but there would plainly exist an obligation from natural law to prevent enormous scandal.[451a] - There must be a true, although implicit, provocation to shameful things on the part of the confessor. Hence several authors probably teach that the obligation of denunciation is not present if the penitent himself solicits and the confessor only consents to this solicitation.[452] To the question, "Whether a confessor who has been solicited, if induced by fear he consents to the solicitation, is to be denounced?" the qualifiers of the Holy Office responded on February 11, 1661: "Affirmative, and the negative opinion is not probable"; but this was omitted both in the Benedictine Bull and

in the Instruction of the Holy Office given concerning this matter on February 20, 1866.[453] It is not likely that St. Alphonsus was ignorant of the opinion issued by the Holy Office on February 11, 1661, and nevertheless the Holy Doctor holds the opposite opinion as more probable. Hence Bucceroni[454] and the *Vindiciae Alphonsianae* teach that there is no obligation to denounce a confessor who from grave fear consented to the solicitation of the penitent but in no way solicited himself. If the confessor freely consents to a soliciting penitent, mutual solicitation is ordinarily present. But denunciation is certainly to be made if the solicitation was mutual between the confessor and the penitent. In this case, however, the penitent is not bound to confess that he himself also solicited.

[451a] Cf. Cappello, *l.c.*, n. 689.

[452] St. Alphonsus, *Theol. mor.* l. 6, n. 681.

[453] *Collect. de Prop. Fide*, n. 1282.

[454] *Comm. in Bull. Ap. Sedis*, n. 29.

463. In four cases a priest is judged to solicit as confessor, namely, if he provokes to shameful things:

a) **In the act of sacramental confession**, that is, from the time at which the confession is begun up to and including the words of absolution, or, as it is said, between the two crosses of the confessor. But that confession is judged sacramental which was begun in order to sacramental absolution, even if it is not brought to completion nor perfected by absolution.

b) **Immediately before or after confession.**

That is, if no other external action intervenes between the confession and the solicitation. Therefore the crime of solicitation is present if, for example, the confessor speaks manifestly obscene words from lustful affection immediately before or after confession; if he touches in a dishonorable manner a penitent who immediately after receiving absolution comes to kiss the hand or stole of the confessor; if he gives the penitent letters to be read afterward in which he solicits to shameful things.

c) **On the occasion or pretext of confession.**

To solicit **on the occasion of confession** is to take from confession a motive or opportunity for provoking to shameful things. Hence, for example, if the confessor, learning from confession the proclivity of some woman to lust, asks her where she lives or says to her: Come afterward to my house; and if he then afterward commits a sin of lust with her, the crime of solicitation is present, provided, however, that it is clearly established that the confessor already had during confession the intention of sinning with the woman. But if the confessor does not meet with that woman until after several days, or if he meets with her for another end and then, as temptation gradually arises, provokes her to shameful things, it is not certainly established that there was an abuse of confession, and consequently there is no strict obligation to denounce this confessor.

To solicit **under the pretext of confession** is to provoke to shameful things under the appearance or veil of confession. For example, the confessor invites the penitent to come into the confessional with the intention that there he may provoke the penitent to shameful things. St. Alphonsus[455] asks: "Whether a confessor is to be denounced who agrees with a woman that, in order to elude the household, she should pretend to be ill and summon him to the house to perpetrate the sin?" Although some answer affirmatively, the Holy Doctor responds more probably in the negative. For in this case "it is not verified that the confessor solicits under the pretext of confession, but only that under the pretext of confession he carries out the sin; so that the pretext of

confession is then no longer ordered to the solicitation, but to deceiving the household.... But I judge that it is to be said otherwise if the confessor were to solicit outside confession, and the woman were to refuse, fearing defamation, and therefore the confessor were to persuade her to pretend to be ill and to summon him for sinning. For then the confessor would truly be said to solicit the woman under the pretext of confession in order to furnish consent." But so great a difference between the two cases does not seem to be present, since in both the pretext of confession is employed by the accomplices as a means for deceiving others. Hence some teach that a confessor solicits under the pretext of confession only when he employs a simulated confession as a means for inducing into sin that penitent who previously knew nothing concerning the sin to be committed.

d) **Even outside the occasion of confession, in the confessional or in another place designated or chosen for hearing confessions, with the simulation of hearing a confession there.** The essential words of this clause seem to be **with the simulation of confession**.

The difference between the simulation and dissimulation of a sacrament must be recalled. The latter is employed to conceal before others that a sacrament was not administered. The former, however, is a deception of the subject of the sacraments himself. Hence the crime of solicitation does not seem to be present whenever confession is dissimulated in order to deceive others, lest they perceive the sin committed or to be committed with the penitent, provided that this is done outside the place of confession. But that crime is present whenever the confessor before the penitent himself simulates that he wishes to hear his confession in some place and, then being there, provokes him to shameful things.

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[455] *L.c.*, n. 679.

464. 2. The Obligation of Denouncing Those Who Solicit.

Since a confessor by the nefarious crime of solicitation gives the greatest scandal, by natural law itself everyone is bound to strive with all his strength that such scandal be removed. But this can scarcely be done unless the confessor is denounced to his superior. Therefore from natural law itself everyone who certainly knows that solicitation was committed is bound, and indeed under grave sin,[456] to denounce the soliciting confessor, at least if the enormous harm which confessors of this kind are accustomed to cause to religion cannot otherwise be averted. The soliciting confessor himself, however, is not bound to denounce himself.[457]

By ecclesiastical law those who knowingly omit for a month to denounce confessors or priests by whom they were solicited to shameful things are punished with an excommunication *latae sententiae* reserved to no one.[458] Therefore, by the ecclesiastical law now in force, the solicited person alone seems to be bound to denunciation,[459] since that person alone is named in cc. 904 and 2368, § 2. In the ancient law, all who certainly knew that solicitation had been committed had to denounce it. A solicited penitent who culpably omits this denunciation for an entire month (to be computed from the day on which the obligation became known) incurs excommunication, from which, however, any confessor can absolve after the denunciation has been made, or after a serious promise of denouncing, or after a legitimate dispensation has been obtained. The confessor, his conscience being gravely burdened, must admonish the solicited penitent to denounce the soliciting confessor.[460]

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[456] Cf. Instruction of the Holy Office, 1867, § 3.

[457] Holy Office, February 20, 1867.

[458] Code of Canon Law, c. 2368, § 2.

[459] A sign by no means to be despised of the change made appears from the fact that among the sources of canons 904 and 2368 all the decisions which established the former discipline have been omitted. Thus also teach Noldin, *l.c.* III, 377; Father Cerato, *De delicto sollicitationis*, n. 89, while others contradict, for example, Vermeersch, Ferreres, Cappello, and so forth.

[460] Code of Canon Law, c. 904.

465. Causes Excusing from Denunciation:

a) **The death of the soliciting priest.**

Thus the Sacred Penitentiary on April 24, 1884. The reason is that the end of denunciation then ceases. - The obligation of denunciation, however, does not seem to cease if the confessor is now amended or punished, or if the solicitation was already committed a long time ago. But some theologians except the case in which the amendment is so manifest and enduring that no fear of relapse can be had, especially if the confessor has now entered a religious order.[461]

b) **A grave danger to the life, reputation, or fortune of the person denouncing, joined *per accidens* with the denunciation.**

For example, the confessor to be denounced has such friends as are foreseen to persecute the person denouncing most vehemently. The reason is that no positive law obliges with the greatest inconvenience. But an inconvenience which is intrinsically joined with the denunciation does not excuse, such as especially the grave indignation of the confessor denounced.[462]

c) **A dispensation of the Holy Office or the Sacred Penitentiary**, which nevertheless is not granted so easily. A bishop cannot dispense in this law.

The Instruction of the Holy Office of February 20, 1867, has the following concerning seeking this dispensation: "If [the person solicited], detained by no impediment, altogether refuses the denunciation, in this case ... the confessor is to be praised who ... has consulted either the Ordinary or the Holy See for suitable provisions." - In the petition the substance of the case must be set forth exactly (especially whether there is question of a confessor of nuns). In addition, the impediments which draw the penitent back from making the denunciation must be declared.[463]

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[461] Cf. Berardi, *De sollic.*, n. 284; Tanquerey, *De poenit.*, n. 592.

[462] De Smet, *Tract. de cas. reserv.*, n. 165.

[463] Cf. Berardi, *l.c.*, n. 359.

466. 3. The Manner of Making a Denunciation. A confessor hearing a case of solicitation must diligently examine: a) whether the person narrating is worthy of belief, for certain women often relate concerning a confessor, from envy, hatred, hysteria, and other sinister causes, things which are altogether false; b) whether all the conditions required for the crime of solicitation are certainly present. For if even the slightest but true doubt remains, the obligation of denunciation does not exist. If the confessor finds that the crime of solicitation was truly committed, he must admonish the penitent concerning the obligation of denouncing, nor does the good faith of the penitent excuse the confessor from admonishing and instructing him. But if the penitent for grave causes refuses to make the denunciation, let the confessor have recourse to the Sacred Penitentiary for obtaining a dispensation from making the denunciation, as has already been said. The penitent, however, can immediately receive sacramental absolution, provided that he seriously promises that he will obey the Sacred Penitentiary.

The denunciation is to be made either to the Holy Office or to the Ordinary of the place (and, when he is dead, to the vicar capitular), but not to the vicar general unless the latter is specially delegated. The competent Ordinary is first of all the bishop of the place where the crime was committed, and then also the proper bishop of the soliciting priest or of the solicited penitent.[464] The bishop in this affair acts as a delegate of the Holy Office, or, as it is said, as an *inquisitor natus*; and consequently the denunciation even of an exempt regular priest must be made to the bishop and not to the regular superiors. Therefore let the person solicited write letters (not anonymous ones) to the bishop, in which the person sets forth the fact of solicitation with the circumstances of place, time, and the name of the soliciting priest. The person ought not, however, to confess that he or she consented to the soliciting priest.[465]

When the bishop "has received some denunciation concerning the unspeakable crime of solicitation, he will proceed immediately to the *diligentiae* (that is, to a judicial investigation concerning the reputation of the person denounced and of the person denouncing). For this end, either by himself or through a priest specially delegated by him, he will summon two witnesses, insofar as it can be done, from the ecclesiastical body, but in any case beyond every exception, who know well both the person denounced and each and every person denouncing; and he will judicially interrogate them under the sanctity of an oath concerning speaking the truth and preserving the secret of the Holy Office,[466] recording the testimony in writing (according to the following formula...); but he will transmit as soon as possible, directly and by a secure way, to this Supreme Congregation an authentic copy of the testimony of both and at the same time of the respective denunciation." Thus the Instruction of the Holy Office of August 6, 1897, from which it follows that the bishop cannot proceed **judicially** against the person denounced before he has transmitted the aforesaid documents to the Holy Office and received a response from it. This discipline seems to have been changed today.

Until a second or third denunciation of the same confessor has been made, the bishop can refrain from a **judicial process** against the accused confessor, whom nevertheless in the meantime he must admonish paternally and watch. Indeed, it is expedient that the bishop impose a salutary penance upon a confessor who even once has certainly committed the crime of solicitation, for example, the making of Spiritual Exercises, or removal from the place in which the confessor so enormously failed in his office.

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[464] Cappello (*De censuris*[2], n. 449) confidently asserts, but does not prove, that the denunciation must be made to the Ordinary of the place where the person solicited here and now resides, and not to the proper Ordinary either of the soliciting priest or of the solicited penitent or of that diocese in which the offense was committed.

[465] A few years ago no denunciations could be made by the clergy or the faithful immediately to the Holy Office, but they had to be made through the bishop. The reason was the danger of losing them in the mail, which indeed could cause very grave inconveniences. Therefore, closed under seal, they had to be delivered to the Ordinary, who, when he had received them thus closed, had to enclose them untouched in another covering (*enveloppe, busta*) and, having addressed them, send them to the Cardinal Secretary, who himself, with no delay interposed, took care that they were transmitted similarly intact to the Holy Office (Circular of the Secretariat of State, December 1, 1918). This circular was revoked on August 7, 1926.

[466] The secret of the Holy Office is called that secret which all officials of the Holy Office and others who treat some matter pertaining to the Holy Office must observe under oath.

467. 4. Penalties for Solicitation. The following penalties are to be inflicted upon a confessor who in a judicial process has been convicted of the crime of solicitation (all of which, however, are *ferendae sententiae*):

a) suspension from celebrating Mass;

b) suspension from hearing confessions;

c) privation of every benefice, of active and passive voice, and of dignity;

d) in graver cases, degradation.[467]

It must be noted that the sin of solicitation itself **is not reserved**, at least by common law; and consequently, if an unhappy priest rightly disposed confesses this sin, he can be absolved by any confessor.[468]

[467] Code of Canon Law, c. 2368.

[468] Holy Office, September 13, 1859 (*Collect. de Prop. Fide*, n. 1181).

468. Scholion. The Penalty Inflicted upon One Denouncing Calumniously. The Code of Canon Law, c. 2363, establishes that the detestable deed of one who falsely denounces before superiors, either personally or through others, an innocent confessor incurs an excommunication reserved in a special manner to the Apostolic See. Therefore this case is reserved both by reason of the censure and by reason of the sin. For canon 894 establishes: "The only sin reserved by reason of itself to the Holy See is a false denunciation by which an innocent priest is accused of the crime of solicitation before ecclesiastical judges." The following conditions are required in order that this sin be truly reserved:

1. That there be a false denunciation of a confessor **as confessor** according to the things explained above. Therefore, if someone calumniously denounces a priest without relation to confession, the sin is not reserved.
2. That the denunciation be **juridical**, that is, made personally before a competent judge. Therefore the sin does not seem to be reserved if the denunciation was made anonymously or even through a signed letter which nevertheless is regarded as a merely private letter.[469]
3. That knowledge of the censure be present; for ignorance indeed excuses from the censure, but not from the reservation of the sin itself, as was already stated above, n. 423.

Accomplices in a false denunciation, for example, those ordering, commanding, giving counsel, asking, promising, threatening, and so forth, commit the same reserved sin under the same clauses.

Concerning absolution from this detestable crime of false denunciation, it is established that the censure cannot be remitted unless the penitent: a) has seriously promised to retract before the bishop and before all others who perhaps heard it the calumnious defamation of the innocent confessor; b) has repaired all the harms from his calumnious denunciation; c) has accepted a grave and prolonged penance. - But if the censure annexed to this crime was not incurred, for example, because of ignorance of it, as is accustomed often to occur, then the harms caused must indeed be repaired according to one's powers, but absolution can be given much more easily. For then those things are valid which are established in the Code of Canon Law, c. 900.[470] The reservation ceases, for example, if the penitent is ill and cannot leave the house, or if the faculty of absolving from this sin cannot be sought from the Sacred Penitentiary without grave inconvenience to the penitent.

[469] Cf. Noldin, *De sacr.*, n. 393.

[470] Pontifical Commission, November 10, 1925 (*Acta Ap. Sed.* XVII, 583).

Treatise VI. On Ecclesiastical Penalties

Preliminary note. Although the discipline concerning ecclesiastical penalties properly pertains to Canon Law, nevertheless it is found in almost all modern Manuals of Moral Theology, because it is very necessary in the practice of the confessor. Therefore we too here explain ecclesiastical penalties very briefly, as a complement to the treatise on penance and for the benefit of confessors; but we omit vindicative penalties (for example, degradation and deposition) and penances, both because such penalties are very rare today and because this matter pertains solely to Canon Law. The whole treatise is divided into three chapters: 1. on ecclesiastical penalties in general; 2. on censures in general; 3. on censures in particular.

Chapter I. On Ecclesiastical Penalties In General

This chapter is divided into two articles: 1. on the notion and division of an ecclesiastical penalty; 2. on its author and subject.

Article I. On The Notion And Division Of An Ecclesiastical Penalty

469. Notion. A penalty in general can be defined: an afflictive evil inflicted against the will of the sufferer in vindication of his sin;[1] or also: an affliction inflicted by legitimate authority upon a guilty person because of the transgression of a law or precept; or briefly: "a penalty is the vindication of guilt."[2] But if this evil is inflicted by legitimate ecclesiastical power, there is an **ecclesiastical penalty**, which is "the privation of some good, inflicted by legitimate authority for the correction of the delinquent and the punishment of the delict."[3]

The evil which is inflicted as a penalty by ecclesiastical power consists in the privation of some good which falls under ecclesiastical jurisdiction. Such goods are not only spiritual goods, but also temporal goods. Hence the Church has the right to take away the exercise of order, jurisdiction, and union with the Mystical Body of Christ, to deprive one of the revenues of a benefice, to inflict the penalty of imprisonment, and so forth. According to the discipline now in force, however, ecclesiastical penalties are not accustomed (at least for the laity) to consist except in the privation of spiritual goods.

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[1] Cf. St. Thomas, *S. theol.* 1, q. 48, a. 5; Billuart, *De peccat.* diss. 7, a. 4. There is no leisure here to treat the many theories devised by authors concerning the nature of penalty. See Cathrein, *Moralphil.*[4] II, 663 ff.

[2] L. 131, D. 50, 16.

[3] Code of Canon Law, c. 2215.

470. The cause of a penalty is a crime or delict that is a) external; b) grave.

Although the Church perhaps has the power to punish even purely internal evil acts, nevertheless in fact she does not do this, but leaves the punishment of these acts to divine justice. A light delict is not punished with an ecclesiastical penalty properly so called, since otherwise penalties would become too numerous. Therefore the Code of Canon Law, c. 2218, § 2, establishes: "Not only those things which excuse from all imputability, but also those which excuse from grave imputability, likewise excuse from every penalty, both *latae sententiae* and *ferendae sententiae*."

According to the usage received in modern penal laws, crimes (*Verbrechen*) are distinguished from delicts (*Vergehen*). A crime is a graver evil action, which in modern penal law is customarily punished with a grave penalty of imprisonment; a delict, however, is an external action not so gravely evil, which is punished with a pecuniary fine or other light penalties. In ecclesiastical law, *crime*, *delict*, *transgression*, and *wicked deed* are not rarely taken interchangeably; but by the name of delict is understood an external and morally imputable violation of law, to which a penal sanction, at least an indeterminate one, has been added.[4] - Delicts are distinguished as occult, public, and notorious. A delict is **occult** when it is known either to the evildoer alone (wholly occult) or to a few discreet persons (nearly occult). A delict is distinguished as **materially occult** if the very fact of the delict is hidden, and as **formally occult** if not the fact, but its imputability, is hidden. - A delict is **public** when it has already been divulged, or at least has occurred or exists in such circumstances that it can, and indeed must, prudently be judged that it will easily be divulged. - A delict is not only public but also **notorious**: a) after the sentence of a competent judge has passed into a res judicata, or after the judicial confession of the delinquent (notoriety of law); b) if it is so publicly known that neither the fact itself nor its imputability can any longer be concealed[5] (notoriety of fact).

The end of an ecclesiastical penalty is twofold, namely, the good of society or the good of the delinquent to be obtained.

First, therefore, and principally, an ecclesiastical penalty intends the **good of society**. For through a crime public order is injured, and scandal is also often given; but through penalties the order injured and any scandal perhaps given are repaired. Hence St. Bonaventure says: "That which is disordered in fault is best ordered in penalty."[6] An end of a penalty is also, by threatening it, to deter from perpetrating a crime. - Besides this end of preserving public order, a penalty often intends the **amendment of the guilty person**, and thus becomes, as it were, a medicine for recovering spiritual health. All censures properly so called, for example, have such a medicinal character.

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[4] Cf. Code of Canon Law, c. 2195.

[5] Cf. ibid., c. 2197.

[6] 4, dist. 15, P. 2, a. 1, q. 3. - Since there is a threefold order injured by the delinquent, namely, the order of one's own reason, the order of temporal governance, and the order of divine rule, the delinquent incurs a threefold penalty: "one from himself, which is remorse of conscience; another, however, from man (that is, from a legitimate human superior); a third, however, from God." St. Thomas, *S. theol.* 1, 2, q. 87, a. 1.

471. Division of Penalties. Among the many divisions of ecclesiastical penalties, the following seem more conducive to our purpose.

1. **By reason of the end**, penalties are distinguished as vindicative and medicinal.

A **vindicative penalty** (which is also called punitive) principally intends the reparation of the order injured and the instilling of horror. Such penalties are degradation, deposition, privation of a benefice, and so forth. Sometimes they are inflicted for a merely past crime, even if the guilty person has already come to his senses.[7] A vindicative penalty is remitted through dispensation. - A **medicinal penalty** primarily intends the amendment of the guilty person and therefore is never inflicted because of a merely past crime of which the delinquent has already sufficiently repented. Such a penalty is remitted through absolution.

2. **By reason of the author**, penalties imposed *a iure* and *ab homine* are distinguished.

Penalties *a iure* are those which are established by the law itself (whether they are *latae sententiae* or *ferendae sententiae*) against determinate crimes. Penalties *ab homine* are those which a legitimate judge or superior justly inflicts upon a delinquent by way of a particular precept or through a condemnatory judicial sentence. But although some penalty may be *ferendae sententiae* in the law, for example, suspension from hearing confessions to be inflicted upon a soliciting confessor, nevertheless that same penalty, after the condemnatory sentence of a legitimate judge, is considered as imposed *ab homine*; and therefore it is reserved.[8]

3. **By reason of the object**, spiritual penalties, which deprive one of a spiritual good, for example, the suffrages of the Church, and temporal penalties, which afflict the delinquent with a temporal evil, for example, imprisonment or a pecuniary fine, are distinguished.

It cannot be doubted that the Church has the power to inflict temporal penalties also.[9] For it can sometimes happen that public order cannot be preserved without penalties of this kind. But the power of the Church extends to all those things which are necessary for preserving her public order. In ancient times the Church not rarely inflicted such temporal penalties, but today she is no longer accustomed to employ them except against delinquent clerics and religious. - It is disputed whether the Church has the power to inflict even **bloody punishment**, for example, mutilation of members or capital punishment, since according to the common adage, "The Church shrinks from blood." In fact the Church has never employed bloody punishment, but her power to inflict such penalties - if they are truly necessary for preserving public order - can scarcely be denied.[10]

4. **By reason of the form**, penalties *latae sententiae* and *ferendae sententiae* are distinguished.

The former are those which are incurred by the very fact of the transgression or crime, without any sentence of a judge, at least a condemnatory one, being necessary. The latter are not incurred except after and through a condemnatory sentence of a judge.

The penalties of civil codes are customarily *ferendae sententiae*; but in ecclesiastical law there are several penalties *latae sententiae*, for example, many censures, of which there will be discussion below. But even in ecclesiastical law a penalty is always understood to be *ferendae sententiae*, unless it is expressly said that it is *latae sententiae*, or is incurred *ipso iure*, *ipso facto*, without another sentence, or unless other similar words are employed. Penalties expressed by these or similar words, however, are considered *ferendae sententiae*: let him be excommunicated; we command under the penalty of excommunication, interdict, privation of offices, and so forth.[11]

Note. Although penalties *latae sententiae* require no condemnatory sentence of a judge, nevertheless some penalties of this kind still require a declaratory sentence of a judge concerning the crime committed. Thus, for example, penalties of privation of a benefice or of active and passive voice which are to be incurred *ipso facto* are accustomed to require that a legitimate judge declare that the guilty person truly committed the crime on account of which those penalties were imposed by the law. Such a declaratory sentence, however, carries the penalty back to the very moment when the crime was committed.[12]

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[7] Code of Canon Law, c. 2286.

[8] Ibid., c. 2217, § 1, n. 3.

[9] Hence Pius IX condemned the proposition: "The Church does not possess the right of coercing violators of her laws by temporal penalties" (Denz. n. 1697; cf. *Syllab.*, prop. 24; Denz. n. 1724; Code of Canon Law, c. 2214, § 1). Vacandard, *L'Inquisition*, 304 ff., spoke

less correctly concerning this matter in our times.

[10] Cf. Tarquini, *Inst. iur. eccl.*, n. 47.

[11] Cf. Code of Canon Law, c. 2217, § 2.

[12] Ibid., c. 2232, § 2.

472. List of Ecclesiastical Penalties Existing Today. All the penalties which the Church inflicts can be reduced to three kinds; namely, they are:

1. **Censures or medicinal penalties:** a) excommunication; b) suspension; c) interdict.
2. **Vindicative penalties**, which are inflicted principally for the reparation of injured public order, for the punishment of the guilty person, and for deterring others from the same crime. Of such vindicative penalties, some are inflicted upon clerics alone, while others are inflicted also upon the laity.

a) Vindicative penalties upon clerics or religious alone, for example, privation of an ecclesiastical benefice or office, privation of active and passive voice, deposition, and degradation. Twelve such penalties are enumerated in the Code of Canon Law, c. 2298.

b) Vindicative penalties which can be imposed either upon clerics or upon the laity, for example, privation of ecclesiastical burial, ecclesiastical infamy, irregularity from a delict, and temporal penalties, such as a pecuniary penalty, public correction, and so forth. Likewise twelve such penalties are enumerated in the Code of Canon Law, c. 2291.

3. **Penances and penal remedies**, which are inflicted as penalties partly vindicative and partly medicinal; they are certain works of penance enjoined by the Church chiefly for this end, that public scandal may be repaired and the delinquent corrected.[13] According to the discipline in force, penances of this kind are sometimes employed against delinquent clerics and religious, and consist, for example, in Spiritual Exercises, in correction, in fasting, and in other works which are indeed laborious but not so hard.[14]

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[13] Cf. Council of Trent, sess. 24, c. 8, *de reform.*, and Noldin, *De poenis eccl.*[12], n. 6.

[14] Cf. Code of Canon Law, cc. 2306-2313.

Article II. On The Author And Subject Of An Ecclesiastical Penalty

473. The author of an ecclesiastical penalty is the Church, to whom it certainly belongs to possess the native and proper right (independent of any human authority) of inflicting penalties upon her delinquent subjects.[15]

For Christ the Lord endowed the Church with true legislative and coercive power, which she also put into practice from the beginning. Therefore Pius VI proscribed as heretical the proposition asserting: "The Church does not have conferred upon her by God the power not only of directing by counsels and persuasions, but also of commanding by laws, and of coercing and compelling the erring and contumacious by external judgment and salutary penalties."[16] This coercive power of the Church indeed extends to penalties not only spiritual but also temporal, as was already said above.

The **exercise of punitive power** in the Church belongs to all superiors having jurisdiction in the external forum, whether ordinary or delegated, provided that this jurisdiction is unimpeded. Concerning this matter

the Code of Canon Law, c. 2220, establishes: "Those who possess the power of making laws or imposing precepts can also annex penalties to the law or precept; those who possess judicial power only can merely apply legitimately established penalties according to the norm of law."

Hence ecclesiastical penalties can be imposed by: a) the Supreme Pontiff for the whole Church; b) bishops and major regular prelates for their subjects; c) all others having unimpeded jurisdiction in the external forum, for example, Vicars and Prefects Apostolic, even provincial Councils, and so forth.

Sometimes, however, a special mandate is required, for example, in a vicar general.[17]

Jurisdiction, as regards the right of punishing, is impeded:

1. In the case of an **excommunicated, suspended, heretical, or schismatic bishop**, who always unlawfully, and indeed invalidly - if a condemnatory or declaratory sentence has been pronounced - imposes censures upon his subjects.[18]
2. In the case of a **judge** who wishes to pronounce a sentence in the contentious forum outside his own territory. Hence that common adage: "One who administers justice outside his territory may be disobeyed with impunity."[19] Sometimes, however, a judge has the power to administer justice even outside his own territory, as the canonists teach.[20]

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[15] Ibid., c. 2214, § 1.

[16] Denz. n. 1505; cf. Benedict XIV, Brief *Ad assiduas*, 1755; Leo XIII, Constitution *Immortale Dei*, November 1, 1885.

[17] Code of Canon Law, c. 2220, § 2.

[18] Ibid., c. 2264.

[19] Cf. c. 2, I 2 in VI°, and c. unic., II 2 in Clem.

[20] Cf. Bargilliat, *Prael. iur. can.*, n. 1551; Code of Canon Law, c. 1637.

474. The subjects of an ecclesiastical penalty are (or those who can be punished with ecclesiastical penalties are) all baptized persons who are capable of reason, living, delinquent, and subjects.

Therefore the following are not subject to ecclesiastical penalties:

1. **The unbaptized.**

For the Church does not judge those who are outside.[21]

2. **Those actually lacking the use of reason.**[22]

For since a man actually lacking the use of reason cannot perpetrate a formal delict, neither can he be punished with an ecclesiastical penalty. Therefore not only the insane, but also infants who have not reached their seventh year, are not bound by ordinary ecclesiastical penalties. The pious Mother Church exempts from penalties *latae sententiae* all prepubescent persons, that is, up to the completion of the fourteenth year,[23] although they are capable of the use of reason; adults, however, who have induced them to violate the law or have concurred with them in the delict incur the penalty established by law.[24] Hence, for example, a boy ten years of age who has entered the enclosure of nuns illegitimately is not excommunicated. But the one who introduced him does not escape the censure. Minors after attaining puberty are indeed ordinarily subject to ecclesiastical penalties,[25] but because younger age (unless something else is established) diminishes

imputability,[26] minors seem to be excused from those penalties which are imposed upon those who knowingly, with rash audacity, and so forth, have done something. For then any diminution of imputability excuses.[27]

3. **Travelers.**

Travelers are not bound by the merely territorial laws of their domicile or quasi-domicile when they are staying outside it.[28] Therefore Boniface VIII established that "by a statute of a bishop in which a sentence of excommunication is promulgated against all who commit theft, his subjects who commit theft outside his diocese are by no means to be regarded as bound."[29] Authors dispute whether the same is to be said concerning a precept or statute which a bishop issued for his diocesans under a penalty to be incurred *ipso facto*, namely, whether diocesans violating such a precept outside the diocese incur this penalty. The common opinion teaches that a bishop indeed can issue precepts of this kind which bind his subjects even outside the diocese.[30] Whether, however, some episcopal precept actually binds transgressors outside the diocese is to be ascertained from the mind of the legislator. If this mind is doubtful, the penalty imposed is not considered to have been incurred.

A traveler is customarily bound by civil penalties which have been enacted in the places through which he passes. Hence, for example, a Frenchman in Switzerland who violates the penal law of Switzerland is punished according to the penal laws of Switzerland. In ecclesiastical law a general rule cannot be given, but the individual delicts and the individual penalties to be inflicted must be examined.

Scholion. How exempt religious are subject to the punitive power of the bishop of the place is to be seen in the treatise on the law of religious.[31]

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[21] Cf. 1 Cor. 5:12; Council of Trent, sess. 14, c. 2, *de poenit.* (Denz. n. 895).

[22] Code of Canon Law, c. 2201.

[23] There is no reason for a distinction of puberty between boys and girls to be made here. For the weakness of mind is almost the same in either sex before the age of fourteen years. Thus also teach several others, such as Vermeersch, Génicot, Sole, Wernz, and so forth.

[24] Code of Canon Law, c. 2230.

[25] Cf. Benedict XIV, Constitution *Ab Augustissimo*, March 5, 1744, and c. 1, 2, X 5, 23.

[26] Code of Canon Law, c. 2204.

[27] Ibid., c. 2229, § 2.

[28] Cf. above, I, n. 194.

[29] c. 2, I 2 in VI°.

[30] Cf. Benedict XIV, *De syn. dioec.*, l. 13, c. 4, n. 9.

[31] Cf. our *Man. iur. can.*, q. 9.

Chapter II. On Ecclesiastical Censures In General

This chapter is divided into six articles: 1. on the notion and division of censure; 2. on its author; 3. on its subject; 4. on its object; 5. on excusing causes; 6. on absolution from censures.

Article I. On The Notion And Division Of Censure

475. Notion. A censure is a medicinal ecclesiastical penalty by which a baptized, delinquent, and contumacious man is deprived of the use of certain spiritual goods or of goods annexed to spiritual goods (c. 2241, § 1).

This is explained: The name censure signified in the ancient Roman law the **office of the censor**, who entered the census, that is, the description of persons and goods, into the censorial tables and branded delicts perpetrated against public morality with a censorial mark.[32] In ecclesiastical law, however, censure has a threefold signification, namely: 1. in the first centuries of the Church, censure signifies **any ecclesiastical penalty whatever** (whether vindicative or medicinal), for example, public penances, excommunication, deposition; 2. from the time of Innocent III[33] (the thirteenth century), censure began to be restricted to the penalties or sentences of excommunication, suspension, and interdict; 3. censure signifies the examination and approval of a book to be published.[34] This censure is properly called **preventive censure**, and in this sense Leo XIII enacted most wise laws "concerning the censure of books."[35] - The definition given is valid only for censure taken in the second sense.

It is called, first, **"a penalty,"** and therefore it presupposes fault and is distinguished from irregularities, which are either solely or at least principally incapacities.

It is called, second, **"ecclesiastical and medicinal,"** because a censure is inflicted by ecclesiastical power as a medicine, that is, for the amendment of the delinquent. Therefore: 1. if the amendment of the delinquent has truly been obtained, absolution from censures not only can, but must, be given;[36] 2. a censure cannot be imposed because of a merely past delict which does not have - as they say - a successive continuance, or which has already been amended; 3. a censure cannot be imposed for a determinate time, nor even simply in perpetuity; for when the amendment of the delinquent arrives, then the censure is to be removed, as was already said; 4. a censure can be imposed even upon those whose amendment is nearly despaired of; for a censure is imposed not only for the amendment of the delinquent, but also (although secondarily and accidentally) for the punishment of the delict committed and for instilling terror in others; moreover, the amendment of no living man is to be altogether despaired of. But no censure properly so called is to be imposed upon the dead.

Note. Suspension and interdict are sometimes inflicted not as censures, but as vindicative penalties; excommunication, however, is always inflicted as a true censure. Hence Innocent III says: "Since excommunication is medicinal, not deadly; disciplining, not uprooting, provided, however, that the one against whom it has been imposed does not despise it: let the ecclesiastical judge cautiously provide that, in imposing it, he show himself to pursue that which belongs to one correcting and healing" (c. 1, V 11 in VI°).

It is called, third, **"by which a baptized, delinquent, and contumacious man."** By these words are indicated the conditions required for a censure on the part of the subject and of the object. These will be treated specifically below, n. 481 ff.

It is called, fourth, **"is deprived of the use of certain spiritual goods or of goods annexed to spiritual goods."** By these words the effect of a censure is indicated. Since a censure is an ecclesiastical penalty, it deprives one only of the use of those goods of which the Church freely disposes, for example, the administration and reception of the sacraments, offices, benefices, and so forth. Hence a censure: a) does not deprive one of spiritual goods which proceed immediately from Christ, such as the sacramental character, the power of order, habitual or actual grace, the virtues, and so forth; for these goods do not depend upon the

Church; b) does not deprive one of those spiritual goods which are produced by individual men, such as the good works and prayers of the faithful; the reason is that not even these goods depend upon the Church, since she has no power to impede the communion of saints; hence it is lawful to pray privately for an excommunicate even when he is one to be avoided; c) does not deprive one of the spiritual goods themselves, but only of their use; for a censure must be a medicinal penalty and therefore must be inflicted by way of a bond easily dissolved as soon as the guilty person has withdrawn from contumacy.[37]

The goods of whose use an ecclesiastical censure deprives one are principally spiritual; nevertheless, *per accidens* and secondarily, the use even of temporal goods which are annexed to spiritual goods is taken away, for example, civil communication with the other faithful, the revenues of a benefice, and so forth.

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[32] Cf. Wernz, *Ius Decretal.* V, 144.

[33] Cf. c. 20, X 5, 40.

[34] Censure in this sense is sometimes taken more broadly for a judgment as to whether some thing is worthy of praise or blame.

[35] Constitution *Officiorum ac munerum*, January 25, 1896, tit. 2.

[36] Code of Canon Law, c. 2248, § 2.

[37] Cf. Laymann, *Tract. de cens. eccl.*, P. 1, c. 1, n. 2.

476. Division of Censures. The principal divisions appear to be the following:

1. **By reason of species**, censures are divided into excommunication, suspension, and interdict.[38]

No other species of ecclesiastical penalties is contained under the genus of censure. Therefore, for example, deposition, degradation, irregularities, and so forth, are not censures.

2. **By reason of the efficient cause**, censures imposed *a iure* and *ab homine* are distinguished.

Censures are imposed *a iure* if they are inflicted against future sins through a stable law or general statute; but they are imposed *ab homine* by way of a sentence or particular precept, as when a bishop suspends some determinate cleric from office because of a crime committed.

3. **By reason of the manner**, censures *latae sententiae* and *ferendae sententiae* are distinguished.

Censures *latae sententiae* are incurred by the very fact of the crime committed, without a condemnatory sentence. In the external forum, a declaratory sentence concerning the crime is indeed often still customarily required, but in the internal forum not even this declaratory sentence is required in order that such a censure be truly incurred by the very fact that the crime was committed.[39] Censures *ferendae sententiae* are incurred in neither forum except after a condemnatory sentence of a judge.

4. **By reason of the power of absolving**, censures are distinguished as reserved and non-reserved, according as they can be removed either by the one imposing them alone (or by his superior, successor, or one specially delegated), or also by inferior ministers.

The reserved censures existing today are reserved: 1. to the Supreme Pontiff, and indeed a) in the most special manner; b) in a special manner; c) simply;[40] 2. to bishops; 3. to religious superiors for their subjects.[41]

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[38] Cf. c. 20, X 40.

[39] Cf. Cappello, *De cens.*, nn. 4, 6, 74.

[40] Code of Canon Law, c. 2245, § 3.

[41] Cf., however, the decree of the Sacred Congregation of Religious, August 5, 1913, related above in n. 417.

Article II. On The Author Of Censure

This article is subdivided into two paragraphs: 1. on the power of imposing censures; 2. on the conditions required in imposing censures.

§ 1. On The Power Of Imposing Censures

477. Principle 1. There exists in the Church the power of imposing censures.

This is proved, first, from the Council of Constance, which condemned the thirtieth proposition of John Wyclif: "The excommunication of the Pope or of any prelate whatsoever is not to be feared, because it is a censure of Antichrist."[42] Moreover, if Wycliffites or Hussites wished to return to the Church, they had to answer this question: "Whether he believes that the Pope or another prelate ... can excommunicate his ecclesiastical or secular subject because of disobedience or contumacy, so that such a one is to be held as excommunicated."[43]

It is proved, second, from Sacred Scripture; for St. Paul delivered a certain one to Satan, "that the spirit may be saved in the day of our Lord Jesus Christ";[44] but by this delivering to Satan is understood excommunication. Christ the Lord said: "But if he will not hear the Church, let him be to thee as the heathen and the publican."[45]

Moreover, if the Church has coercive power, as was proved above in n. 473, she must also have the power of imposing censures, as is evident of itself.

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[42] Denz. n. 610; cf. also proposition 19 of John Huss (Denz. n. 645).

[43] Denz. n. 681.

[44] 1 Cor. 5:3-5.

[45] Matt. 18:17.

478. Principle 2. The ordinary power of imposing censures rests with all and only ecclesiastical prelates having unimpeded jurisdiction in the external forum.

The reason is that the faculty of punishing with so grave a penalty as a censure is most fittingly reserved to prelates having jurisdiction in the external forum.

Those possessing a power of this kind are:

1. The Supreme Pontiff and an ecumenical council, for the whole Church.[46]
2. Legates *a latere* within the territory of their legation (by mandate of the Supreme Pontiff).[47]
3. Bishops over their subjects[48] (but not a vicar general without a special mandate).
4. The chapter of a cathedral church (before a vicar capitular has been elected; when he has been elected, the power of the chapter passes to him), and the vicar capitular while the episcopal see is vacant.[49]
5. Prelates *nullius* and similar prelates who have jurisdiction in the external forum.[50]
6. Provincial councils, and likewise chapters of religious orders.

As regards these chapters and, generally, as regards religious superiors, legitimately approved particular statutes are to be observed.

Note. Pastors have no ordinary power of imposing censures. Thus, at least, according to the discipline in force.[51] Cardinals appear to have the ordinary faculty of imposing censures in the churches of their title.[52]

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[46] Cf. c. 1, I 8 *Extrav. comm.*

[47] Code of Canon Law, c. 266.

[48] If a censure is reserved to the Apostolic See, the Ordinary cannot impose upon the same delict another censure reserved to himself (Code of Canon Law, c. 2247, § 1). During a canonical visitation the Metropolitan can impose censures in the dioceses of his suffragans (ibid., c. 274, n. 5). The vicar general of a bishop, without a special mandate, does not have the power of inflicting censures and other ecclesiastical penalties (ibid., c. 2220, § 2).

[49] Council of Trent, sess. 24, c. 10, *de reform.*

[50] c. 10, X 1, 33; c. 8, X 3, 35.

[51] Cf. St. Thomas, 4, dist. 18, q. 2, a. 2, sol. 1; St. Alphonsus, *Theol. mor.* l. 6, n. 11.

[52] Cf. Code of Canon Law, c. 240, § 2.

479. Principle 3. The delegated power of imposing censures rests with clerics alone, to whom it has been legitimately committed by one having ordinary power.

Thus, at least, according to the discipline in force. A layman can indeed be delegated by the Supreme Pontiff to exercise ecclesiastical jurisdiction in the external forum, and this appears actually to have been done in the famous "Sicilian Monarchy."[53] A woman, however, does not appear able to impose censures even by a delegated faculty. Hence St. Thomas[54] says: "A woman cannot have any spiritual jurisdiction, ... whence she has neither the key of order nor the key of jurisdiction." When, however, in the Decretals[55] an abbess is said to be able to suspend clerics subject to her from office or benefice, there is not conceded to her the faculty of imposing a censure properly so called, the violation of which would induce irregularity; rather, such suspension is taken in a broad sense for a precept by which the abbess prohibits a cleric in some manner subject to her from the celebration of Mass until he has made satisfaction, meanwhile withholding revenues from him.[56] - Every cleric initiated by the first clerical tonsure is capable of ecclesiastical jurisdiction, and therefore the faculty of imposing censures can be entrusted to him.

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[53] Cf. Sentis, *Die "Monarchia Sicula"* (Freiburg im Breisgau, 1869), 2 ff.

[54] 4, dist. 19, q. 1, a. 1, sol. 3 ad 4.

[55] c. 12, X 1, 33.

[56] Cf. St. Alphonsus, *Theol. mor.* l. 7, n. 11 ff. The holy Doctor thinks that opinion more probable which teaches that not even from the plenitude of power can the Pope delegate to a woman the power of imposing censures. Ballerini teaches the contrary (in the notes to Gury II, n. 943), and very many authors with him. Since this controversy is merely theoretical, without any practical utility, we omit it here for the sake of brevity. - A curious example of the jurisdiction of the Abbess of the Monastery of St. Mary of Las Huelgas, who still in the year 1868 contended that she possessed quasi-episcopal jurisdiction, may be seen in *Anal. eccl.* VI (1898), 257.

§ 2. On The Conditions Required In Imposing Censures

480. For the imposing of censures, it is required on the part of the one imposing them:

1. That he be baptized; because one who is not himself a member of the Church is not capable of ecclesiastical jurisdiction.[57]
2. That he be possessed of reason and have the will of imposing a true censure. This is evident of itself.
3. That he act freely and not under compulsion. It is not certain whether a censure imposed from grave fear is invalid,[58] since the Code, c. 103, § 2, establishes by a general rule: "Acts placed from grave fear unjustly inflicted are valid, unless something else is provided by law."
4. That he have jurisdiction unimpeded as regards its use.[59]
5. That a warning precede.

For a censure is a medicinal penalty which is not imposed except upon the contumacious. But no one is considered contumacious unless he has first been warned of the penalty to be incurred in the event of transgression of a law or precept. Concerning this warning, the following matters are to be noted briefly: A twofold warning is distinguished, one legal or solemn, the other canonical. A **legal warning** is made by the law itself and has place in all censures imposed by law. For a known law which threatens transgressors with a censure is considered continually to warn subjects and to deter them from transgression. But if a subject nevertheless transgresses such a law, he is deservedly considered contumacious. - A **canonical warning** is made *ab homine* and has place in censures or penalties to be imposed *ab homine*; for example, such a warning is necessary before a bishop can suspend a disobedient and delinquent cleric. It is strongly counseled that an ecclesiastical superior, before proceeding to a canonical warning (which is already the beginning of a judicial process), endeavor to amend the subject through the so-called paternal warning. For it is fitting that a superior, imitating the example of the meek Christ, correct the delicts of his subjects first and preferably by paternal love rather than by strict justice. But because all untimely warnings do more harm than good, the superior should not make even a paternal warning unless he has first known with moral certainty the existence of the delict. But if the paternal warning has remained fruitless, one must proceed to the canonical warning, which ought to have the following qualities:

1. it ought to be made personally to the delinquent, or at least by letter;
2. it ought ordinarily to be threefold, with an interval of three days or at least two days, or one peremptory warning;
3. it ought to be registered in the chancery of the bishop or superior.[60]

Note. The Holy Office observes:[61] "Let the Ordinaries be altogether cautious and as sparing as possible with regard to penal sanctions, especially excommunications; for, as the Sacred Council of Trent wisely admonishes (sess. 25, *de ref.*, c. 3): 'Although the sword of excommunication is the sinew of ecclesiastical discipline and is very salutary for containing the people in their duty, nevertheless it is to be employed soberly and with great circumspection, since experience teaches that, if it is inflicted rashly or for light matters, it is more despised than feared and produces ruin rather than salvation.'"

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[57] Cf. St. Alphonsus, *loc. cit.*

[58] Cf. ibid., n. 12.

[59] Cf. what was said above in n. 473 concerning the author of ecclesiastical penalties.

[60] Cf. concerning all these matters the Code of Canon Law, cc. 2143; 2233, § 2; 2309; and the Pontifical Commission, July 14, 1922.

[61] Instruction of July 13, 1916 (*Act. Ap. Sed.* VIII, 314).

Article III. On The Subject Of Censure

481. Notion. The (passive) subject of censure is called that person who can be punished with ecclesiastical censures. Such a subject, however, is only a man who is 1. baptized; 2. a wayfarer; 3. possessed of reason and capable of malice; 4. subject to the one who imposes the censure. - The individual points are to be explained briefly:

1. **A baptized man.**

The reason is twofold: a) because the Church does not have jurisdiction except over the baptized; b) because the non-baptized do not enjoy ecclesiastical spiritual goods of which they can be deprived through censures. - Hence the following cannot be punished with a censure: 1. irrational creatures; but if the Church has at times pronounced an anathema upon irrational creatures (for example, upon locusts), this was not a proper censure, but a manifestation of execration and detestation; 2. pagans, Jews, and catechumens. Heretics, schismatics, and apostates, however, are by no means exempt from censures, provided that they have been validly baptized.

2. **A wayfarer.**

But if in ancient times the dead were punished with censures or absolved from censures,[62] this was done to instill a salutary horror in the faithful, or to deprive the dead of ecclesiastical burial and suffrages, or to bestow them again. It is manifest, however, that the dead cannot be punished with a proper censure, because their corpse cannot be bound, while the separated soul is no longer subject to ecclesiastical jurisdiction.

3. **Possessed of reason and capable of malice.**

The reason is that censure, as a grave medicinal penalty, presupposes grave fault joined with contumacy. But before the perfect use of reason no one can commit a grave fault. Hence infants, the insane, and others wholly lacking the use of reason are not punished with censure. Although prepubescent persons, since they are capable of the use of reason and of grave delict, can be punished with censures, nevertheless according to the discipline in force they do not incur them, as was already said above in n. 474. Prepubescent persons can of themselves be punished with censures *ferendae sententiae*, but commonly this is not fitting; and therefore the Salmanticenses say wittily:[63] "Prepubescent persons ought to be corrected by rods rather than by censures"; and the Code of Canon Law, c. 2230, establishes: "Prepubescent persons ... should be corrected by educative punishments rather than by censures or other graver vindicative penalties."

4. **A subject.**

To impose censures is an act of jurisdiction, as was said above. But no one can validly and licitly exercise jurisdiction except over his own subjects. Since these things are so, the following corollaries are inferred:

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[62] Cf. c. 6, C. 24, q. 2; c. 5, X 5, 7; *Rit. Rom.* tit. 3, c. 4.

[63] Tract. 10, *de cens.*, c. 1, n. 168.

482. Corollaries. 1. No ecclesiastical superior incurs a censure imposed by himself. For no one can exercise jurisdiction over himself. Therefore the Supreme Pontiff, since he has no ecclesiastical superior, is bound by no censure. Similarly, by privilege (unless they are expressly named), Cardinals are comprehended under no penal

law, nor are bishops under penalties *latae sententiae* of suspension and interdict.[64] Moreover, supreme rulers of peoples and their sons and daughters, and likewise those who have the right of immediate succession to the principality, can be judged or punished by no one except the Supreme Pontiff.[65] Therefore these are not subject to penalties or censures imposed by a bishop, but they are subject to censures established in the common law.

2. Travelers and subjects of another do not incur territorial censures to be incurred *ipso facto*. The reason is the same. But if travelers have committed a delict in another's territory, they can be punished with censures by the superior of that territory through a particular sentence. According to the discipline in force, however, such a delinquent traveler is customarily denounced to his own superior, so that he may be punished by him. It is evident of itself that a traveler who has obtained a quasi-domicile in some place is subject to the censures in force in that place. - Vagrants incur territorial censures, because they are bound by all the laws of the place where they are staying.[66]
3. Those committing a delict outside the diocese do not incur censures imposed in their own diocese by a general and local statute. The reason is that territorial law does not bind outside the territory. But if a censure has been imposed by a special personal precept, it is then incurred even by one committing a delict outside the territory. Hence, for example, if a bishop by a general law prohibits all his clerics under penalty of suspension from frequenting a tavern or theater, clerics who engage in such frequenting outside the diocese do not incur that penalty; but if he has prohibited some determinate cleric by a particular precept from frequenting a tavern under penalty of suspension, such a cleric incurs this penalty even if he frequents taverns outside his own diocese. Thus the more probable opinion.[67]
4. Exempt religious, since they are subject to the personal jurisdiction of their prelates, are subject to censures legitimately imposed by their own superiors wherever they may be.
5. Exempt religious are not subject to episcopal censures except in cases expressly determined by law, for example, in c. 616.[68]

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[64] Code of Canon Law, c. 2227.

[65] Ibid., c. 1557, § 1; c. 2227, § 1.

[66] Ibid., c. 14, § 2.

[67] Cf. St. Alphonsus, *Theol. mor.* l. 7, n. 23.

[68] Cf. our *Man. iur. can.*, q. 240 ff.

483. Scholion. On censures imposed upon moral persons or communities. According to the discipline in force, the following hold:

1. Interdict and suspension can be imposed upon an entire community, although there may be several innocent persons in it. The reason is that these penalties are customarily inflicted so that the entire community may be brought to better fruit. Moreover, these penalties are not so hard upon the innocent, nor is it certainly established whether in that case they are censures or vindicative penalties.
2. Excommunication cannot be imposed upon an entire community in which innocent persons are actually found.[69] The reason is that the goods of which excommunication deprives one are chiefly personal, and it is unjust to punish an innocent person personally.

[69] Cf. c. 5, V 11 in VI°; Code of Canon Law, c. 2255.

Article IV. On The Object Of Censure

484. The object, which is also sometimes called the matter or cause of censure, is the crime on account of which this ecclesiastical penalty is inflicted. Such a crime, however, cannot be punished with censure unless it is: 1. grave (both subjectively and objectively); 2. external; 3. consummated in its kind; 4. joined with contumacy.[70]

1. **Grave.**

For censure is considered a grave penalty. But a grave penalty cannot licitly be imposed except on account of grave fault. Sometimes, however, suspension and interdict are inflicted upon a guilty community in which innocent persons may be present, and then they must indeed be patiently endured by all, even by the innocent, but it is not so certain whether they are censures strictly so called. - When a crime becomes light for some reason, for example, smallness of matter, imperfection of the act, inability to fulfill the law, and so forth, a censure or another ecclesiastical penalty is no longer incurred.[71]

2. **External.**

For a merely internal crime cannot be punished with an ecclesiastical censure, because the Church does not judge merely internal acts. It must be noted that an internal crime is one thing and an occult crime, which is known to few or to the delinquent alone, is another. Nothing prevents an occult crime, for example, heresy uttered in secret, from being punished with censure.

3. **The crime to be punished with censure must be consummated or complete (and not merely attempted),** or, in other words: a censure is not present unless the crime has all the conditions placed in the very promulgation of the censure.

For censures are of strict interpretation. Hence, for example, one who indeed fires a gun at a cleric but does not strike him does not incur a censure imposed upon assailants of clerics; likewise, one who reads a book which he falsely thought was prohibited under excommunication does not incur excommunication. On the other hand, one who administered a drug causing abortion, but who repents before the effect has followed, appears to incur the excommunication imposed against those procuring abortion. The reason is that the effect which followed was voluntary and gravely sinful, and had all the conditions required for excommunication.[72] St. Alphonsus,[73] however, calls the contrary opinion more probable in a similar case, without nevertheless rejecting the other opinion.

You will resolve the case thus: Caius administered a drug which after three days will cause an abortion in the pregnant Tullia. Immediately struck with repentance, he confesses the sin perpetrated. Even a simple confessor can grant absolution, since the abortion has not yet followed. After three days the abortion actually follows, and then the excommunication appears to be incurred, from which Caius must be absolved in his next confession by a competent confessor. Thus the more probable opinion. Nor should anyone say that no excommunication is incurred without grave sin, but that in the proposed case the sin has been blotted out through sincere repentance. The response is that certainly no excommunication is incurred without a causative sin, but it is by no means required that the causative sin persevere throughout the entire time during which the excommunication exists. For nothing prevents someone from being excommunicated and

nevertheless being in the state of grace, for example, through perfect contrition. Concerning this matter, see the controversy between Ballerini and the *Vindiciae Alphonsianae*.[74]

4. **Joined with contumacy,**[75] that is, with at least virtual contempt of the censure.

Express and formal contempt is indeed not required for incurring a censure; rather, virtual or even interpretative contempt suffices, consisting in this: that someone knows something to be prohibited under censure by a law or a legitimate ecclesiastical superior and nevertheless presumes to do it.[76] Therefore, for incurring a censure, there is required in the sinner knowledge both of the prohibiting law and of the special penalty to be inflicted upon transgressors; and consequently ignorance and fear sometimes excuse, concerning which discussion will return in the following article.

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[70] Code of Canon Law, c. 2242.

[71] Ibid., c. 2218, § 2.

[72] Cf. Lugo, *De poenit.* disp. 16, sect. 9, n. 453.

[73] *Loc. cit.*, n. 40; cf. also ibid., nn. 280 and 368.

[74] Ballerini-Palmieri, *Opus theol.* VII, n. 143, and *Vindic. Alphons.* nn. 841-848.

[75] In German: "with defiance and obstinacy."

[76] Cf. Reiffenstuel, *Ius can.* l. 5, tit. 39, n. 14.

485. Note. At least virtual contumacy is altogether required for incurring censures **in the internal forum**; in the external forum, however, presumed contumacy sometimes suffices. For when some ecclesiastical law has been sufficiently promulgated, knowledge of it is presumed in all subjects, who, if they transgress this law, must undergo the penalties and censures sanctioned. Hence, for example, a Catholic who contracts marriage before a non-Catholic minister incurs the imposed excommunication, although he is ignorant of the existence of this censure.[77] Therefore, such a Catholic who is actually ignorant of the excommunication can be absolved in the internal forum by any confessor, but in the external forum he still needs an absolution which is to be given according to the form prescribed in the individual dioceses. Contumacy is to be said to have ceased when the guilty person has truly repented of the delict committed and at the same time has given suitable satisfaction for the damages and scandal, or at least has seriously promised it; but it belongs to the one from whom absolution from the censure is sought to judge whether the repentance is true, the satisfaction suitable, or the promise of it serious.[78]

Corollary. An act clothed with the qualities enumerated above can therefore be punished with censure. But according to the diversity and multiplication of acts, censures also are diversified and multiplied; and therefore one and the same man can be bound by many censures. Hence, for example, one who a) contracted marriage before a non-Catholic minister, b) stipulated that the offspring would be educated in heresy, c) knowingly presumed to offer the offspring to a non-Catholic minister to be baptized, and d) on seven different occasions knowingly read heretical books, incurred ten censures.[79]

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[77] Cf. Holy Office, May 11, 1892 (*Collect. de Prop. Fide*, n. 1793).

[78] Code of Canon Law, c. 2242, § 3.

[79] Code of Canon Law, cc. 2244 and 2319.

Article V. On Causes Excusing From Censures

Some causes excuse from the incurrence, others from the effects, of censure.

§ 1. On Causes Excusing From The Incurrence Of Censure

Five excusing causes are customarily enumerated:

486. 1. Nullity of the censure, which, however, cannot be an excusing cause except in censures imposed *ab homine*.

Thus, at least, according to modern discipline. For censures imposed by a pontifical law are always valid; other censures imposed by law are customarily just and valid. - A censure imposed *ab homine* is null: a) from a defect of jurisdiction in the one imposing the censure, for example, if a bishop were illegitimately to impose a censure upon an exempt regular; b) from a defect of the substantial order of judgment; thus, for example, a superior would invalidly impose a censure if the canonical warning had not preceded;[80] c) from a defect of a just cause. But a just cause is lacking not only when it does not actually exist, but also when it has not been legitimately proved. Thus, for example, an excommunication imposed on account of a false or even a light crime is invalid.

2. **A defect on the part of the sin.**

Therefore, if the sin is not internally and externally grave, consummated, and joined with contumacy, the censure is not incurred, as was already said in the preceding article.

3. **Physical or moral inability.**

For censures are imposed by ecclesiastical law. But an ecclesiastical law ceases when inability arises. Hence, for example, one who in good faith usurped ecclesiastical goods and afterward lost them is not bound under censure to restore these goods if this is morally impossible. Thus, at least, in the internal forum.

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[80] Cf. St. Alphonsus, *Theol. mor.* l. 7, n. 53; Code of Canon Law, c. 2233, § 2.

487. 4. Grave fear excuses from censure whenever it excuses from observing an ecclesiastical law.

The reason is that one who transgresses a law from grave fear does not act from contempt or contumacy, as is evident. But without contumacy there is no censure properly so called. If, however, the delict tends to contempt of the faith or of ecclesiastical authority, or to public harm of souls, grave fear in no way exempts from censures (and other penalties *latae sententiae*).[81] It is disputed whether one who from grave fear perpetrates an act gravely evil by the natural law itself incurs a censure; for example, whether a girl who procures an abortion for herself from grave fear of her father is excommunicated. The negative opinion, although it is not certain, as Cappello, *De cens.*, n. 61, for example, maintains, nevertheless appears probable. - Even light fear excuses from a censure which is imposed against those who do something "rashly, with rash audacity, voluntarily," and so forth. For in these cases it is required that the prohibited action be done entirely *motu proprio*, so that any diminution of imputability excuses.

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[81] Code of Canon Law, c. 2229, § 3, n. 3.

488. 5. Ignorance. a) From censures (or other ecclesiastical penalties *latae sententiae*) which are imposed upon those doing something "knowingly, deliberately, with deliberation, rashly, with rash audacity, with

presumption," crass or supine ignorance excuses (but not affected ignorance);[82] b) from other censures, crass or supine ignorance does not excuse.[83]

It was said above in the preceding article that a censure is not incurred unless contumacy or contempt is present in the sinner. But contempt of a law is impossible in one who is ignorant of the law. Therefore, for incurring a censure, it is required that the sinner know not only the general prohibition but also the special ecclesiastical law prohibiting the act (at least substantially). It is not necessary, however, that the sinner know all the accidental determinations of the prohibiting law, for example, the reservation of the censure. Thus the far more common and truer opinion.[84]

That crass or supine ignorance excuses in the cases enumerated under letter a) is evident from the fact that in that case, strictly speaking, there is neither rash audacity nor gravely culpable presumption.

That ignorance which is not crass, as being inculpable or lightly culpable, excuses from other censures manifestly follows from what was said about the contumacy or contempt necessary for incurring censures.

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[82] Code of Canon Law, c. 2229, §§ 1 and 2.

[83] From vindicative penalties *latae sententiae*, only inculpable ignorance excuses (Code of Canon Law, cc. 2202 and 2229, § 3, n. 1). Drunkenness, omission of due diligence, weakness of mind, and the impulse of passion, if, notwithstanding the diminution of imputability, the action is still gravely culpable, do not excuse from penalties *latae sententiae* (Code of Canon Law, ibid.).

[84] Cf. Cappello, *De censuris*[2], n. 72.

§ 2. On Causes Excusing From The Effect Of Censure

489. Since the effects of censure are nothing other than statutes of merely ecclesiastical law, all those things which excuse from the observance of ecclesiastical statutes also exempt from observing the effects of censure. But any grave inconvenience is customarily to excuse from statutes of this kind, since positive laws as such are not customarily binding with grave inconvenience. Hence the following excuse (before a declaratory or condemnatory sentence) from observing the effects of censure:

1. **Grave infamy.**

Thus, for example, a layman occultly excommunicated can be a sponsor in baptism if otherwise he would have to manifest his crime with infamy.

2. **Scandal.**

Therefore a priest occultly suspended can perform the divine offices if otherwise scandal of the faithful would arise.

3. **Grave fear, provided, however, that it was not inflicted in hatred of religion.**

Hence, for example, a wife who, illegitimately possessing ecclesiastical goods with her husband, is excommunicated, is not bound to abstain from the reception of the sacraments if, from making immediate restitution, she fears most grave evils to be inflicted by her husband.

Article VI. On Absolution From Censures

Four matters are to be considered in this article: 1. how censures are removed; 2. who can absolve; 3. what conditions are required; 4. with what rite absolution is to be given.

§ 1. How Censures Are Removed

490. Principle. A censure (strictly so called), once incurred, is not removed except through legitimate absolution.[85]

Since some authors taught that, at least in the internal forum, a censure ceases through the amendment of the guilty person, proposition 44 was condemned by Alexander VII: "As regards the forum of conscience, when the guilty person has been corrected and his contumacy has ceased, censures cease."[86] Hence censures are not removed:

a) by the death of the author imposing them;[87]

b) by the death of the guilty person punished with censure;[88]

c) by the amendment or satisfaction of the guilty person.[89]

But it is said: a censure strictly so called; for sometimes interdict and suspension are imposed for a determinate time; then, however, they are not censures strictly so called, but rather vindicative penalties or penances.

Then it is said that a censure is removed through **absolution**. For it is not removed through dispensation, since a dispensation is an **act of grace**, which (speaking absolutely) can: a) be denied even to one duly disposed; b) once granted, be revoked; c) never licitly, and sometimes not even validly, be granted without a sufficient reason.[90] Absolution, however, is an **act of justice**, which cannot a) be denied to a guilty person duly disposed and amended; b) once granted, be revoked.

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[85] Cf. c. 15, X 5, 39; Code of Canon Law, c. 2248, § 1.

[86] Denz. n. 1144.

[87] c. 11, X 1, 31.

[88] c. 28, X 5, 39.

[89] c. 15, X 5, 39. Absolution, however, cannot be denied as soon as the delinquent has receded from contumacy (Code of Canon Law, c. 2248, § 2).

[90] Cf. above, I, n. 251 ff., on the causes of dispensation.

491. Scholion. On the diverse ways in which absolution from censure is customarily granted. There are five principal ways in which absolution from censure is customarily granted:

1. **For the internal forum only, or for both forums, namely, the internal and external.** Absolution given for the external forum is also valid for the internal forum, but not vice versa. Hence, for example, if a heretic returning to the bosom of the Church has been absolved from censure **in the external forum** (by the bishop or his delegate), he can be absolved from the sin of heresy in the tribunal of penance by any confessor. On the other hand, if someone contracted a mixed marriage before a non-Catholic minister and was absolved in the tribunal of penance by a competent confessor from the censure incurred on account of such a crime, he can nevertheless be treated as excommunicated in the

external forum. The judge can, however (if he wishes), accept the absolution given in the internal forum also for the external forum.[91] - Ordinarily it is not lawful to give absolution in the internal forum before absolution has been obtained in the external forum.

2. **Absolutely or conditionally.** A conditional absolution does not obtain its effect unless the condition appended has been verified; it is to be employed very rarely in practice.

3. ***Ad reincidentiam.*** According to the discipline in force, such an absolution is customarily given in more urgent cases, when one is absolved from all reserved censures under penalty of falling back into the same censures specifically if the absolved penitent does not have recourse within a month to the legitimate superior.[92]

4. ***Ad cautelam.*** Absolution is customarily given as a precaution from censures (which a man perhaps incurred), lest the conferral of a benefice, dispensation, and so forth, be invalid. Pius VI condemned the frivolous objections made by the Synod of Pistoia against this manner of absolving.[93] In every sacramental absolution, absolution *ad cautelam* from censures perhaps contracted is first given. It is worthy of note that, from November 3, 1908, all graces and dispensations granted by the Holy See are valid and legitimate even for those bound by censure, unless there is question of those who are excommunicated persons to be avoided, or who after a declaratory or condemnatory sentence are excommunicated, interdicted, or suspended. The Code of Canon Law, c. 36, § 2, confirmed this discipline.[94]

5. **For a certain effect,** absolution from censures is sometimes given lest some determinate effect, for example, the conferral of an office and so forth, be impeded.

Note. If there is question of a censure which does not impede the reception of the sacraments, for example, suspension, one under censure who is duly disposed and recedes from contumacy can be absolved from sins while the censure remains intact; but if there is question of other censures, for example, excommunication, one under censure cannot be absolved from sins unless he has first been absolved from the censure.[95]

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[91] Cf. Code of Canon Law, c. 2251.

[92] Cf. below, n. 494.

[93] Proposition 48 (Denz. n. 1548).

[94] Cf. *Normae peculiares*, c. 3, a. 1, n. 6 (*Acta Ap. Sed.* I, 64).

[95] Code of Canon Law, c. 2250.

§ 2. Who Can Absolve From Censures

492. Principle 1. From a non-reserved censure, any confessor can absolve in the sacramental forum; outside the sacramental forum, anyone who has jurisdiction over the guilty person in the external forum can absolve.

Thus from c. 29, X 38, and from the Code of Canon Law, c. 2253. A confessor can grant such an absolution both within and outside confession. For the most part, however, it is fitting that absolution not be given by a confessor except in the tribunal of penance.[96] It is otherwise with those who have jurisdiction in the external forum; for they can give absolution everywhere, even to one absent.

Principle 2. From a censure imposed *ab homine* by a particular sentence, no one can absolve except the one who imposed it, or his superior, or his successor in office, or one specially delegated by him.[97]

It is said: **by a particular sentence**; for censures imposed by a general statute are not considered reserved unless this is established in express words; it is otherwise with a censure imposed by a particular precept, which indeed appears to be reserved, for it is a true censure imposed *ab homine*.[98]

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[96] Cf. Ferraris, *Prompta Bibl.*, s.v. "Excommunicatio," a. 7, n. 11; and Code of Canon Law, c. 2248, § 2.

[97] Code of Canon Law, c. 2245, § 2.

[98] Ibid. and c. 2247, § 2.

493. Principle 3. From every reserved censure, no one can absolve except one who has the requisite ordinary or delegated jurisdiction.

1. Those who have **ordinary jurisdiction** to absolve from reserved censures are: a) the one who imposed it; b) his successor in office; c) his ecclesiastical superior.
2. **Delegated jurisdiction** is granted either by the law itself or by a competent man. In jurisdiction which is delegated *ab homine* (for example, by a bishop or by the Sacred Penitentiary), all appended limitations and clauses are to be observed.

494. Jurisdiction for absolving from reserved censures is delegated by the law itself in four cases,[98a] namely:

a) **In danger of death,** any priest (even one not approved or suspended) can licitly and validly absolve from all censures without any exception. He can indeed exercise this faculty even if another approved confessor furnished with the necessary faculties is present. Thus it is manifestly inferred from the Council of Trent[99] and from the Code of Canon Law, c. 882. But if such a dying person afterward recovers, in only two or three[100] cases he must within a month present himself to the legitimate superior, and indeed under penalty of reincidence: first, if he had been put under censure *ab homine* by a particular sentence, in which case he must present himself to that man; second, if he had been bound by a censure reserved in the most special manner to the Supreme Pontiff. In this case he must, either personally or through the confessor, have recourse within a month to the Supreme Pontiff (that is, to the Sacred Penitentiary), or seek a new absolution from one having the legitimate faculty.[101] Third, if someone had been notoriously under censure, because then the scandal must be repaired in the manner which the superior determines.

b) **In more urgent cases,**[102] any confessor can directly[103] absolve in the sacramental forum from all reserved censures and sins, under this condition, however, that the person thus absolved is bound under penalty of reincidence to have recourse within a month to the Sacred Penitentiary or to seek a new absolution from one having the faculty.[104] Nothing prevents the penitent, not only immediately but even after receiving absolution in that urgent case, and indeed even after recourse has been made to the legitimate superior, from approaching another confessor furnished with the faculty. Then, however, the penitent is bound to declare to this confessor the delict together with the censure, as is evident of itself, and to accept his mandates. Once absolution has been received, he is no longer bound afterward to obey other mandates subsequently coming from the superior (to whom recourse was made).

But if in some extraordinary case this recourse is morally impossible, then any confessor (except in the case of the absolution of an accomplice) can grant absolution without the burden of recourse or of making confession to a privileged confessor. The confessor must then: a) enjoin those things which must be enjoined by law, for example, the removal of scandal, of the proximate occasion, and so forth; b) impose a suitable penance and satisfaction for the censure, to be performed within a determinate time. If the penitent has not performed this penance and satisfaction within the time determined by the confessor, he falls back into the same censure.[105] In these more urgent cases, any confessor can also dispense from all irregularities arising from an occult delict (except voluntary homicide), but solely for this purpose, that the penitent may licitly exercise orders already received.[106]

c) **Cardinals** can absolve in the internal forum everywhere in the world any penitents whatsoever (even exempt religious) from any sins and censures whatsoever, except only censures reserved in the most special manner to the Apostolic See and those which are annexed to the revelation of the secret of the Holy Office.[107]

d) **Ordinaries** (that is, residential bishops, vicars general, and major religious superiors in exempt religions) can absolve their subjects (and local Ordinaries, also travelers and vagrants), **in occult cases**, from all censures imposed by the common law, except censures reserved in the most special or special manner to the Apostolic See.[108]

[98a] Above, n. 424 ff., we treated more extensively the absolution of reserved cases.

[99] Sess. 14, c. 7, *de poenit.* (Denz. n. 903).

[100] Cf. above, n. 424.

[101] Holy Office, August 19, 1891, ad 2 (*Collect. de Prop. Fide*, n. 1764); Code of Canon Law, c. 2252.

[102] More urgent cases are those in which absolution cannot be deferred a) without danger of grave scandal or infamy, or b) if it is hard for the penitent to remain in the state of mortal sin until absolution has been obtained from the legitimate superior. Code of Canon Law, c. 2254, § 1.

[103] Holy Office, August 19, 1891, ad 3 (ibid.).

[104] Holy Office, June 23, 1886 (ibid., n. 1658); Code of Canon Law, c. 2254, § 1.

[105] Code of Canon Law, c. 2254, §§ 2 and 3.

[106] Ibid., c. 990.

[107] Ibid., c. 239, § 1, n. 1.

[108] Ibid., c. 2237.

§ 3. What Conditions Are Required For Absolution

495. 1. On the part of the one absolving, there is required:

a) **Legitimate power,** concerning which enough has already been said in the preceding paragraph.

b) **A free will.**

For an absolution extorted by force or by grave fear unjustly inflicted is not valid;[109] indeed, one who thus extorted absolution incurred a (new) excommunication,[110] which, however, no longer appears to be in force today.

2. **On the part of the one to be absolved, there is required:**

a) **That he be a subject.**

According to the discipline in force, not only vagrants but also travelers can be absolved from censures imposed by law just as natives can, because the law expressly establishes this.[111]

b) **That he seek absolution.**

Thus, at least, ordinarily, since otherwise the contumacy of the sinner is not so efficaciously broken.[112] One seeking absolution, however, must faithfully confess the delict with the circumstances changing its species, and especially must declare all the cases; otherwise the absolution is valid only for the case expressed. But if the absolution was general - as it is customarily - it is also valid for those omitted in good faith, except a censure reserved in the most special manner to the Holy See; it is not valid, however, for those omitted in bad faith.[113]

c) **That he make satisfaction to the injured party,** if any injury has been done to property, honor, reputation, and so forth.

But if suitable satisfaction is morally impossible, the person to be absolved must seriously promise that he will seek pardon or afterward make satisfaction according to his ability.[114]

d) **That he repair any scandal which may have arisen.**

The manner of this reparation is to be determined according to the prudent judgment of the confessor or superior.

e) **That he firmly promise that he wishes to carry out the mandates of the Church,** which perhaps prescribes special means for satisfaction or amendment.

f) **That a salutary penance be imposed and received,** and indeed in addition to the sacramental penance.

This penance is sometimes determined by the bishop or by the Holy See; otherwise the confessor can determine it, with regard had to the condition of the penitent and of the delict committed. In general it ought to be a grave penance.

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[109] Ibid., c. 2238.

[110] c. unic., I 20 in VI°; St. Alphonsus, *Theol. mor.* l. 7, n. 119; cf. above, I, n. 71.

[111] Code of Canon Law, c. 2253, n. 3.

[112] Cf. St. Thomas, *Suppl.* q. 24, a. 2.

[113] Code of Canon Law, c. 2249, § 2. Cf. above, n. 428.

[114] Cf. c. 8, X 1, 36; Council of Trent, sess. 24, c. 12, *de reform.*

496. You ask: What is intended by the clause customarily added in faculties granted: "those things which must be imposed by law having been imposed"? This clause requires nothing other than that the one to be absolved: a) recede from contumacy; b) furnish, or at least seriously promise, the satisfaction due to the injured party; c) repair public scandal, if any was present; d) have recourse by letter to the superior, if at any time the faculty of absolving is given with that burden.

It is indeed not certain that an absolution is valid which has been given without all the clauses inserted into the indult of absolving having been observed; nevertheless, a solidly probable opinion affirms that the absolution is valid, provided that a certainly essential clause has not been neglected.[115]

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[115] Cf. St. Alphonsus, *loc. cit.*, n. 121.

§ 4. With What Rite Absolution Is To Be Given

497. A distinction must be made between the external and internal forums.

In the **external forum**, either the form specially determined by the competent superior or the form contained in the Roman Ritual is to be observed.[116]

In the **internal forum**, the common form which is used in every sacramental absolution is to be employed.[117] Therefore certain particular Rituals which contain special formulas of absolution for special censures certainly incurred are no longer to be observed.

Note. Absolution from censures in the external forum can be granted even to one absent.

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[116] Tit. 3, cc. 3 and 5.

[117] Code of Canon Law, c. 2250, § 3.

Chapter III. On Censures In Species

Preliminary Note. We treat this matter very briefly, both because it principally pertains to ecclesiastical law, and because there has already been discussion in their proper places of the more frequent censures, for example, against those procuring abortion, perpetrating a duel, heretics, and so forth, and because there still exist several censures which occur very rarely in the practice of the confessor. - Since there are three species of censures, we divide this chapter into three articles: 1. on excommunication; 2. on interdict; 3. on suspension.

Article I. On Excommunication

We shall treat: 1. the notion and division of excommunication; 2. the effects of excommunication; 3. the excommunications in force today.

§ 1. On The Notion And Division Of Excommunication

498. Notion. Excommunication (*ἀφορισμός, ἀνάθεμα*) **is a censure by which someone (a physical person) is deprived of the ecclesiastical communion of the faithful.**

It is said: **ecclesiastical communion**, because excommunication deprives one of participation in those goods which depend upon the power and will of the Church. What those goods are will be said in the following paragraph, where there will be discussion of the effects of excommunication. Since the Church has indirect power over civil affairs, she can also, when necessity exists, deprive an excommunicated person of civil rights, as will be said below. But the Church is by no means able to deprive a man of internal union, which consists in sanctifying grace, by which man is joined to God. Therefore, at least it is not repugnant that an excommunicated person be in the state of sanctifying grace and, after death, in the kingdom of heaven.

Excommunication is the gravest among all ecclesiastical censures, because neither suspension nor interdict deprives one of as many goods as it does. Therefore, according to the discipline of the Church in force, excommunication cannot be inflicted except on account of a grave crime committed, and except upon physical persons, not upon moral persons as such.

499. Division. 1. Formerly major and minor excommunication were distinguished. But minor excommunication, which deprived one only of the reception of the sacraments and of passive election to

benefices,[118] no longer exists, at least as a censure inflicted by the law itself.[119]

2. Major excommunication either leaves a man (bound by this censure) **tolerated** or renders him **one to be avoided**.

Before Martin V at the Council of Constance (in the year 1418), all excommunicated persons were to be avoided. According to the discipline of the Church in force, none are to be avoided except:

1. one who has laid violent hands upon the person of the Roman Pontiff;
2. one who has been excommunicated by name by the Apostolic See and has been publicly denounced as one to be avoided.[120]

Scholion. On the anathema maranatha. In ancient times there existed still another species of excommunication which was called **anathema maranatha** (from the Syriac expression which means "the Lord comes"),[121] and from which one was ordinarily not absolved except at the point of death, and indeed sometimes was not absolved at all; cf. what Benedict XIV says concerning this matter, which is obsolete today.[122]

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[118] Cf. c. 10, X 5, 27.

[119] Holy Office, December 5, 1883 (*Collect. de Prop. Fide*, n. 1608).

[120] Code of Canon Law, c. 2258, § 2. Excommunicated persons to be avoided are very rare today.

[121] Cf. 1 Cor. 16:22.

[122] *De syn. dioec.* l. 10, c. 1, n. 7.

§ 2. On The Effects Of Excommunication

The effects of excommunication are either immediate (direct) or mediate (indirect). We treat first a) the **immediate** and then b) the **mediate** effects.

500. a) The immediate effects are contained in the following verses:

Sacred things, rites, communion, crypt, power, Sacred revenues, forum, civil rights are forbidden.

1. **Sacred things** are the sacraments, the administration (active use) and reception (passive use) of which are in some manner forbidden to the excommunicated.

Concerning the **administration** of the sacraments, the following matters are to be noted briefly:

a) An **excommunicated person to be avoided** (and also any other excommunicated person after a declaratory or condemnatory sentence) invalidly and illicitly administers sacraments for which **jurisdiction** is required.[123] Only danger of death is excepted, in which any priest, when requested, can validly and licitly absolve from all censures and sins, as was said above. - Sacraments for whose valid administration jurisdiction is not required (namely, baptism, confirmation, the Eucharist, extreme unction, and order) can be validly administered even by an excommunicated person to be avoided, provided that the other essentials are present.

b) A **tolerated excommunicated person** (provided he is not excommunicated by a condemnatory or declaratory sentence) always validly administers the sacraments, and indeed licitly if he has been explicitly or implicitly requested by the faithful.[124] Hence, for example, a pastor who is occultly excommunicated on

account of reading a heretical book can, notwithstanding the excommunication, present himself in the confessional to hear the confessions of the faithful when he is requested. He must then, however, elicit at least an act of perfect contrition, so that he may recover the state of sanctifying grace.

Concerning the **reception** of the sacraments, let these things be said:

a) An excommunicated person can **validly** receive all the sacraments, provided the other essentials required are present. Hence no sacrament is invalid on account of the excommunication alone of the one receiving it. Thus, for example, a penitent bound by a reserved excommunication is validly absolved from sins if a simple confessor through ignorance does not attend to the excommunication.

b) An excommunicated person cannot **licitly** receive any sacrament,[125] unless ignorance or fear of grave harm excuses. Hence it is also gravely prohibited for anyone to administer the sacraments to an excommunicated person outside danger of death; indeed, one who voluntarily and knowingly admits an excommunicated person to be avoided to receive the sacraments incurs an excommunication simply reserved to the Supreme Pontiff.[126] But one who admits excommunicated, suspended, or interdicted clerics after a declaratory or condemnatory sentence to celebrate the divine offices incurs an interdict from entrance into a church until he has made suitable satisfaction, at the judgment of the one whose sentence he contemned.[127]

Note. The use of sacramentals is not prohibited to excommunicated persons (unless, however, after a declaratory or condemnatory sentence); hence, for example, nothing prevents (setting aside the danger of profanation) blessed water, blessed medals, and so forth, from being given to Protestants.

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[123] Code of Canon Law, c. 2264.

[124] Ibid., c. 2261, § 2.

[125] Ibid., c. 2260.

[126] Ibid., c. 2338, § 2.

[127] Ibid., § 3.

501. 2. By rites are here understood the liturgical divine offices, or "functions of the power of order which by the institution of Christ or of the Church are ordained to divine worship and can be performed by clerics alone,"[128] such as the sacrifice of the Mass, liturgical processions, the obsequies of the dead, blessings with the Most Holy Sacrament, and so forth.

According to the present practice of the Church, **tolerated** excommunicated persons (all heretics) indeed lack the **right** of assisting at the divine offices (not at the preaching of the word of God), but they are no longer strictly barred from the liturgical divine offices.[129] For experience establishes that heretics obtain many fruits from this devout assistance and are gradually led back into the bosom of the Church.

Excommunicated persons **to be avoided** are gravely prohibited from assisting at the divine offices. Hence, if they nevertheless assist, they are to be warned to depart; but if they refuse this, they are to be expelled; and if even this is impossible, clerics are bound to interrupt divine offices already begun, provided this can be done without grave inconvenience.[130]

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[128] Code of Canon Law, c. 2256, n. 1.

[129] Cf. Code of Canon Law, c. 2259; Lehmkuhl, *Theol. mor.* II, n. 1136; D'Annibale, *Summula Theol. mor.* I, n. 362; Noldin, *De poenis eccl.*, n. 40.

[130] Code of Canon Law, c. 2259, § 2; cf. what we said above in I, n. 524, concerning religious communication with non-Catholics.

502. 3. By communion are here understood the common suffrages of the Church. Under these suffrages are comprehended:

a) All public prayers which are performed **in the name of the Church** by public ministers of the Church, for example, the divine office of clerics and religious, the sacrifice of the Mass, and so forth.

b) Those suffrages which, even through private prayers and good works, without the special intention of those praying, redound to the whole body of the Church on account of the "communion of Saints."

c) All indulgences.[131]

Nothing prevents anyone from pouring forth private prayers for excommunicated persons, even those to be avoided. Today tolerated excommunicated persons are no longer excluded so strictly from the common suffrages; therefore it is also lawful to apply Mass privately for heretics, as was said above in n. 250.[132]

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[131] Code of Canon Law, c. 925, § 1.

[132] Cf. Benedict XIV, Constitution *Ex quo primum*, March 1, 1756, § 23 ff.; Code of Canon Law, c. 2262.

503. 4. Crypt, that is, ecclesiastical burial, is forbidden to all excommunicated persons after a condemnatory or declaratory sentence;[133] but if they have nevertheless been buried in a sacred place, they must be exhumed if this is morally possible; indeed, through such a burial the sacred place is violated and needs reconciliation.[134]

Note. Those who have dared to command or compel unbelievers, apostates from the faith, heretics, schismatics, or others, whether excommunicated or interdicted, to be given ecclesiastical burial contract an excommunication *latae sententiae* reserved to no one; but those who voluntarily give burial to the same persons contract an interdict from entrance into a church reserved to the Ordinary.[135]

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[133] Code of Canon Law, c. 1240, § 1, n. 2.

[134] Ibid., c. 1172, § 1, n. 4. Besides excommunicated persons, the following are deprived of ecclesiastical burial unless before death they gave some signs of repentance: 1. Notorious apostates from the Christian faith; those who are notoriously attached to a heretical or schismatic sect, or to the Masonic sect or other societies of the same kind. 2. Suicides, unless they brought death upon themselves from an unsound mind. 3. Those who died in a duel or from a wound received from it. 4. Those who commanded their body to be given over to cremation. Hence it is not lawful to bestow ecclesiastical burial upon the ashes of a cremated body; rather, they are to be deposited in a separate place. Although the cremation of a human corpse is not evil of itself and therefore can be permitted for a certain and grave reason of the public good, as the Holy Office says on January 19, 1926 (*Acta Ap. Sed.* XVIII, 252), nevertheless it is contrary to the customs and liturgy of Christians. Therefore it is deservedly proscribed by the Church (Code of Canon Law, c. 1203). If anyone, clearly knowing the grave prohibition of the Church, nevertheless demands the cremation of his own corpse, he sins gravely and therefore, while this will persists, he is not worthy of sacramental absolution and ecclesiastical burial, even if this cremation does not follow (Pontifical Commission, November 10, 1925 [*Acta Ap. Sed.* XVII, 583]). Sometimes, however, the faithful demanding this cremation are in good faith, in which they can be left in order to avoid greater evils, provided that scandal is guarded against (Holy Office, July 27, 1892). If cremation is done not from the will of the deceased himself but from the command of another, ecclesiastical rites can be employed both in the home of the deceased and in the church, but not as far as the place of cremation. The scandal of the faithful must always be removed. 5. Other public and manifest sinners, for example, spouses who contracted marriage before a non-Catholic minister, or who consented to the non-Catholic education of their offspring (cf. Holy Office, May 8, 1908). But when any doubt occurs in the aforesaid cases, the Ordinary is to be consulted if time permits; if the doubt remains, the body is to be given ecclesiastical burial, yet in such a manner that scandal is removed (Code of Canon Law, c. 1240).

[135] Code of Canon Law, c. 2339.

504. 5. Power signifies: a) ecclesiastical jurisdiction; b) the right of electing, presenting, and nominating; c) the faculty of obtaining ecclesiastical offices or orders, and indeed even the first tonsure; d) the faculty of exercising legitimate acts.

As regards a): An act of jurisdiction in either the external or internal forum placed by an excommunicated person is generally **illicit**, and indeed also **invalid** if it is placed by one to be avoided or by one who has been excommunicated by a declaratory or condemnatory sentence. In the first case the act becomes licit when the faithful seek such an act from the excommunicated person; in the latter case the act becomes valid and licit if it is sought by the faithful in danger of death.[136]

As regards b): Thus establishes the Code of Canon Law, c. 2265. Hence, for example, any excommunicated person cannot exercise the right of patronage in the presentation of a pastor.

As regards c): Thus establishes the Code of Canon Law, ibid.

As regards d): What legitimate acts are was said above in n. 146. An excommunicated person is furthermore prohibited from discharging ecclesiastical offices or duties and from enjoying privileges previously granted by the Church.[137]

6. **Sacred revenues, that is, ecclesiastical fruits.** For after a condemnatory or declaratory sentence, an excommunicated person remains deprived of the fruits of a dignity, office, benefice, pension, or duty, if he has any in the Church; indeed, one to be avoided is deprived not only of the fruits, but of the dignity, office, benefice, pension, or duty itself.
7. **Forum, that is, communication in judgment, both civil and ecclesiastical.** But in the civil forum this communication no longer appears to be prohibited.[138] In the ecclesiastical forum, however, an excommunicated person who is either to be avoided or under a declaratory or condemnatory sentence cannot be a judge, advocate, plaintiff, procurator, witness, and so forth. But if he is summoned as a defendant, he can certainly do all those things which are necessary for his defense, since this is conceded by the natural law itself. - A tolerated excommunicated person is not deprived *ipso facto* of forensic communication, but he can nevertheless be repelled.
8. **Civil rights, that is, civil communication,** were formerly most strictly forbidden to excommunicated persons, but today this communication is no longer prohibited as regards tolerated excommunicated persons; indeed, even as regards excommunicated persons to be avoided it is no longer observed in its full rigor, so that, when a reasonable cause exists, it is lawful.[139]

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[136] Ibid., c. 2264.

[137] Ibid., c. 2263.

[138] Sacred Penitentiary, July 5, 1867.

[139] Code of Canon Law, c. 2267.

505. b) Those effects of excommunication are called mediate which arise from contempt for the censure contracted. Two are enumerated:

1. **Irregularity.** An excommunicated cleric (or one bound by another canonical penalty) who culpably exercises an act of sacred order (but not of minor order) becomes irregular.[140]

2. **Suspicion of heresy.** Those remaining hardened for a year in excommunication become suspected of heresy.[141] This suspicion, however, falls only upon excommunicated persons to be avoided or those excommunicated by a declaratory or condemnatory sentence.

[140] Ibid., c. 985, n. 7.

[141] Council of Trent, sess. 25, c. 3, *de reform.*; Code of Canon Law, c. 2340, § 1.

§ 3. On The Excommunications Existing Today

Here we append very briefly a list of the excommunications **of the common law** which are in force today and which are distinguished into five categories, according as absolution from them is reserved: 1. to the Holy See in the most special manner; 2. to the Holy See in a special manner; 3. to the Holy See simply; 4. to the Ordinary; 5. to no one.

506. I. Excommunications reserved in the most special manner to the Apostolic See.

There are four excommunications *latae sententiae* of this kind (besides those which either are contained in the Constitution of Pius X, December 25, 1904, *Vacante Sede Apostolica*, or have been imposed against those violating the secret of the Holy Office). Namely, the following are excommunicated:

1. One who has cast away the consecrated species either of the body or of the blood of Christ, or has taken them away or retained them for an evil end; for example, a sacrilegious breaker of the tabernacle, but not one who from a devotion indeed unhealthy, yet good considered subjectively, takes a consecrated host from his mouth and reverently places it away in a fitting place. The guilty person of this most wicked crime is furthermore: a) suspected of heresy; b) infamous *ipso facto*; c) to be deposed, if he is a cleric.[142]
2. One who has laid violent hands upon the person of the Roman Pontiff. The guilty person of this crime is furthermore: a) infamous *ipso iure*; b) to be degraded, if he is a cleric.[143]
3. One who has absolved or feigned to absolve an accomplice in a shameful sin, and this even at the point of death, if another priest, although not approved for confessions, could have heard the confession of the dying person without some grave infamy and scandal likely to arise, except in the case in which the dying person refused to confess to another. - Nor does one escape the same excommunication who has absolved or feigned to absolve an accomplice who indeed did not confess the sin of complicity, from which he has not yet been directly absolved, but kept silent about it because he was induced to do so either directly or indirectly by the accomplice confessor.[144]
4. A confessor who has presumed directly to violate the sacramental seal.[145] What a direct violation of the sacramental seal is, see above, n. 447.

[142] Code of Canon Law, c. 2320.

[143] Ibid., c. 2343.

[144] Code of Canon Law, c. 2367.

[145] Ibid., c. 2369.

507. II. Excommunications reserved in a special manner to the Apostolic See.

Eleven are ordinarily enumerated.

1. "All apostates from the Christian faith and all and each of the heretics or schismatics" (can. 2314, § 1).

What heretics and apostates are was said above in I, n. 512 ff. Schismatics are not only non-uniate Greeks and Old Catholics, but also those baptized persons who pertinaciously refuse obedience to the Roman Pontiff insofar as he is head of the Church, such as the Mariavites and perhaps also the so-called associations of worship. One suspected of heresy who has not amended himself within six months from the penalty contracted is regarded as a heretic, subject to the penalties of heretics (can. 2315). Those are suspected of heresy *ipso iure*, for example, who presume to offer their children to non-Catholic ministers to be baptized (can. 2319).

If the delict of heresy, apostasy, or schism has been brought in any manner (even through voluntary confession) to the external forum of the local Ordinary, that same local Ordinary (but not the vicar general without a special mandate) can by his ordinary authority absolve the repentant person in the external forum, after an abjuration has first been performed juridically and the other things to be observed by law have been observed; but one thus absolved can afterward be absolved from the sin by any confessor in the forum of conscience. An abjuration is regarded as juridically performed when it is made before the local Ordinary himself or his delegate and at least two witnesses (can. 2314, § 2). - This statute has very practical value in the reception of new converts into the bosom of the Church.

508. 2. "Publishers of the books of apostates, heretics, and schismatics which defend apostasy, heresy, or schism, and likewise those who defend those same books or others prohibited by name through Apostolic Letters, or knowingly read or retain them without due permission" (can. 2318, § 1).

This censure was already contained in the Bull *Apostolicae Sedis*, but has been changed slightly. To explain it, we indicate briefly: a) what books they are; b) what actions are prohibited under penalty of excommunication. We note beforehand, however, that there are many other books which indeed are prohibited under grave sin by the Code of Canon Law, c. 1399, although not under excommunication. Cf. our *Man. iur. can.*, q. 419.

a) **What books are prohibited under excommunication?**

a) All books of heretics, apostates, or schismatics which defend heresy, apostasy, or schism, that is, which defend them with deliberate purpose, and not merely contain heresy. - Under the name of a book there does not come a manuscript, nor a pamphlet of small size, nor a newspaper. Nevertheless, from the declaration of the Holy Office of January 13, 1892,[146] those "knowingly reading periodical publications bound into volumes, having a heretical author and defending heresy" incur excommunication.

b) Books of any author **prohibited by name through Apostolic Letters**. Hence it is required that such a book be prohibited through Apostolic Letters, such as bulls, briefs, and so forth, but not decrees of the Sacred Congregation of the Holy Office or of another Congregation. There are not many books of this kind, which in the new Index of prohibited books are marked with a dagger. - Then it is required that such a book be prohibited **by name**, that is, with an indication of its proper title. Therefore a prohibition *in globo* or in general does not suffice, as when all the works of some author are proscribed. - Finally it is required (at least probably) that such a book be prohibited under excommunication reserved to the Roman Pontiff.

Note. Some authors judge that two categories of books (although they defend heresy) are not prohibited under this censure:

1. Books of heretics from the first centuries of the Christian era, such as certain writings of Tertullian, Origen, Pelagius, and so forth. Thus Lehmkuhl,[147] citing Lacroix, Pennacchi, D'Annibale, and Lugo for

this opinion.

2. Books defending heresy which were written not by heretics but by pagans, Jews, and so forth. Thus Noldin,[148] Cappello,[149] and others.

b) **What actions are prohibited under excommunication?** There are four: a) publication; b) defense; c) reading; d) retention. For the last two actions perfect knowledge of the censure is required, and consequently crass and supine ignorance excuses; not so for the first two actions.

a) **Publication.** Under this title the following incur excommunication: 1. the author of the book; 2. the printer; 3. the publisher.[150] Whether all those also who proximately cooperate in printing, such as typesetters, proofreaders, and so forth, are punished with this censure is not so certain. It appears, however, that this is to be denied, since they cannot properly be called publishers of the book; and therefore the old controversy concerning printers has been removed today.

b) **Defense.** For incurring excommunication it is required that an evil book be defended not on account of elegance of style and other good qualities, but notwithstanding the errors manifestly contained in it.

c) **Reading.** Someone is said formally to read a book if he surveys with his own eyes and understands in some manner the things which are contained in the book. Hence one who hears another reading does not incur the censure, provided he did not command it to be read;[151] nor does one who does not at all understand the things which he reads. Likewise the censure is not present if the things which have been read constitute only light matter. But authors do not agree about what light matter is. Let this be the general rule: that is grave matter which of itself and ordinarily induces a grave danger of perversion in the reader. Thus sometimes a few pages are grave matter, while at other times not even thirty pages which are not so dangerous constitute grave matter.

d) **Retention.** For excommunication to be incurred from this, it is required: 1. that gravity be present on the part of **time**; one day is certainly a short time, but to retain such a book beyond a month is grave matter; 2. that the one retaining it act in his own name and not as the mandatary of another. Hence those who are custodians in the libraries of others, those who bind books,[152] and so forth, are not excommunicated. Booksellers, however, who have books of this kind for sale appear to need a special permission.

Note. 1. Since only those "knowingly" reading and retaining incur this censure, any diminution of imputability, whether on the part of the intellect or on the part of the will, excuses from it (c. 2229, § 2). Hence not only prepubescent persons but, more probably, also minors do not incur this censure (c. 2204).

2. Besides the excommunication just explained, there exists another (reserved, however, to no one) against those who without due permission print or cause to be printed books of Sacred Scripture or annotations or commentaries upon them.[153]

3. "One not promoted to the priestly order, if he has simulated the celebration of Mass or heard a sacramental confession" (can. 2322).

This excommunication has been newly introduced. A layman perpetrating such a crime is furthermore to be deprived of a pension or office, if he has any in the Church, and is to be punished with other penalties according to the gravity of the fault; but a cleric is to be deposed. If any non-priest has usurped other priestly functions, he is to be punished by the Ordinary according to the gravity of the fault.

[146] *Collect. de Prop. Fide*, n. 1777.

[147] *Theol. mor.* II, n. 1183.

[148] *De poenis eccl.*[12], n. 61.

[149] *De censuris*, n. 226.

[150] Noldin, *loc. cit.*, n. 62, teaches that neither the author nor the printer incurs this censure.

[151] St. Alphonsus, *Theol. mor.* l. 7, n. 292.

[152] Commonly: bookbinder (French *relieur*, German *Buchbinder*).

[153] Code of Canon Law, c. 2318, § 2; cf. below, n. 526.

509. 4. "All and each persons of whatever status, rank, or condition, even if they are of royal, episcopal, or cardinalitial dignity, who appeal from the laws, decrees, or mandates of the Roman Pontiff for the time being to a universal Council" (can. 2332).

This excommunication, which sometimes occurred in the Middle Ages, will be very rare today; but it strikes all physical persons whatsoever who appeal to a universal Council. If juridical persons, such as universities, colleges, or chapters, make such an appeal, they incur an interdict reserved in a special manner to the Roman Pontiff.[154]

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[154] Ibid.; cf. below, n. 530.

510. 5. "Those having recourse to the lay power to impede letters or any acts proceeding from the Apostolic See or from its Legates, and those directly or indirectly prohibiting their promulgation or execution, or on account of them injuring or terrifying either those to whom the letters pertain or others" (can. 2333).

This censure formerly had place frequently, especially in those places where the "royal placet" was in force; today, however, acts of the Apostolic See are more rarely impeded (at least efficaciously) by private men.

511. 6. "Those who publish laws, mandates, or decrees against the liberty or rights of the Church; those who directly or indirectly impede the exercise of ecclesiastical jurisdiction in either the internal or external forum by having recourse for this purpose to any lay power" (can. 2334).

This censure, which was already contained in nearly the same manner in nn. 6 and 7 of the Bull *Apostolicae Sedis*, would be most frequent in our days if ignorance or grave fear did not excuse. Thus, for example, this censure is objectively incurred by those who impede a pastor from visiting schools; who prevent a bishop from freely administering his diocese; who impede the execution of the decrees of the Supreme Pontiff, and so forth.

Ecclesiastical jurisdiction is here taken in the strict sense, as it is distinguished: a) from the power of order; b) from an ecclesiastical office; c) from the jurisdiction of regular superiors. Ecclesiastical jurisdiction taken in this sense is the power of governing the faithful in order to eternal life. To it belongs, for example, to issue laws and mandates, to punish, absolve, dispense, instruct, and so forth.

Those **impeding** jurisdiction of this kind are all those who unjustly, for example, by threats, command, coercion, and so forth, cause an efficacious obstacle so that jurisdiction is not exercised. Hence one who without effect has recourse to the lay power for the purpose of impeding the exercise of ecclesiastical jurisdiction does not incur this censure.[155]

The penalties established by can. 2237 against a pastor or another priest impeding the jurisdiction of the Ordinary are also to be observed.

7. "One who (without permission of the Holy See) has dared to draw before a lay judge any of the Cardinals of the Holy Roman Church, Legates of the Apostolic See, or major Officials of the Roman Curia on account of matters pertaining to their office, or his own Ordinary" (can. 2341).

The violators of the privilege of the forum which belongs to these preeminent persons are punished with this excommunication. Violation of the same privilege which belongs to other ecclesiastical persons is also punished with other penalties, namely: a) **excommunication simply reserved to the Apostolic See**, if anyone without permission of the Holy See has dared to draw before a lay judge another bishop, or an abbot or prelate *nullius*, or any of the supreme superiors of religions of pontifical right; b) **suspension from office reserved to the Ordinary**, if a cleric, without obtaining the permission of the local Ordinary, has dared to draw before a lay judge another person enjoying the privilege of the forum. A layman, however, is to be punished with suitable penalties according to the gravity of the fault by his own Ordinary.[156] In some regions the privilege of the forum no longer exists on account of concordats or other legitimate causes.

8. "One who has laid violent hands upon the person of a Cardinal of the Holy Roman Church, a Legate of the Roman Pontiff, a Patriarch, an Archbishop, or a Bishop, even a titular one" (can. 2343, §§ 2 and 3).

Those who commit a personal sacrilege against the princes of the Church are punished with this excommunication. What that personal sacrilege from violation of the privilege of the canon is, see above, II, n. 541. One who commits violence of this kind against Cardinals or Legates of the Roman Pontiff furthermore becomes infamous *ipso iure* and is to be deprived of benefices, offices, dignities, pensions, and any duty which he may have in the Church.

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[155] Pontifical Commission, July 26, 1926 (*Acta Ap. Sed.* XVIII, 394).

[156] Cf. what was said above in II, n. 542, concerning the privilege of the forum.

512. 9. "Those usurping or detaining, personally or through others, goods or rights pertaining to the Roman Church" (can. 2345).

There were five excommunications imposed against those who violated ecclesiastical goods, namely, two reserved in a special manner to the Holy See, two reserved simply to the Holy See, and one reserved to no one. Now, however, there exist only two excommunications *latae sententiae*, namely, this one and another simply reserved, concerning which below in n. 518. This excommunication, imposed for protecting the goods and rights of the Roman Church, strikes those usurping and detaining them. Those are called **usurpers** who take them away by authority, namely, rulers who have secularized the goods and rights of the Roman Church; therefore ordinary thieves and robbers are not punished by this censure. Those are **detainers** who purchased or leased such goods for themselves; but not officials of the state who administer those goods or acquired and detain them not for themselves but for the common use of the republic.

10. "All fabricators or falsifiers of letters, decrees, or rescripts of the Apostolic See, or those knowingly using the same letters, decrees, or rescripts" (can. 2360, § 1).

This crime is committed very rarely today, especially by laymen. Clerics committing it, however, are moreover to be coerced by other penalties, which can extend even to privation of benefice, office, dignity, and

ecclesiastical pension; religious, however, are to be deprived of all offices which they have in the religion and of active and passive voice, besides other penalties established in the proper constitutions of each.[157]

[157] Code of Canon Law, c. 2360, § 2.

513. 11. "If anyone personally or through others has falsely denounced a confessor to Superiors for the crime of solicitation, by the fact itself he incurs an excommunication reserved in a special manner to the Apostolic See, from which he cannot in any case be absolved unless he has formally retracted the false denunciation and has repaired according to his ability the damages, if any followed from it, with a grave and lasting penance furthermore imposed" (can. 2363).

This excommunication has been newly introduced. A calumnious denunciation of a confessor (which is made juridically before the local Ordinary or before the Holy Office) induces not only a reserved censure, but also a sin reserved by reason of itself.[158] Therefore, although the censure may not be incurred, for example, on account of ignorance, nevertheless the reserved sin remains.

Absolution from this censure cannot be granted except under a twofold condition: 1. the penitent must first formally retract the false denunciation before the superior or his delegate; an implicit retraction therefore does not suffice; 2. the penitent must repair according to his ability the damages, if any followed from his calumny. When these conditions have been fulfilled and the faculty of absolving has first been obtained, the confessor can absolve the penitent, but must impose upon him a grave and lasting penance, for example, five decades of the Rosary to be said daily for six months.

III. Excommunications reserved simply to the Apostolic See.

According to the discipline now in force, there are eleven excommunications of this kind. The following are excommunicated:

[158] Ibid., c. 894.

514. 1. "Those making profit from indulgences" (can. 2327).

This excommunication was already imposed in the Constitution of St. Pius V *Quam plenum*, January 2, 1569, which nevertheless is now restricted to indulgences alone and not to other spiritual graces. All those make profit from indulgences who gain a temporal price from them; nor is it required that they acquire that price for themselves. Therefore even those who obtain temporal gain from indulgences **for pious causes** are punished with this censure, for example, those who sell blessed rosaries at a higher price for a poor religious house.

2. **"Those perpetrating the delict of simony in any ecclesiastical offices, benefices, or dignities"** (can. 2392).

Simoniacs are furthermore punished with various other penalties.[159] This excommunication, however, appears to be the only one[160] imposed for the crime of simony; and therefore simony on account of entrance into religion, or on account of profit sought from collected Mass stipends, is no longer punished with excommunication, since the Code of Canon Law is silent concerning these penalties, and all penalties of which no mention is made in the Code are regarded as abrogated.

[159] Code of Canon Law, c. 2392 and c. 729; cf. above, II, n. 565.

[160] Cf., however, below, n. 534 (2).

515. 3. "Clerics constituted in sacred orders, or male religious or nuns after a solemn vow of chastity, and likewise all those presuming to contract marriage, even merely civilly, with any of the aforesaid persons" (can. 2388, § 1).

In the Bull *Apostolicae Sedis* this excommunication was reserved to the Ordinary. If the clerics and other persons indicated intend nothing but concubinage, they do not incur excommunication. Clerics attempting marriage, if, after being warned by the Ordinary, they have not repented within the time prescribed according to the diversity of circumstances, are to be degraded;[161] and as soon as they have contracted marriage, by that very fact they lose all ecclesiastical offices.[162]

4. **"Those perpetrating a duel, or simply challenging another to it, or accepting it, or furnishing any assistance or favor, and likewise those deliberately watching it, and those permitting it, or not prohibiting it insofar as lies within their power, of whatever dignity they may be"** (can. 2351, § 1).

Enough was already said above in II, n. 126 concerning this censure.

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[161] Code of Canon Law, c. 2388, § 1.

[162] Ibid., c. 188, n. 5.

516. 5. "Those giving their names to the Masonic sect or to other associations of the same kind which plot against the Church or legitimate civil powers" (can. 2335).

For explaining this excommunication it is useful to set forth: a) what sects are prohibited under censure; b) what persons are excommunicated.

a) **As regards the prohibited sects.** On May 10, 1884, the Holy Office distinguished between societies prohibited **simply** and those prohibited **under censure**.

All societies which pursue an evil end, or employ evil means, or "which exact from their adherents by oath a secret to be disclosed to no one and complete obedience to be rendered to hidden leaders," are **simply** prohibited. For such secrecy and such obedience, which extend to all matters, even illicit ones, constitute a grave sin. Societies simply prohibited of this kind are, for example, several American societies (Odd Fellows, Sons of Temperance, Knights of Pythias,[163] Independent Order of Good Templars[164]); then, societies for promoting the cremation of corpses.[165]

The following are prohibited **under censure**:

a) the Masonic society;[166]

b) all societies which plot against the Church or legitimate civil powers. Such societies are those of the Carbonari,[167] the former Fenians,[168] and all anarchistic and nihilistic societies. Whether modern socialist societies incur this censure is disputed among authors, and therefore is doubtful. In practice socialists of diverse regions cannot be judged in the same manner. For in some regions they seek scarcely anything except the betterment of the condition of the common people; but in other regions they openly plot against the Church and legitimate power. In that case they appear subject to the censure; indeed, sometimes they also incur a censure on account of heresy admitted.

b) **The persons who are excommunicated on account of these sects** are only those

giving their names, namely, those who become members of such a sect. Formerly those furnishing favor and those not denouncing hidden leaders were also included under this censure, but the new Code of Canon Law is silent concerning them; therefore they are no longer excommunicated, although they sin gravely if they truly foster these most wicked societies.

Clerics and religious giving their names to the Masonic sect and other similar associations must be denounced to the Holy Office and are furthermore to be punished by privation of benefice, office, dignity, pension, function, and active and passive voice.[169]

The manner of acting in confession with members of a forbidden sect. a) It rarely happens that a member of this kind is in good faith, because these sects are so often and so openly proclaimed illicit by the Church. Nevertheless, if such a member is in good faith and neither causes scandal nor incurs a proximate danger of perversion, he ought not to be compelled to leave the sect with the gravest inconvenience. For then perhaps he would not obey, and his material sin would be changed into a formal one.

b) A member of such a forbidden sect (who is not in good faith) cannot be absolved unless he breaks off communication with the sect and abjures it at least before the confessor.[170] But if external communication with the sect cannot be broken off without a very grave inconvenience, then, scandal and the proximate danger of perversion being excluded, the penitent can for some time persevere in paying dues and attending the meetings of the sectarians, until the danger of grave harm has ceased.[171]

c) The penitent must deliver the sect's books, manuscripts, insignia, and so forth (if he has any) to the confessor, who is to transmit them to the bishop as soon as possible or, if this is impossible, burn them.

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[163] Holy Office, August 20, 1894.

[164] Holy Office, August 9, 1893.

[165] Holy Office, May 19, 1886.

[166] Clement XII, Constitution *In eminenti*, April 28, 1738; Benedict XIV, Constitution *Providas*, May 18, 1751, and several other Supreme Pontiffs, among whom was Leo XIII, Encyclical *Humanum genus*, April 20, 1884.

[167] Pius VII, Constitution *Ecclesiam*, September 13, 1821; Leo XII, Constitution *Quo graviora*, March 13, 1825. The members of this society called themselves *carbonari*, *Köhler*, *fendeurs*, *buoni cugini*. Cf. Wetzer and Welte, *Kirchenlex.*, s.v. "Carbonari."

[168] Holy Office, January 12, 1870.

[169] Code of Canon Law, c. 2336.

[170] Holy Office, August 5, 1898 (*Anal. eccl.* VI [1898] 387).

[171] Thus Noldin, *De poenis eccl.*[12], n. 76, citing for this opinion a decision of the Holy Office of January 18, 1896.

517. 6. a) **"Those violating the enclosure of nuns, of whatever class or condition or sex they may be, by entering their monasteries without legitimate permission, and likewise those introducing or admitting them."**

b) **"Women violating the enclosure of male religious, and superiors and any others whatsoever introducing or admitting them, of whatever age they may be."**

c) **"Nuns illegitimately leaving the enclosure"** (can. 2342).

The enclosure with which we are concerned here is only the **papal enclosure**, which by common law is found only in religious Orders with solemn vows. Those violating another enclosure, therefore, are not touched by this censure. The enclosure of nuns is stricter than that of men. Under certain conditions the

following can enter the enclosure of nuns: a) the canonical Visitor; b) the confessor; c) Cardinals, supreme rulers of peoples, and their wives with an entourage; d) a physician and workmen, if necessity demands it.[172] Nuns, that is, solemnly professed women, can leave the enclosure: 1. with special permission of the Holy See; 2. if there is imminent danger either of death or of another most grave evil. **Women** also are prohibited under penalty of excommunication from entering the enclosure of nuns; likewise infants and prepubescent persons, but these no longer incur excommunication by entering. For in the text cited above one no longer reads, as formerly, "of whatever class or condition, sex, or age they may be," but "age" is omitted. Now prepubescent persons generally incur no censures,[173] as was said above in n. 481. On the contrary, the superioress and any adult illegitimately introducing or admitting prepubescent persons into the enclosure of nuns do not appear to escape excommunication. It is certain that excommunication is incurred by one who admits or introduces little girls, even those not yet seven years old, into the enclosure of male religious. The same holds for prepubescent girls entering the enclosure of male religious and for adults who introduce or admit them. The wives of those who actually hold the supreme rule of peoples can enter the enclosure of male religious with an entourage.[174] We treated the enclosure more broadly in *Man. iur. can.*, q. 227.

[172] Code of Canon Law, c. 600.

[173] Ibid., c. 2230.

[174] Ibid., c. 598, § 2.

518. 7. "If anyone has presumed, through himself or through others, to convert and usurp for his own uses ecclesiastical goods of any kind, whether movable or immovable, whether corporeal or incorporeal, or to impede the fruits or revenues of the same from being received by those to whom they pertain by law, let him remain subject to excommunication until he has restored the goods themselves integrally, removed the aforesaid impediment, and thereafter obtained absolution from the Apostolic See" (can. 2346).

This excommunication was already imposed by the Council of Trent, sess. 22, c. 11, *de reform.* (although in slightly different words). Ecclesiastical goods are taken here in the broadest sense; namely, they are temporal goods which belong to some moral person in the Church,[175] for example, to a parish, to a monastery, and so forth, but not those which belong to physical ecclesiastical persons. Three actions are punished: converting to one's own uses, usurping, and impeding. Each of these actions appears to induce the censure, and usurpation includes not only authoritative but also private usurpation.[176] Thieves and robbers of ecclesiastical goods, however, do not incur this censure.[177] Thus the probable opinion even in the new law. Likewise it is not incurred by city councillors and a mayor,[178] who acquired ecclesiastical goods not for their own but for the common uses of the city;[179] nor by those who freely undertook the function of administering ecclesiastical goods thus taken away.[180] But those who purchased or leased these confiscated goods for themselves incur excommunication.[181] Likewise intruded pastors and other benefice-holders. Absolution from this censure cannot be given except after restitution of the goods. In France and Italy, however, bishops possess a special faculty for giving or facilitating this absolution.[182]

[175] Ibid., c. 1497, § 1.

[176] Cf. Hollweck, *Die kirchl. Strafgesetze*, § 156, n. 18.

[177] Holy Office, March 9, 1870.

[178] Commonly, French *maire*, German *Bürgermeister*.

[179] Sacred Penitentiary, January 3 and March 8, 1906 (*Anal. eccl.* XV [1907] 128 ff.).

[180] Sacred Penitentiary, September 17, 1906.

[181] Holy Office, July 8, 1874 (*Collect. de Prop. Fide* II, 1420); Sacred Penitentiary, August 5, 1907 (*Anal. eccl.* XVI [1908] 445).

[182] Cf. Letter of the Secretariat of State, September 24, 1907 (*Anal. eccl.* XVI [1908] 488 ff.); Sacred Congregation of the Council, March 12, 1913.

519. 8. "Those furnishing any assistance or favor to an excommunicated person to be avoided in the delict on account of which he was excommunicated; likewise clerics knowingly and spontaneously communicating with him in divine services and receiving him into divine offices" (can. 2338, § 2).

Two delicts are punished by this censure, which in the Bull *Apostolicae Sedis* were punished with two distinct excommunications. The first delict consists in assistance or favor furnished to an excommunicated person to be avoided, and that not in any manner whatever, but in the delict on account of which he was excommunicated, or in the *criminal delict*, as it used to be called. Hence, for example, if someone has been declared an excommunicated person to be avoided on account of rebellion, all who furnish him assistance or favor in this very rebellion incur an excommunication reserved simply to the Holy See. Who is an excommunicated person to be avoided was said above in n. 499.

The other delict consists not in any communication whatever with an excommunicated person to be avoided, but in communication in divine services. Clerics incur this excommunication, under which name probably neither bishops nor lay religious are included. It is required that such clerics:

a) act **knowingly and spontaneously**; therefore fear and every kind of ignorance excuse, provided it is not affected ignorance;

b) **communicate in divine services**, that is, authoritatively receive into properly liturgical offices (for example, Mass, ecclesiastical burial, and so forth) one excommunicated by name by the Roman Pontiff.

520. 9. "Those presuming, without due faculty, to absolve from a *latae sententiae* excommunication reserved to the Apostolic See in the most special or special manner" (can. 2338, § 1).

Confessors incur this excommunication who **knowingly** or with affected ignorance presume (without faculty) to absolve a penitent from an excommunication reserved to the Pope in the most special or special manner. But if a confessor, ignorant of or not advertent to the reservation, absolves a penitent from the censure and sin, he neither sins nor incurs any penalty; indeed, the absolution from the censure is valid, provided it is not: a) a censure *ab homine*, or b) a censure reserved to the Apostolic See in the most special manner.[183] It was said above in n. 494 how a simple confessor can absolve from cases of this kind in danger of death and in more urgent cases.

10. **"If anyone has dared (without previous legitimate permission) to draw before a lay judge a bishop, even merely titular (not his own Ordinary), or an abbot or prelate *nullius*, or any one of the supreme superiors of religions of pontifical right"** (can. 2341).

Those who have dared to violate the privilege of the forum with respect to certain prelates are punished with this excommunication, provided they did so altogether voluntarily and freely. For any diminution of imputability excuses from this censure. See above, n. 511, for the other penalties inflicted on account of violation of the same privilege with respect to the highest prelates, and below, n. 535, with respect to other ecclesiastical persons.

11. **"The capitular vicar and all others, whether of the Chapter or outsiders, who through themselves or through another have taken away, destroyed, concealed, or substantially altered any document whatsoever pertaining to the episcopal curia"** (can. 2405).

This excommunication has been newly introduced, but appears to have force only while the episcopal see is vacant. By the name of document there appears to be signified not a private letter, but any writing pertaining to the governance of the diocese, for example, accounts of receipts and expenses, reports concerning a canonical visitation, and so forth.

IV. Excommunications reserved to Ordinaries.

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[183] Code of Canon Law, c. 2247, § 3.

521. Preliminary note. a) By the name of Ordinary are understood not only residential bishops but also all who possess quasi-episcopal jurisdiction. For regulars and religious in exempt clerical religions, the Ordinary is their own major superior, unless the **local Ordinary** is expressly named.

b) Censures reserved to the Ordinary can **by law** be absolved by a simple confessor: 1. **in danger of death**, without an obligation of recourse after recovery that may have occurred;[184] 2. **in more urgent cases**, with an obligation of recourse;[185] 3. in certain other cases, as was said above in n. 427; 4. by confessors possessing the privileges of the Mendicants, as the more common opinion, safe in practice, teaches.

The excommunications whose absolution is reserved to Ordinaries are six or nine; namely, the following are excommunicated:

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[184] Cf. above, n. 494.

[185] Cf. ibid.

522. 1. a) **"Catholics who contract marriage before a non-Catholic minister contrary to the prescription of can. 1063, § 1."**

b) **"Those who are joined in marriage with an explicit or implicit agreement that all or some of the offspring be educated outside the Catholic Church."**

c) **"Those who knowingly presume to offer their children to non-Catholic ministers to be baptized."**

d) **"Parents or those taking the place of parents, who knowingly hand over their children to be educated or instructed in a non-Catholic religion"** (can. 2319, § 1).

All these delicts constitute favor toward heresy and before the new Code of Canon Law were punished with an excommunication reserved to the Holy See in a special manner. But since these delicts are customarily public and brought to the external forum of the Ordinary, the same Ordinary can absolve from them; indeed, the censure now imposed by the common law is reserved to the local Ordinary. In some regions the non-Catholic minister is constituted an official of the civil government, before whom all marriages are commanded to be celebrated. Then, certainly, those contracting marriage before such a minister **as a civil official** do not incur the censure.[185a]

In the first case there is question only of mixed marriage, concerning which c. 1063 establishes the law. Therefore, if two Catholics contracted marriage before a non-Catholic minister, they indeed sinned gravely, but they are not excommunicated. It is otherwise in the second, third, and fourth cases. Since in the celebration of marriage before a non-Catholic minister and in the agreement to educate offspring outside the

Catholic Church there is manifestly contempt for ecclesiastical authority, grave fear does not appear to excuse from the censure. Hence, for example, if a Catholic girl who has already become pregnant consents to such a celebration and agreement because otherwise she gravely fears that she will be abandoned by her betrothed, she nevertheless appears to incur these censures.[186]

Those who are joined in marriage with an agreement (whether explicit or implicit) that the offspring be educated outside the Catholic Church and afterward presume actually to execute this agreement by handing over the offspring to be educated in a non-Catholic religion contract a twofold excommunication; indeed, they are furthermore suspected of heresy and therefore, if within six complete months from the penalty contracted they have not amended themselves, they contract an excommunication reserved to the Holy See in a special manner.[187] Catholics who have dared to enter a mixed marriage without a dispensation of the Church, even if valid, remain by that very fact excluded from legitimate ecclesiastical and sacramental acts until they have obtained a dispensation from the Ordinary.[188]

See below, n. 783, for how one is to proceed in the absolution of these four censures. Besides, particular norms are customarily observed in individual dioceses.

2. **"One who fabricates false relics or knowingly sells, distributes, or exposes them for the public veneration of the faithful"** (can. 2326).

This newly introduced excommunication does not need explanation, since it is clear in itself.

[185a] Code of Canon Law, c. 1063, § 3.

[186] Cappello, *De cens.*, n. 371, teaches the contrary.

[187] Code of Canon Law, c. 2319, § 2, and c. 2315.

[188] Ibid., c. 2375.

523. 3. "One who has laid violent hands upon the person of other clerics (not adorned with cardinalitial or episcopal dignity) or of religious of either sex."[189]

This excommunication protects the privilege of the canon both in clerics constituted below bishops and in religious. We treated the violation of the privilege of the canon more broadly above in II, n. 541. Clerics who have laid hands **upon themselves** do not incur any *latae sententiae* censure, but are to be punished with *ferendae sententiae* penalties according to can. 2350, § 2.

4. **"Those procuring an abortion, with the effect ensuing, the mother not excepted."**[190]

The controversy concerning the exemption of the mother from the censure, therefore, is now ended. Clerics procuring an abortion are furthermore to be deposed. The procuring of abortion was treated more broadly above in II, n. 137 ff.

5. **"A religious who is an apostate from religion incurs by the law itself an excommunication reserved to his own major superior or, if the religion is lay or non-exempt, to the Ordinary of the place in which he resides"** (can. 2385).

Apostasy from religion occurs when a religious illegitimately leaves the religion in which he emitted perpetual vows, with the intention of not returning.[191] In exempt clerical religions this apostasy induces an excommunication reserved to the major superior of the religious himself;[192] but in other religions the

excommunication is reserved to the Ordinary of the place where the apostate resides, not where his monastery or convent is situated. Such apostates are furthermore excluded from legitimate ecclesiastical acts, are deprived of all privileges of their religion, and, if they return, perpetually lack active and passive voice; they must moreover be punished with other penalties by their superiors according to the norm of the constitutions. See below, n. 536, concerning penalties against fugitive religious.

6. **"Those professed with simple perpetual vows both in Orders and in religious Congregations, and likewise all those presuming to contract marriage, even merely civilly, with any of the aforesaid persons"** (can. 2388, § 2).

If these professed persons are clerics constituted in sacred orders, they contract an excommunication reserved simply to the Holy See, as was already said above in n. 515.

V. Excommunications reserved to no one.

[189] Ibid., c. 2343, § 4.

[190] Ibid., c. 2350.

[191] Code of Canon Law, c. 644, § 1.

[192] Major superiors are the Abbot Primate, the Abbot superior of a monastic Congregation, the Abbot of a monastery *sui iuris*, the supreme moderator of a religion, the provincial superior, their vicars, and others having power after the manner of provincials (Code of Canon Law, c. 488, n. 8).

524. In this series five excommunications are enumerated:

1. **"Authors and editors who without due permission cause the books of Sacred Scripture, or annotations or commentaries upon them, to be printed"** (can. 2318, § 2).

This excommunication is already found in the Constitution *Officiorum et munerum*, January 25, 1897 (n. 48). Three local Ordinaries can grant the due permission for printing books of this kind: a) the proper local Ordinary of the author; b) the Ordinary of the place in which they are printed;[193] c) the Ordinary of the place in which they are published.[194] If one of these three Ordinaries has denied permission, the author cannot seek it from another Ordinary unless he has informed that Ordinary of the permission denied by the other. Religious must furthermore obtain the permission of their major superior.[195]

[193] Place of printing.

[194] Place of publication.

[195] Code of Canon Law, c. 1385, §§ 2 and 3.

525. 2. "Those who have dared to command or compel unbelievers, apostates from the faith, heretics, schismatics, or others, whether excommunicated or interdicted, to be given ecclesiastical burial contrary to the prescription of can. 1240, § 1" (can. 2339).

Those endowed with public authority who freely compel notorious heretics, unbelievers, excommunicated persons, or interdicted persons to be buried in a sacred place are punished with this excommunication. In most regions, for example, in Germany, Austria, and so forth, civil law commands and regulates the burial of inhabitants. Therefore, if, for example, the prefect of some place is bound by force of civil law to command that some notorious heretic be buried in a blessed or consecrated Catholic cemetery, he does not appear to

incur this censure. For it is not the prefect, but the unjust civil law, that commands this burial.[196] Neither do those themselves who bury or assist at the burial incur this censure, for they do not command or compel. Clerics, however, who perform the burial of one excommunicated by name incur both an excommunication reserved simply to the Roman Pontiff[197] and an interdict.[198]

3. **"For all guilty in any manner (in the illegitimate alienation of precious ecclesiastical goods or of those exceeding the value of 30,000 francs; namely, if apostolic approval has knowingly been omitted), whether by giving, by receiving, or by furnishing consent, there remains (besides other penalties) a *latae sententiae* excommunication reserved to no one"** (can. 2347, n. 3).

As regards its substance, this excommunication has already existed for centuries, but it has now been changed considerably as regards its circumstances. For first, it is not so clear whether this censure is *latae* or *ferendae sententiae*; for it is not incurred by that very fact, but "remains for the guilty." Commonly, however, it is regarded as a *latae sententiae* censure. Then, apostolic approval is required only if there is question of alienating **precious** ecclesiastical things whose value is notable by reason of art, history, or material. The value is notable by reason of material if it exceeds 30,000 francs;[199] but by reason of art or history, a lesser value appears already to be notable, for example, a value of 1,000 francs in gold currency. For alienating other ecclesiastical things, other permissions are required and suffice. Those alienating illegitimately are also punished with various other penalties.[200]

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[196] Thus also Noldin, *De poenis eccl.*, n. 97; Cappello, *De cens.*, n. 401.

[197] Cf. above, n. 519.

[198] Cf. below, n. 536.

[199] Code of Canon Law, c. 1532, § 1; c. 1497, § 2.

[200] Ibid., c. 2347, nn. 1 and 2.

526. 4. "All, even those adorned with any dignity whatsoever, who in any manner compel either a man to embrace the clerical state, or a man or woman to enter religion or emit a religious profession, whether solemn or simple, whether perpetual or temporary" (can. 2325).

By this excommunication liberty in choosing the clerical or religious state is protected. The religious state includes not only Orders but also approved religious Congregations. Unjustly to impede someone from the clerical or religious state is indeed a grave sin, but does not induce any censure.

5. **"A member of the faithful who knowingly has omitted, contrary to the prescription of can. 904, to denounce within a month the one (the confessor) by whom he was solicited incurs a *latae sententiae* excommunication reserved to no one, and is not to be absolved unless he has satisfied the obligation or has seriously promised that he will satisfy it"** (can. 2368, § 2).

Cf. what was said above in n. 460 ff. concerning the matter of this censure. Note furthermore: not only the solicited person himself but also all witnesses, whether immediate or mediate, who know with certainty that the crime of solicitation was committed, are bound under grave sin to denounce; on the contrary, only the solicited person himself, who culpably neglects the required denunciation for a month, incurs the present excommunication. If the solicited person has seriously promised that he will denounce within a month, he can be absolved, even if he has already incurred the censure on account of the neglected denunciation. But if, his

will having changed, he afterward does not denounce, the censure appears to arise anew, because otherwise the law would be evaded. Thus the most common opinion.[201]

[201] Cf. De Smet, *Tract. de cas. reserv.*, n. 167. Noldin (*De poenis eccl.*, n. 103) teaches the contrary, saying: "But if afterward, his will having changed, he does not denounce, the censure does not revive, because there is nothing concerning reincidence." This opinion is scarcely probable.

Article II. On Interdict

We shall treat: 1. interdict in general; 2. interdicts in particular, or those in force today.

§ 1. On Interdict In General

527. Notion. An interdict is a censure by which the faithful, remaining in the communion of the Church, are prohibited from certain sacraments and other sacred things.

Explanation. It is said: **An interdict is a censure**, or a medicinal penalty. Not rarely, however, an interdict (especially a local and general one) is a vindicatory penalty or a mere prohibition, since even the innocent must suffer from it.

It is said: **by which the faithful, remaining in the communion of the Church, are prohibited from certain sacraments and other sacred things.** For an interdict does not take away communion with the Church and therefore differs: a) from **excommunication**, which is a graver penalty and deprives one of the communion of the faithful, but nevertheless is never local; b) from **suspension**, which affects clerics alone, whereas an interdict is imposed both upon clerics and upon laymen. What sacraments and sacred things are prohibited will be said below, where the effects of an interdict are enumerated.

Divisions. 1. An interdict is either **local**, which immediately affects a place and mediately all persons residing there, even outsiders and exempt persons; or **personal**, which affects only the person and follows and binds him everywhere.[202]

A local interdict is either **general**, which affects the entire territory or the whole people of such a place, for example, an entire city; or **particular**, which affects a determined part of some place or people, for example, a convent or church. A general interdict upon an entire state, or even upon a diocese or its people, can be imposed only by the Apostolic See or by its mandate; a bishop can also impose other interdicts.[203]

2. One interdict is **total**, which prohibits the use of all sacred things, or which causes all the effects proper to an interdict; another is **partial**, which prohibits only certain sacred things.

[202] Code of Canon Law, c. 2269, § 2.

[203] Ibid., § 1.

528. Effects of an interdict. In practice it is customary for the legitimate superior to determine particularly what precisely is prohibited or permitted during an interdict,[204] especially if a particular or partial interdict is inflicted. Generally it can be said:

a) A **local** interdict personally affects those who gave cause for it; the others who are present in the interdicted place must indeed observe it, but can receive the sacraments and are altogether free outside this place.[205]

b) A **general local** interdict prohibits in the interdicted place every divine office or sacred rite; and even if divine offices are permitted in certain cases (concerning which below), singing and pomp in sacred furnishings, the sound of bells, organs, or other musical instruments are prohibited.[206]

c) A **personal** interdict prohibits the interdicted person from: a) celebrating divine offices or actively assisting at them, with the preaching of the word of God excepted; passive assistance, however, does not appear to be gravely prohibited; b) administering, confecting, and receiving sacraments and sacramentals; on this point, however, the same exceptions hold which were indicated above in n. 500 for excommunicated persons; c) being given ecclesiastical burial. As regards the right of electing, presenting, and nominating; the acquisition of dignities, offices, benefices, pensions, functions in the Church, and graces of the Apostolic See; and the reception of orders, interdicted persons are treated in the same manner as excommunicated persons.[207]

d) Those who violate an interdict sin gravely; clerics who illicitly exercise sacred order become irregular.

Exceptions. 1. On five feasts (namely, the Nativity of the Lord, Easter, Pentecost, Corpus Christi, and the Assumption of the Blessed Virgin Mary into heaven) a local interdict is suspended, so that all divine offices and rites are permitted, with the conferral of orders and the solemn nuptial blessing excepted.[208]

2. Clerics not personally interdicted can privately (that is, with doors closed, voice subdued, and bells not rung) perform all offices and sacred rites in any church or oratory.[209]

3. In the cathedral church, in all parish churches, and in a church which is the only one in a town, the following are permitted: a) the celebration of one Mass; b) the reservation of the Most Holy Sacrament; c) the administration of baptism, the Eucharist, and penance; d) assistance at marriages, with the nuptial blessing excluded; e) funeral rites for the dead, but with every solemnity forbidden; f) the blessing of baptismal water and the sacred oils; g) the preaching of the word of God.

Holy Viaticum is to be carried privately to the sick.[210]

Cessation of an interdict. An interdict imposed in vindication ceases at the discretion of the prelate imposing it, that is, either by dispensation or by the lapse of a determined time.

An interdict imposed after the manner of a censure does not cease except through absolution given by competent authority. Therefore all that was said above concerning absolution from a censure in n. 490 ff. holds.

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[204] Cf. the interdicts inflicted upon the city of Adria on September 30, 1909, and Galatina on December 10, 1913.

[205] Cf. Code of Canon Law, c. 2269, § 2, and c. 2276.

[206] Ibid., c. 2271.

[207] Ibid., cc. 2275 and 2265.

[208] Ibid., c. 2270, § 2.

[209] Ibid., c. 2271, n. 1.

[210] Ibid., n. 2.

529. Scholion. On interdict from entrance into a church and on cessation from divine services. An interdict from entrance into a church is a particular and partial personal interdict. It is defined: **a penalty by which someone is prohibited from participation in divine offices in a church and from ecclesiastical burial.** One thus interdicted can therefore hear and celebrate Mass outside a church, for example, in an

oratory, receive other sacraments, and so forth. Likewise he can pray privately even in a church. If one thus interdicted assists at divine offices in a church, it is not necessary that he be expelled; nor, if he is buried, is it necessary that the corpse be removed (c. 2277).

Cessation from divine services[211] is a prohibition (imposed especially upon clerics) against performing divine offices in a sacred place and administering the sacraments of the Eucharist, Extreme Unction, and Orders. This cessation is not a censure properly so called, but is inflicted *ab homine* (never by the law) on account of a most grave crime, as a sign of the Church's grief over an injury inflicted upon her. Those who violate a cessation from divine services indeed sin gravely, but do not become irregular.[212]

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[211] German: cessation of divine services.

[212] Cf. Wernz, *Ius Decretal.* VI, n. 235 ff. The Code of Canon Law is silent concerning cessation from divine services.

§ 2. On The Interdicts In Particular Which Are In Force Today

There are four interdicts in force, of which the first is reserved to the Holy See in a special manner; the second is reserved to the Superior until suitable satisfaction has been rendered; the third is reserved to the Ordinary; the fourth is not reserved.

530. 1. "Universities, colleges, chapters, or other moral persons, by whatever name they may be called, which appeal from the laws, decrees, or mandates of the Roman Pontiff for the time being to a universal council, incur by the law itself an interdict reserved to the Roman Pontiff in a special manner" (can. 2332).

2. **"Those knowingly celebrating or causing divine services to be celebrated in interdicted places, or admitting to the celebration of divine offices forbidden by censure clerics who are excommunicated, interdicted, or suspended after a declaratory or condemnatory sentence, contract by the law itself an interdict from entrance into a church until, at the discretion of the one whose sentence they contemned, they have made suitable satisfaction"** (can. 2338, § 3).

This censure is incurred by: a) those who illicitly celebrate or cause divine offices to be celebrated (by commanding or compelling) in interdicted places or churches; b) those who admit to divine offices, sacraments, or ecclesiastical burial an excommunicated, interdicted, or suspended person after a condemnatory or declaratory sentence.

3. **"Those voluntarily giving ecclesiastical burial to unbelievers, apostates from the faith, heretics, schismatics, or others, whether excommunicated or interdicted, contract an interdict from entrance into a church reserved to the Ordinary"** (can. 2339).
4. **"Those who have given cause for a local interdict or for an interdict upon a community or college are by that very fact personally interdicted"** (can. 2338, § 4).

Article III. On Suspension

We shall treat: 1. suspension in general; 2. suspensions in force today.

§ 1. On Suspension In General

531. Notion. "Suspension is a censure by which a cleric is prohibited from office or benefice or both" (can. 2278, § 1).

Explanation. It is said, first: **suspension is a censure by which a cleric is deprived.** For suspension is not imposed upon laymen, but upon clerics alone.

It is said, second: **from office or benefice or both**, to signify the threefold object of suspension.

It is said, third: **is prohibited**, because suspension does not deprive one of office and so forth, but prohibits only its use.

Note. Not rarely suspension is not a censure properly so called, that is, a medicinal penalty, but a vindicatory penalty, some penance, or a mere prohibition against exercising an office. In doubt whether in some case it is a censure or another penalty, it is presumed to be a censure.[213] Irregularity arises only from the violation of a censure properly so called, but not from the mere prohibition against exercising an ecclesiastical office. The celebrated suspension "from an informed conscience" is sometimes a true censure and sometimes is not.[214]

Divisions. 1. Suspension is either **general** or **special**, according as a cleric is deprived of every use both of order and of office and of benefice, or only of the use of one of the three. This special suspension is subdivided into total and partial. A total suspension deprives a cleric of the use of all power of some species, namely, totally either: a) of the use of order; b) of the use of office; or c) of the use of benefice. A partial suspension deprives a cleric of the use not of all but of a part of the power of some species; for example, a cleric is punished with a partial suspension if hearing confessions, preaching, and so forth are forbidden to him. Partial suspensions also include **suspension *a divinis***, that is, from every act of the power of order which someone obtains either through sacred ordination or through privilege; **suspension from pontifical order**, that is, from every exercise of episcopal order; **suspension from pontificals**, that is, from the use of pontifical insignia, the miter, crozier, and so forth (c. 2279, § 2).

2. Suspension is **by law** and **by a man**, according as it is imposed by the law itself or by a man.

The other divisions, such as reserved, non-reserved, *latae* and *ferendae sententiae*, and so forth, are readily understood from what was said above concerning the division of censures in general.

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[213] Code of Canon Law, c. 2255, § 2.

[214] Cf. our *Man. iur. can.*, q. 556.

532. Effects of suspension.

1. A suspended person sins gravely if he exercises an act forbidden to him (although parvity of matter is admitted), unless there are excusing causes, which are the same as those related above in n. 489 for censures in general.
2. One suspended from sacred order (but not likewise one suspended from a benefice), culpably violating the suspension by the exercise of sacred order, becomes irregular.[215]
3. A tolerated suspended person validly exercises jurisdiction; but if a condemnatory or declaratory sentence of the superior has intervened, he exercises it invalidly.[216]

4. One suspended **from office** (absolutely and simply) is deprived not only of the use of office but also of order and jurisdiction; or, in other words: **suspension from office includes suspension from order.** The administration of the goods of his own benefice, however, is permitted (can. 2279, § 1).

5. One suspended **from a benefice** who nevertheless usurps the beneficial revenues is bound to restitution, and that even before the sentence of a judge; he can, however, dwell in the buildings of the benefice and administer the beneficial goods, unless it has been expressly established otherwise concerning this administration.[217]

Note. A suspended person is not prohibited from receiving the sacraments, for example, the Eucharist and penance, provided that he sincerely sorrows for the sins committed. Likewise, he is not excluded from the common suffrages of the Church or from gaining indulgences.

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[215] Code of Canon Law, c. 985, n. 7; Hollweck, *Die kirchl. Strafgesetze*, § 66.

[216] Code of Canon Law, c. 2284.

[217] Ibid., c. 2280.

533. Cessation of suspension.

1. A suspension imposed in vindication is taken away by dispensation of the legitimate superior or by lapse of time, if it was inflicted for a time.

2. A suspension imposed as a censure is not removed except by legitimate absolution.

3. A suspension from an informed conscience no longer ceases with the death of the prelate who imposed it. There is no occasion to speak at greater length concerning suspension from an informed conscience. See the canonists.[218]

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[218] Cf. our *Man. iur. can.*, q. 556.

§ 2. On Suspensions In Force Today

The *latae sententiae* suspensions in force today are not so numerous (being reserved: 1. to the Holy See; 2. to bishops; 3. to religious superiors; 4. to no one); on the contrary, very many *ferendae sententiae* suspensions are found in the Code of Canon Law. For the sake of brevity, we treat only *latae sententiae* suspensions.

I. Suspensions reserved to the Holy See.

534. The following are suspended:

1. Those conferring or receiving episcopal consecration without an apostolic mandate.

For it is established: **"A bishop consecrating someone as a Bishop, the Bishops or, in place of Bishops, the priests assisting, and the one who receives consecration without an apostolic mandate contrary to the prescription of can. 953, are suspended by the law itself until the Apostolic See has dispensed them"** (c. 2370).

2. Clerics simoniacally giving or receiving ordination and other sacraments.

"All, even those raised to episcopal dignity, who through simony knowingly promote or are promoted to orders, or administer or receive other sacraments, are suspected of heresy; clerics furthermore incur a suspension reserved to the Apostolic See" (c. 2371).

3. Those **receiving** orders from an especially unworthy minister.

"Those who presume to receive orders from one excommunicated, suspended, or interdicted after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic, contract by that very fact a suspension *a divinis* reserved to the Apostolic See; but one who in good faith has been ordained by any one of them is to abstain from the exercise of the order thus received until he is dispensed" (c. 2372).

4. Those **conferring** orders without the requisite: a) dimissorial or testimonial letters; b) canonical title; c) necessary permissions in the ordination of religious.

For **"the following incur by that very fact a suspension for one year from the conferral of orders, reserved to the Apostolic See:**

"1. Those who ordain another's subject without dimissorial letters from his proper Ordinary;

"2. Those who illegitimately ordain their own subject who has remained elsewhere for so long a time that he could have contracted a canonical impediment there;

"3. Those who promote someone to major orders without a canonical title;

"4. Those who, without prejudice to a legitimate privilege, promote a religious belonging to a community which is outside the territory of the ordaining bishop, even with dimissorial letters from his proper superior, unless it has been legitimately proved either that the diocesan bishop gave permission, or that he is of a different rite, or that he is absent, or that he will not hold an ordination at the next legitimate time, or that the diocese is vacant and its ruler does not possess the episcopal character" (c. 2373).

5. Religious clerics in major orders deceitfully emitting an invalid profession.

"A religious cleric whose profession has been declared null on account of deceit committed by him, if he is constituted in minor orders, is to be cast out of the clerical state; if in major orders, he remains suspended by that very fact until it has seemed otherwise to the Apostolic See" (c. 2387).

What is said here concerning a deceitful and invalid religious profession also holds for deceitful and invalid aggregation in clerical societies without vows, provided that the members live a common life (Pontifical Commission, June 2, 1918 [*Acta Apost. Sed.* X, 347]).

6. A cleric in sacred orders who, after perpetual vows (whether simple or solemn), is dismissed on account of delicts lesser than those concerning which in c. 670, remains suspended by that very fact until he has obtained absolution from the Holy See (can. 671, § 1).

We treated the dismissal of religious more broadly in *Man. iur. can.*, q. 261.

7. Those illegitimately admitting to an ecclesiastical benefice, office, or dignity persons elected, presented, or nominated.

"Chapters, convents, and all others to whom it pertains, admitting persons thus elected, presented, or nominated before the presentation of the letters (of confirmation or institution), remain by that very fact suspended from the right of electing, nominating, or presenting, at the good pleasure of the Apostolic See" (c. 2394, n. 3).

II. Suspension reserved to the Ordinary.

535. The following are suspended: clerics violating the privilege of the forum with respect to lower ecclesiastical persons.

"If a cleric has dared to draw before a lay judge, without obtaining permission from the local Ordinary, another ecclesiastical person (who is not adorned with episcopal, cardinalitial, or greater prelatic dignity), he incurs by that very fact a suspension from office reserved to the Ordinary" (c. 2341). A layman committing the same delict no longer incurs any *latae sententiae* penalty, but rather a *ferendae sententiae* penalty.

III. Suspension reserved to the religious major Superior.

536. "A fugitive religious incurs by that very fact privation of office, if he has any in the religion, and a suspension reserved to his own major superior, if he is in sacred orders; but when he has returned, let him be punished according to the constitutions, and if the constitutions make no provision concerning this, let the major superior inflict penalties according to the gravity of the fault" (can. 2386).

A fugitive religious is one who departs from a religious house with the intention of living outside obedience for a time and afterward returning.

IV. Suspensions reserved to no one.

537. 1. "A priest who without necessary jurisdiction has presumed to hear sacramental confessions is by that very fact suspended *a divinis*; but one who has presumed to absolve from reserved sins is by that very fact suspended from hearing confessions" (can. 2366).

2. **"One who without letters, or with false dimissorial letters, or before the canonical age, or by a leap has maliciously approached orders, is by that very fact suspended from the order received"** (can. 2374).
3. **"A cleric who has presumed to resign an ecclesiastical office, benefice, or dignity into the hands of laymen incurs by that very fact suspension *a divinis*"** (can. 2400).
4. **"An Abbot or Prelate *nullius* who (by apostolic prescription or by the constitutions of his own religion must be blessed, and nevertheless) has not received this blessing (within three months from the receipt of the apostolic letters, a legitimate impediment having ceased) is by that very fact suspended from jurisdiction"** (can. 2402).
5. **"A capitular vicar (illegitimately) granting dimissorial letters for ordination is by that very fact subject to suspension *a divinis*"** (can. 2409).
6. **"Religious superiors who (illegitimately) have presumed to send their subjects to another bishop to be ordained are by that very fact suspended from the celebration of Mass for one month"** (can. 2410).

Treatise VII. On Indulgences

538. Preliminary note. The treatise on indulgences is a certain complement of the treatise on penance. For it is Catholic dogma that, when guilt has been remitted, the whole punishment due is not always remitted. In satisfaction for this punishment, the confessor is bound to impose a salutary penance, which the penitent must fulfill. But even when the salutary penance has been fulfilled, all the punishment due has not yet always been remitted. Indulgences, however, are the most efficacious means of entirely destroying all punishment when guilt has been remitted. Hence moralists commonly treat indulgences as a complement of sacramental satisfaction and of the sacrament of penance. Since many controversies exist concerning indulgences which are freely disputed among theologians, it is worthwhile here to set forth briefly in one view those things which are beyond controversy and must be admitted by every Catholic. All these things are contained in the Council of Trent,[1] which defines: "Since the power of conferring indulgences was granted by Christ to the Church, and she has used this power divinely handed down to her even from the most ancient times, the holy Synod teaches and commands that the use of indulgences, most salutary for the Christian people and approved by the authority of sacred Councils, is to be retained in the Church; and it condemns with anathema those who either assert that they are useless or deny that there is in the Church the power of granting them."[2] Therefore two things must altogether be held by faith:

1. The power of granting indulgences was divinely handed down to the Church.
2. The use of indulgences is salutary and therefore is to be retained.

Furthermore, it is certain (on account of the condemnation of proposition 17 of Luther[3] and proposition 41 of the Synod of Pistoia) that there exists a treasury of the satisfactions of Christ and the saints, from which the Church can dispense indulgences.

We divide this treatise on indulgences into five articles: 1. the nature and division of indulgences; 2. the authority of granting indulgences; 3. the conditions required for gaining indulgences; 4. the jubilee indulgence; 5. certain indulgences in particular.

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[1] Sess. 25, *De indulg.* (Denz., n. 989).

[2] Cf. also the condemned propositions 40-43 of the Synod of Pistoia (Denz., nn. 1540-1543).

[3] Denz., n. 757.

Article I. On The Nature And Division Of Indulgences

539. Nominal definition. *Indulgentia* is so called from *indulgere* and signifies nothing other than the remission of one's own right in favor of another, or the condonation of some fine to be exacted. The name indulgence was already known in the time of St. Thomas; but in patristic times other names were customarily employed, for example, peace, condonation, reconciliation, and so forth.

540. Real definition. An indulgence is the remission before God of the temporal punishment due, actual sin having been remitted as regards guilt, made outside the sacrament of penance by a legitimate superior through the application of the treasury of the Church.[4]

It is explained: a) **The remission of temporal punishment, but not of guilt, whether mortal or venial.** Hence it is a pure and rank calumny if certain non-Catholics babble that, according to Catholic doctrine, any sins whatever, even future ones, are remitted through indulgences. What is related concerning Tetzel, as though he had sold indulgences for future sins, is a fable already exploded a hundred times and nevertheless revived again and again by malicious or overly credulous men.[5] Nor is it an objection that in certain Apostolic Letters indulgences are said to be granted for the remission of sins. For the name sin is sometimes taken for the punishment due to sin. Thus, for example, it is said: "Him [Christ], who knew no sin, he made sin for us, that we might be made the justice of God in him."[6] Therefore, if indulgences are granted for the remission of sins, this signifies nothing other than for the remission of the punishment due to sins. Eternal punishment is always remitted with the guilt of sin; hence an indulgence is not granted even for the remission of eternal punishment. The punishments which are due to original sin are remitted by the sacrament of baptism; and therefore an indulgence destroys only temporal punishments due for actual sins. These punishments, however, it truly remits before God and not merely in the forum of the Church. Therefore Leo X proscribed proposition 19 of Luther: "Indulgences, for those who truly obtain them, do not avail for the remission before divine justice of the punishment due for actual sins."[7] Pius VI condemned proposition 40 of the Synod of Pistoia: "The proposition asserting that an indulgence according to its precise notion is nothing other than the remission of a part of that penance which had been established by the canons for the sinner, as though an indulgence beyond the bare remission of canonical punishment does not also avail for the remission before divine justice of the temporal punishment due for actual sins: false, rash, injurious to the merits of Christ, long ago condemned in article 19 of Luther."[8] St. Thomas[9] already rightly observed that, if indulgences liberated only from ecclesiastical punishments and not from punishments to be discharged before God and in the other life, they would do more harm than good, and the Church would deceive the faithful in a matter of grave importance. For by exempting them from the lighter punishments of this life, she would send them to the far more bitter punishments of purgatory, relaxation from which they would have obtained through the punishments of this life. Furthermore, indulgences would then be useless for the souls in purgatory, which are no longer bound to canonical punishments.

b) **Made outside the sacrament of penance by a legitimate superior.** In the sacrament of penance not only guilt and eternal punishment are remitted, but temporal punishment also, at least in part. But since it is certain by faith that when guilt is remitted the whole temporal punishment is not always remitted at the same time,[10] other remedies against the remaining punishment must be present. These remedies are: 1. sacramental satisfaction; 2. works of mortification freely undertaken; 3. the hardships and miseries of this life sent by God and patiently endured by man; 4. indulgences. But if a man has not by these remedies satisfied for the punishments due in this life, he must suffer in purgatory until the entire punishment has been destroyed. That the Church possesses the power of conferring indulgences will be proved in the following article.

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[4] Cf. Code of Canon Law, c. 911.

[5] Cf. N. Paulus, *Johann Tetzel, der Ablaßprediger*, p. 130 ff. The same author also explains well what the so-called *confessionalia* were, and the indulgences from punishment and from guilt formerly granted by the Supreme Pontiffs.

[6] 2 Cor. 5:21.

[7] Denz., n. 759.

[8] Denz., n. 1540.

[9] *Suppl.*, q. 25, a. 1.

[10] Council of Trent, sess. 14, c. 8 and cann. 12 and 15 (Denz., nn. 904, 922a, 925).

541. c) Through the application of the treasury of the Church. The treasury of the Church, as we speak of it here, is nothing other than the accumulation of the satisfactions of Christ and the saints which the Church can dispense. This treasury has two foundations, namely, the communion of saints and vicarious satisfaction. That the communion of saints exists in the Church is a dogma of faith; and therefore a threefold Church is customarily distinguished: the Church militant, the Church suffering, and the Church triumphant. The communion of saints is that most intimate bond uniting all members of the Church into one body. St. Paul speaks beautifully and concisely of this union, concluding with these words: "Now you are the body of Christ and members of member."[11] Hence the Roman Catechism[12] says: "Whatever things are piously and holily undertaken by one belong to all, and that they may profit them is effected by charity, which seeks not the things that are its own." Upon this radical foundation of the communion of saints another is built, namely, **vicarious satisfaction**. For since so intimate a union exists among the individual members of the Church, one member of her can satisfy for another.

It must be noted that a supernaturally good work produces a threefold fruit: meritorious fruit, impetratory fruit, and satisfactory fruit. A work is meritorious insofar as it proceeds from charity; it is impetratory insofar as there is joined with it a petition to obtain something from God; finally, it is satisfactory insofar as it is done with a certain burdensomeness. Meritorious fruit properly so called is inalienable, according to the saying: "And every man shall receive his own reward according to his own labor."[13] Nothing prevents it, however, from being said that one person can merit something for another by merit of congruity. Therefore St. Thomas teaches:[14] "By merit of congruity someone can merit the first grace for another; because when a man constituted in grace fulfills the will of God, it is congruous according to the proportion of friendship that God fulfill the will of the man in the salvation of another, although sometimes there can be an impediment on the part of him whose justification some saint desires."

That one person can impetrate something from God for another is clear of itself, since so many prayers are made in the Church for the conversion of sinners, for the souls in purgatory, for benefactors, for enemies, and so forth.

That satisfactory fruit can be communicated to another is clear from Sacred Scripture, from the unanimous doctrine of theologians, and from the example of the ancient martyrs. St. Paul admonishes: "Bear ye one another's burdens,"[15] and says of himself: "I now rejoice in my sufferings for you, and fill up those things that are wanting of the sufferings of Christ in my flesh for his body, which is the Church."[16] From among the doctors of the Church, let us hear St. Thomas alone:[17] "What we do through friends we appear to do through ourselves, because friendship makes one from two through affection, and especially the love of charity; and therefore, just as through himself, so also through another can someone satisfy God, especially when there is necessity. For someone also regards the punishment which a friend suffers on his account as though he himself were suffering it, and thus punishment is not lacking to him while he suffers together with his suffering friend, and all the more insofar as he himself is the cause of his suffering. And again, the affection of charity in him who suffers for a friend makes the satisfaction more acceptable to God than if he suffered for himself; for the former belongs to ready charity, but the latter to necessity. From this it is gathered that one person can satisfy for another, provided that both are in charity." In the ancient Church, martyrs and confessors were able to remit to penitents part of their penance, insofar as their tortures were regarded as satisfactions for the punishments due to sinners.[18]

From what has been said it is clear that the whole doctrine concerning indulgences is founded upon these three principles: 1. There exists a most intimate union among the diverse members of the mystical body of Christ. 2. Vicarious satisfaction exists. 3. There exist superabundant satisfactions of Christ and the saints

which are contained in the treasury of the Church, from which indulgences are imparted to the individual members.

[11] 1 Cor. 12:27.

[12] Part I, c. 10, q. 20.

[13] 1 Cor. 3:8.

[14] *S. theol.* 1, 2, q. 114, a. 6.

[15] Gal. 6:2.

[16] Col. 1:24.

[17] *Summa c. gent.* 3, 158; cf. also *Quodl.* 2, a. 16 and *Suppl.*, q. 25, a. 1.

[18] Cf. Tertullian, *Ep. ad martyres*, c. 1 (Migne, *Patr. lat.* 1, 621).

542. The doctrine of St. Thomas concerning the nature of indulgences. Since not a few non-Catholic authors think that the doctrine concerning indulgences was invented at the time of the pseudo-Reformation, it is worthwhile to attend to those things which St. Thomas handed down concerning indulgences; for in a few words he comprehends the whole doctrine, and all Catholic theologians have embraced the same doctrine. The Angelic Doctor teaches:[19] "[Indulgences] avail both as regards the forum of the Church and as regards the judgment of God for the remission of punishment remaining after contrition, confession, and absolution, whether it be enjoined or not. The reason why they can avail is the unity of the mystical body, in which many have supererogated in works of penance beyond the measure of their debts, and many also have patiently endured unjust tribulations, through which a multitude of punishments could have been expiated if they had been due to them; of whose merits there is so great an abundance that they exceed all the punishment due to those now living; and especially on account of the merit of Christ, which, although it operates in the sacraments, nevertheless its efficacy is not enclosed in the sacraments, but by its infinity exceeds the efficacy of the sacraments. But it was said above[20] that one person can satisfy for another. The saints, however, in whom a superabundance of works of satisfaction is found, did not perform such works determinately for this person who needs remission, but commonly for the whole Church; as the Apostle says that he fills up those things wanting of the sufferings of Christ in his body for the Church to which he writes.[21] And thus the aforesaid merits are common to the whole Church. But things which are common to some multitude are distributed to individuals of the multitude according to the discretion of him who presides over the multitude. Hence, just as someone would obtain remission of punishment if another had satisfied for him, so also if the satisfaction of another is distributed to him by one who has the power."

[19] *Suppl.*, q. 25, a. 1.

[20] *Suppl.*, q. 13, a. 2.

[21] Cf. Col. 1:24.

543. Scholion. On the intimate nature of indulgences. Among modern authors it is disputed whether an indulgence is rather an absolution granted through an act of jurisdiction, or only a payment or donation from the treasury of the Church. The truer and more common opinion teaches that indulgences granted to the living are at the same time an absolution and a payment;[22] those applied to the dead, however, are only payments offered from the treasury of the Church.

It is certain that an indulgence granted to the living is a true absolution made by the power of jurisdiction. Hence, by granting indulgences, the Supreme Pontiff really absolves the living from temporal punishments; but since, in the present order of salvation, no liability either of guilt or of punishment is remitted without satisfaction, the Supreme Pontiff takes from the treasury of the Church satisfactions as great as correspond to the indulgences granted.

Nor may anyone say that then the Pope himself cannot gain indulgences, since no one can exercise an act of jurisdiction upon himself; for St. Thomas already foresaw and solved this difficulty,[23] saying that no one indeed can exercise an act of jurisdiction upon himself, but that a superior can use for himself those things which he himself has granted to all by the authority of jurisdiction. Hence, just as the Pope cannot absolve himself from sins, but can grant to a priest jurisdiction to absolve him, so he can grant an indulgence to all for a pious work, and he himself, performing this work, gains the indulgence, as do the other faithful.

For the dead existing in purgatory, since they are no longer under the jurisdiction of the Pope, indulgences avail not by way of absolution properly so called, but by way of payment and suffrage. Therefore the Supreme Pontiff offers satisfactions from the treasury of the Church and applies them to the souls in purgatory by way of petition or suffrage.[24]

What an indulgence is not. Thus far it has been said what an indulgence is. In order that its nature may become known still more clearly, it must be said briefly what it is not. An indulgence is not: a) the remission of guilt, whether venial or mortal; b) the remission of ancient canonical punishments; c) liberation from amendment of life through works which guard against future falls; d) liberation from the obligation of repairing injuries perhaps inflicted upon one's neighbor.

Against an exaggerated opinion concerning the utility of indulgences, St. Thomas rightly warns:[25] "Although indulgences avail much for the remission of punishment, nevertheless other works of satisfaction are more meritorious with respect to the essential reward, which is infinitely better than the remission of temporal punishment."

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[22] St. Thomas says: "He who receives indulgences is not, simply speaking, absolved from the debt of punishment, but there is given to him that from which he may pay the debt" (4, dist. 20, q. 1, a. 3, sol. 1 ad 2; cf. Code, c. 911).

[23] *Suppl.*, q. 27, a. 4 ad 1.

[24] Cf. Billot, *De Eccl. sacr.* II, 221 ff.; Chr. Pesch, *Prael. theol.* VII, n. 474 ff.; Beringer-Steinen, *Die Ablässe*[15] I, n. 25.

[25] *Suppl.*, q. 25, a. 2 ad 2.

544. Species of indulgences. Indulgences are divided:

a) **By reason of their effect, into plenary and partial.**

The former remit (according to the intention of the grantor) all the temporal punishment of some person which still remains. The latter remit part of the temporal punishment. Since the extent of an indulgence depends upon the intention of the grantor, ecclesiastical law establishes[26] that one who, because of venial guilt not yet destroyed, cannot gain a plenary indulgence in a perfect manner, nevertheless gains it partially, insofar as he is capable. The practice of the faithful also accords with this; and therefore, for example, the faithful are accustomed to gain for themselves several times the indulgence called "As often as" (*Toties quoties*). If someone has truly gained a plenary indulgence, he is in the same state in which an adult is immediately after receiving baptism, and consequently, if he were to die after gaining the indulgence, he would immediately fly to heaven (without passing through purgatory). A partial indulgence remits part of the temporal punishments, as was

said above. But if it is now asked how great this part is, nothing certain can be answered. Authors most commonly teach that, if the Supreme Pontiff grants, for example, an indulgence of seven years and seven forty-day periods, then so great a part of the punishments is remitted as was remitted through a penance of seven years and seven forty-day periods performed according to the ancient ecclesiastical discipline. The penances of the ancient Church were most rigorous; thus, for example, if someone had to perform a forty-day penance, he could eat nothing except bread and salt; and for drink he had nothing except water. Sometimes, indeed, such rigor was mitigated a little, insofar as the eating of legumes and other light foods was permitted, but the eating of meat was never permitted, and a strict fast was always prescribed.[27]

b) **By reason of the subject, indulgences are distinguished into those for the living and those for the dead.**

As is evident from what was said above, indulgences are granted to the living by way of juridical absolution, which nevertheless includes the payment of the punishment due from the treasury of the Church. Indulgences, however, are granted for the dead by way of suffrage, insofar as the Supreme Pontiff offers to God, from the treasury of the Church, satisfactions for the punishments still to be discharged by the souls in purgatory. All indulgences granted by the Supreme Pontiff are applicable to the souls in purgatory, unless the contrary is certainly established, as happens, for example, with the indulgence to be gained at the moment of death.[28]

c) **By reason of their mode, indulgences are distinguished into personal, real, and local.**

In the strict sense, those indulgences are called **personal** which are granted immediately to determinate persons, whether physical or moral, for example, to the members of some confraternity, religious institute, and so forth. In a broader sense, however, those indulgences are called personal which, independently of any place or thing, are granted to all the faithful who perform some pious work; for example, an indulgence of three hundred days is granted to those reciting certain ejaculatory prayers.

Real indulgences are those which are immediately attached to some portable thing, for example, a Rosary, a medal, and so forth. Real indulgences can be applied only to solid things which are not easily broken or torn, and not to such things as hollow, non-solid glass, paper, and so forth. Real indulgences cease only: a) if the things entirely cease to exist, for example, if the image of a crucifix is broken into two parts. The indulgence does not perish, however, if the alteration is slight, for example, if a few beads of some Rosary are lost and new ones are substituted; nor even (according to the modern discipline) if someone other than the owner uses these things with the intention of gaining the indulgences; b) if the thing endowed with indulgences is sold.[29] In order to avoid even the appearance of simony, the Church has gravely forbidden, under penalty of the loss of the indulgences, that things enriched with indulgences be sold or bought, even if no profit is thereby received. Nothing, however, prevents someone from acquiring for himself several things enriched with indulgences and afterward, before using them, giving them to others as a gift. Several indulgences can be applied to the same thing. Thus, for example, the same Rosary can receive the indulgences of the Dominicans, the Crucigers, and St. Bridget.

Local indulgences are those which are immediately affixed to a pious place, such as a church, an altar, a miraculous image, and so forth. Attention must be paid to the clauses under which indulgences have been granted to some place. Thus, for example, if an indulgence has been granted to all who make a pious pilgrimage to some church, the inhabitants of the place where the church is situated cannot gain this indulgence, because they are not considered pilgrims.[30] If the church or altar to which the indulgence was granted is destroyed, the indulgence ceases, as is evident of itself. If, however, the same church or the same

altar is afterward rebuilt in almost the same place (that is, within a space of thirty paces), and this under the same title and at least within fifty years, the indulgence revives.[31]

[26] Code of Canon Law, c. 926.

[27] Cf. Beringer-Steinen, *Die Ablässe*[15] I, n. 29. All partial indulgences of one thousand or several thousand years have been revoked. Sacred Congregation of Indulgences, May 26, 1898, and August 10, 1899.

[28] Code of Canon Law, c. 930.

[29] Sacred Congregation of Indulgences, July 16, 1887; Code of Canon Law, c. 924, § 2.

[30] *Decreta authentica Indulgentiarum*, n. 202.

[31] Code of Canon Law, c. 924, § 1.

545. Note. Indulgences granted to some **church of regulars** cease if such churches pass into the possession of the bishop or of another religious order.[32] The reason is that indulgences are granted to these churches principally because they are administered by such a religious order. Consequently, if such an order afterward (even after a long time) recovers the same church, the indulgences also revive. There are considered churches of regulars not only those which are possessed by them, but also all those which have merely been entrusted to them permanently, although the bishop or someone else is the owner.[33] But if some church is administered by a **regular priest**, even permanently, it is not yet considered a regular church, but is secular, and does not have the indulgences of churches of regulars.[34]

[32] *Decreta authentica Indulgentiarum*, n. 246.

[33] Cf. Beringer-Steinen, *Die Ablässe*[15] I, n. 177.

[34] Cf. *Decreta authentica Congregationis Indulgentiarum*, nn. 47 and 395.

Article II. On The Authority To Grant Indulgences

546. Errors. The following denied to the Church the power of granting indulgences: a) the Waldensians, or the so-called Poor Men of Lyons, the Wycliffites, the Hussites, and Peter of Osma. The errors of John Wycliffe were condemned by the Council of Constance in sessions 8 and 19;[35] the errors of Peter of Osma were condemned by Sixtus IV through the Bull *Licet ea* of August 9, 1479.[36] b) The Protestants. Luther at first wished to censure only the abuses of the collectors of indulgences, but he admitted the indulgence itself, just as he also acknowledged the power of the Supreme Pontiff to grant indulgences;[37] afterward, however, he attacked indulgences themselves, which he called pious frauds.[38] Modern Protestants are accustomed to assert the same thing; indeed, several dare to affirm that indulgences are nothing other than the freedom to sin more freely, purchased by the payment of money.

[35] Cf. Denz., n. 622.

[36] Cf. Denz., n. 729.

[37] Luther says in his first thesis, proposed at Wittenberg on October 31, 1517: "Whoever speaks against the truth of the papal indulgence, let him be a curse and accursed."

[38] Leo X condemned the proposition of Luther: "Indulgences are pious frauds of the faithful and remissions of good works; and they are of the number of those things which are lawful, and not of the number of those which are expedient" (Denz., n. 758).

547. Proposition 1. The Church has the power of granting indulgences.

This is of faith and was defined in the Council of Trent (session 25, Decree on Indulgences).[39] Consequently, in the Profession of Faith prescribed by Pius IV, it is said: "I also affirm that the power of indulgences was left by Christ in the Church...."[40]

Proof 1. From Sacred Scripture. The power of granting indulgences is deduced from three dogmas of faith: 1. from the superabundance of the satisfaction of Christ; 2. from the communion of saints; 3. from the power of the keys. Enough has already been said above concerning the first two. The power of the keys which was handed down by Christ to the Church is indicated by the words: "Whatsoever thou shalt bind upon earth, it shall be bound also in heaven; and whatsoever thou shalt loose upon earth, it shall be loosed also in heaven."[41] Therefore the power of loosing all things which exclude from the kingdom of heaven is handed down to St. Peter. But not only sins exclude from the kingdom of heaven, but also the punishments remaining after the remission of guilt. Therefore St. Peter and his successors must have the power of remitting those remaining punishments; and this is done by the granting of indulgences. Therefore, from Sacred Scripture it is established that the Church has the power of granting indulgences.

Proof 2. From theological reason. The power of conferring indulgences is intimately connected with the power of the keys handed down to the Church, and conduces exceedingly to the good of religion and the exercise of virtues. Therefore such a power must be admitted. For if the power of absolving from guilt and eternal punishment has been granted to the Church, as is done in the sacrament of penance, the faculty of absolving also from temporal punishment cannot fittingly be denied to her, since this likewise excludes from the kingdom of heaven. Daily experience proves that the gaining of indulgences conduces to every kind of virtue and to the good of religion. For various heads of Christian doctrine are inculcated concerning the justice of God demanding satisfaction for committed faults, the mercy of Christ so abundantly satisfying for us, and the Church so mercifully bestowing helps upon us and so securely leading us to heaven. Moreover, a man cannot gain indulgences except by the exercise of good works, such as the reception of the sacraments of penance and Communion, prayers, pilgrimages, alms, and so forth. Hence it is not wonderful that St. Ignatius of Loyola writes: "For those seeking the love of God and heaven, indulgences are an immense treasury and precious gems."[42] Voltaire, however, is reported to have said concerning the jubilee of the year 1775: "One more jubilee like this, and it is all over with philosophy."[43]

Proof 3. From the tradition and continuous practice of the Church. St. Paul himself already granted an indulgence to the incestuous Corinthian, to whom he remitted part of the temporal punishment which he had imposed upon him.[44] Nor may anyone say that St. Paul merely remitted canonical penance, but not the temporal punishments themselves which were due in the forum of God. For the holy Apostle says: "And to whom you have pardoned anything, I also. For what I have pardoned, if I have pardoned anything, for your sakes have I done it in the person of Christ."[45] Therefore St. Paul in the person of Christ condoned these punishments, and consequently also in the forum of God.

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[39] Denz., n. 989. Cf. above, n. 538.

[40] Denz., n. 998.

[41] Matt. 16:19; cf. John 20:23.

[42] Cited by Chr. Pesch, *Prael. dogm.* VII, n. 505.

[43] Ibid.

[44] 1 Cor. 5:1 ff.

[45] 2 Cor. 2:10.

548. The historical progress of indulgences is intimately connected with the development of penitential discipline. Three periods can be distinguished in it: the first period down to the eighth century; the second down to the twelfth century; the third period down to our days.

In the first period indulgences appear under the form of a mitigation of public canonical punishment, which was granted especially through the so-called letters of the martyrs. Concerning these St. Cyprian testifies:[46] "Those who have received letters from the martyrs can be assisted before God by their prerogative." Tertullian teaches the same thing (which, however, after he had fallen into the heresy of the Montanists, he rejected).[47] Similar things are contained in the First Council of Nicaea.[48] Punishments were also relaxed for the dying at that time, so that they might be able to enter heaven more quickly. Furthermore, in these cases the Church wished to relax not only canonical penances, because from this no advantage would have arisen for the souls themselves, but rather harm; for then the remaining punishment would have had to be discharged in purgatory, which certainly would have been still harsher than the rigorous penances imposed by canonical discipline. From all these things it is evident that already in the first centuries of the Christian era true remissions of temporal punishments, valid in the forum of God, or indulgences, were granted.

In the second period the matter appears still more clearly. St. Thomas relates:[49] "The Pope grants an indulgence, so that he who goes to one church has seven years of indulgence; indulgences of this kind were also instituted by Blessed Gregory at the stations of Rome." William of Auxerre relates the same thing.[50] Therefore Gregory the Great already granted indulgences which remain in force even in our times. Although this fact is denied by certain authors, for example, by Morinus, nevertheless Boniface VIII, granting for the year 1300 a plenary indulgence to those visiting the basilica of St. Peter, testified: "The faithful account of the ancients has it that great remissions and indulgences of sins were granted to those approaching the venerable basilica of the Prince of the Apostles in the City. We therefore... holding all and each of such remissions and indulgences ratified and approved, confirm them."[51] Indulgences were granted by the Supreme Pontiffs especially when expeditions were made to the Holy Land to fight against the Turks. Thus, for example, Urban II established in the year 1095: "We, trusting in the mercy of God and in the authority of the blessed apostles Peter and Paul, relax for the Christian faithful who take up arms against them [the infidels] the penances enjoined upon them for their offenses." Indulgences for the dead also already occur in the ninth and tenth centuries. Thus Paschal I granted that one who said a certain number of Masses for a deceased person in a certain chapel of St. Zeno would free that deceased person from purgatory. John IX granted an indulgence for the deceased Emperor Arnulf.[52]

In the third period indulgences become more frequent and easier. St. Thomas, living in the thirteenth century, handed down a complete doctrine concerning indulgences which has not been changed down to our days. Boniface VIII granted the first jubilee in the year 1300. Moreover, the Protestants themselves are bound to concede that the practice of indulgences flourished in the Catholic Church from the twelfth century onward.

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[46] Ep. 18; cf. Epp. 21, 33, 36.

[47] *Ad mart.*, c. 1 (Migne, *Patr. lat.* 1, 621), and *De pudic.*, c. 22 (ibid. 2, 1026).

[48] Can. 12.

[49] *In 4, dist.* 20, q. 1, a. 3, sol. 2.

[50] *Summa*, l. 2, tr. 6, c. 9.

[51] *Extrav. comm.*, l. 5, tit. 9, c. 1.

[52] Cf. Schoofs, *Die Lehre v. kirchl. Ablaß*, p. 46, cited by Chr. Pesch, *Prael. dogm.* VII, n. 503.

549. Proposition 2. The Pope can grant indulgences principally; others, however, insofar as they receive from him either ordinary or committed, that is, delegated, power. Thus St. Thomas[53] and the Code of Canon Law, c. 912.

The reason for this proposition is that he alone can grant indulgences who has the dispensation of the treasury of the Church. Now the Pope has this dispensation principally; others, however, insofar as they are delegated by the Supreme Pontiff. Whether this power in bishops is to be called ordinary or delegated is rather a question of name than of reality. How far the power of others extends will be stated below.

For the validity of the granting of indulgences, a **just and reasonable cause** is required. For the Supreme Pontiff is only the administrator of the treasury of the Church, which he can dispense, not at will, but reasonably in the name of God. Hence, if he were to grant the greatest indulgence for a most trifling work, he would act not only illicitly but also invalidly. St. Thomas constantly assigns the honor of God and the utility of one's neighbor as causes for granting indulgences.[54] In estimating the proportion of the cause, however, not only the objective difficulty of the enjoined work must be considered, but also the utility of religion, of the Church, and of the faithful. Hence, for example, the plenary indulgence attached to the little prayer "Behold, O good Jesus," to be said after receiving Communion, is not to be called exaggerated, because by it the faithful are incited to receive the Eucharist more frequently and more devoutly.

The current practice of the Church. The following can grant indulgences:

a) **The Supreme Pontiff for the whole Church.** Sometimes the Pope grants indulgences by an oral declaration, but ordinarily, according to the current discipline, indulgences are granted through the Sacred Penitentiary;[55] indeed, all general grants of indulgences made to **all the Christian faithful** are invalid unless they have been reviewed by the Sacred Penitentiary.[56] But the following do not need such review: a) indulgences which are granted by religious orders according to the privileges granted to them;[57] b) indulgences granted by the Sacred Congregation for the Propagation of the Faith;[58] c) all particular indulgences; d) faculties of blessing pious objects and of attaching indulgences and privileges to them.[59]

b) **Residential bishops** were able, until the Fourth Lateran Council (1215), to grant all indulgences in their own diocese. But then their power was limited, and now they can grant one year at the consecration of some church, and on other occasions fifty days of indulgences. Archbishops can grant one hundred days; Cardinals, however, two hundred days.[60]

Indulgences granted by a bishop can be gained outside the territory by his subjects, and within the territory by all who dwell there,[61] even exempt religious and in their churches.[61a]

But it must be noted that all who are inferior to the Roman Pontiff cannot:

1. commit to others the faculty of granting indulgences, unless this has been specially granted to them;
2. grant indulgences applicable to the dead;
3. add other indulgences to the same thing, act of piety, or sodality to which indulgences have already been granted by the Holy See or by another, unless new conditions to be fulfilled are prescribed.[62]

Nuncios, legates *a latere*, and the Major Penitentiary at Rome can likewise grant some indulgences.[63] By special pontifical delegation other priests also, such as regular prelates, visitors, confessors, and so forth, can sometimes bestow indulgences, for example, the papal blessing.

[53] *Quodl.* 2, a. 16.

[54] *Suppl.*, q. 25, a. 2; *Quodl.* 2, a. 16.

[55] Code of Canon Law, c. 258, § 2.

[56] Ibid., c. 920.

[57] Holy Office, June 15, 1910.

[58] Holy Office, July 13, 1910.

[59] Benedict XV, *Motu proprio*, September 16, 1915; cf. Beringer-Steinen, *loc. cit.*, n. 201.

[60] Sacred Congregation of Indulgences, May 26, 1898; cf. Code of Canon Law, c. 239, § 1, n. 24; c. 274; c. 349, § 2, n. 2; c. 1166, § 3. Titular bishops cannot grant indulgences. Sacred Congregation for the Propagation of the Faith, August 23, 1852. Vicars and Prefects Apostolic, however, can grant an indulgence of fifty days. Code of Canon Law, c. 294, § 2.

[61] Code of Canon Law, c. 927.

[61a] Pontifical Commission, December 6, 1930 (*Acta Apost. Sed.* XXIII, 25).

[62] Code of Canon Law, c. 913.

[63] Cf. Beringer-Steinen, *Die Ablässe*[15] I, n. 65 and Supplement.

Article III. On The Conditions Required For Gaining Indulgences

For obtaining an indulgence three things are required: 1. the due intention; 2. the state of grace and true communion of saints; 3. the fulfillment of the prescribed works. Each of these must be treated separately.

550. 1. On the necessary intention. Since an indulgence is a benefit which everyone who has not positively contradicted it is presumed to accept, even the least true intention suffices for gaining it, at least if it is a question of an indulgence to be gained for oneself. Although, therefore, it is better and more advisable frequently to elicit an actual intention of gaining all indulgences, nevertheless this actual intention is not necessary. Any virtual intention suffices, and even a habitual intention, that is, one which was once had and was never retracted. Nor is it required that someone know that an indulgence is joined to some work or prayer. It suffices that the work be duly performed and that there be at least a habitual intention of gaining all indulgences. If it is a question of indulgences to be applied to the souls in purgatory, at least a virtual intention is required, which was once actually elicited and was never retracted. If someone wishes to apply some indulgence to a determinate soul, an actual explicit intention is certainly required. Otherwise a general intention suffices, for example, of applying all indulgences to the deceased detained in purgatory, or of applying them to that soul which is most abandoned.

551. 2. On the state of grace and perfect communion of saints. The following cannot gain indulgences:

a) **the non-baptized and the excommunicated**;[64] because these are not in the perfect communion of saints, nor are they participants in the goods which accrue to the living members of the Church;

b) **those who are in the state of mortal sin.** Concerning this matter St. Thomas teaches:[65] "A dead member does not receive influence from the other living members. But he who is in mortal sin is as a dead member. Therefore through indulgences he does not receive influence from the merits of the living members." Furthermore, an indulgence by its nature is the remission of temporal punishment. But how can temporal punishment be remitted if, because of mortal sin, eternal punishment still remains? Indeed, even venial sin not yet remitted prevents the whole temporal punishment from being condoned. The remaining punishments of other sins already destroyed can then be destroyed through indulgences, but not the punishment of venial sin

not yet remitted. This doctrine is valid also for indulgences to be applied to the souls in purgatory. Such, at least, is the more probable opinion. St. Thomas[66] says absolutely: "Indulgences, simply speaking, avail as much as they are proclaimed to avail, provided that on the part of the grantor there is authority, on the part of the recipient charity, and on the part of the cause piety, which comprises the honor of God and the utility of one's neighbor."

The intrinsic reason is that indulgences to be applied to the souls in purgatory must first be possessed by a living man, who then applies them to the souls in purgatory. But a sinner cannot acquire and possess any indulgence for himself.[67] Busembaum, Suarez, Escobar, and others hold the contrary opinion.[68] The Sacred Congregation, when asked several times whether the state of grace is necessary for gaining an indulgence for the dead, was unwilling to give an answer. On August 20, 1822, it answered: "Deferred"; and on February 22, 1847, it answered the same question: "Let approved authors be consulted." It is certain, however, that a sinner cannot apply any indulgence to the dead if this or a similar clause is contained in the grant: "He who with a contrite heart devoutly does this." For a sinner is not contrite.

If several works are prescribed for gaining an indulgence, it suffices that the **last work** be performed in the state of sanctifying grace; for then the indulgence is actually granted.[69]

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[64] Code of Canon Law, c. 925, § 1, and c. 2262.

[65] *Suppl.*, q. 27, a. 1.

[66] Ibid., q. 25, a. 2.

[67] St. Alphonsus (*Theol. mor.*, l. 6, n. 534) calls this opinion the truer one.

[68] Cited by St. Alphonsus, *loc. cit.* It seems certain that a Mass celebrated at a privileged altar (whether local or personal) by a sinful priest nevertheless produces a plenary indulgence. The reason is that the whole efficacy of the sacrifice of the Mass comes principally from the work performed (*ex opere operato*) and not from the work of the one performing (*ex opere operantis*).

[69] Thus St. Antoninus, Benedict XIV, and Theodore of the Holy Spirit; and the *Raccolta* (p. VII) and the Code of Canon Law, c. 925, § 1, agree.

552. 3. On fulfilling the prescribed works. The general rule is: **The prescribed works must be faithfully fulfilled according to the intention of him who granted the indulgence, so that a substantial change renders the indulgence to be gained invalid.** Slight changes or omissions, however, do not prevent the gaining of the indulgence, for example, the insertion of the individual mysteries in the recitation of the Rosary. In particular, the following must be noted:

a) **The prescribed works must be fulfilled personally.**

Only the alms to be given are excepted, which can also be given by another who has been asked. Thus, for example, parents can give the prescribed alms for their children. Since the prescribed works must be fulfilled personally, no one can apply an indulgence to another living person.[70] Such, at least, is the current discipline. Of itself nothing prevents the Pope from granting indulgences which can also be applied to other living persons (provided that they are in the state of grace), but no such grant yet exists. One person can indeed satisfy for another, and consequently pious men often offer their satisfactions to God for the faults of others; God accepts these satisfactions.[71] But since the application of indulgences depends upon the will of the Pope, who is the sole dispenser of the treasury of the Church, and he has not hitherto permitted one person to fulfill the prescribed works and another living person to receive the indulgence, and thus indulgences to be applied to other living persons, such an application is therefore invalid.[72] Moreover, scarcely any good may be hoped

for from this application; because it does not appear how the exercise of virtues would be promoted in those to whom indulgences would thus be applied.

b) **The prescribed works must be fulfilled according to the quantity, quality, mode, time, place, and so forth, as is required in the grant of the indulgence.** Therefore every "substantial" change or omission (whether culpable or not) renders the gaining of the indulgence invalid.[73]

c) **The works must be supererogatory, that is, not already prescribed from another source under sin, unless, however, the one who grants the indulgence has expressly established the contrary.**[74]

Hence, if fasting is prescribed for gaining some indulgence, such an indulgence cannot be acquired through the Lenten fast or another fast prescribed under sin. The reason is that by one action several obligations cannot be satisfied, each of which demands a distinct action. A further reason is that otherwise indulgences, which take the place of satisfactions due, would become too easy. There are, however, some exceptions: Thus a) by the Easter Communion someone can gain an indulgence for which Communion is necessary (a special Communion, however, is customarily required for gaining the jubilee indulgence);[75] b) through prayers and other pious works which are imposed by the confessor as a salutary penance, indulgences can be acquired if these works are enriched with indulgences;[76] c) since fasts, prayers, and other pious works prescribed in religious orders are not accustomed to oblige under sin, religious can gain indulgences through the same works and prayers.

The particular works which are customarily imposed for gaining indulgences are: a) confession, b) Communion, c) the visit of some church, d) certain prayers. A few things must be said concerning each.

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[70] Cf. Lugo, *De poenit.*, disp. 27, n. 77.

[71] St. Thomas, *Suppl.*, q. 71, aa. 1 and 4.

[72] Code of Canon Law, c. 930; Palmieri treats this matter excellently in *Analecta eccl.* III (1895), 89, and Gennari, *Consult. mor.* I, 90.

[73] *Raccolta*, p. VIII; cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 534, and Sacred Penitentiary, November 26, 1934 (*Acta Apost. Sed.* XXVI, 643).

[74] Code of Canon Law, c. 932.

[75] *Decreta authentica Congregationis Indulgentiarum*, n. 327 ad 1.

[76] Sacred Congregation of Indulgences, June 11, 1901; Code of Canon Law, c. 932.

553. a) On confession.

When confession is expressly enjoined in the grant of an indulgence, it is necessary even for those who have only venial sins.[77] A sacramental confession performed within the eight days before or after the day designated for gaining the indulgence suffices for gaining any indulgences.[78] For some dioceses, because of a scarcity of priests, an indult has been granted that someone can gain all indulgences, provided that he makes confession every fortnight. Thus, for example, it is in all Prussia and in the archdiocese of Freiburg. Indeed, the Christian faithful who are accustomed (unless they are legitimately impeded) either a) to confess at least twice in a month, or b) worthily to receive the most holy Eucharist daily (although they abstain from Holy Communion once or twice a week), can, without weekly confession, gain all indulgences which otherwise could not be acquired without confession (the jubilee indulgence excepted).[79] Therefore, for example, a priest who says Mass daily or almost daily can gain all indulgences, even if he is able to confess only once in three weeks.

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[77] *Decreta authentica Congregationis Indulgentiarum*, nn. 214; 253 ad 2; 359 ad 4.

[78] Code of Canon Law, c. 931.

[79] Ibid., § 3.

554. b) On Communion.

1. One and the same sacramental Communion suffices for gaining several indulgences granted for the same day, each of which requires Communion, provided, however, that the other prescribed works are performed as many times as the indulgence is to be acquired.[80] The reason is that it is not lawful for ordinary faithful to receive Communion several times on the same day; but on the other hand it would be harsh to deprive them of the manifold indulgence granted for such a day. Therefore, if the Church wishes to grant several indulgences on the same day, she must also permit one Communion to suffice for gaining them.
2. If an indulgence has been granted for a determinate day, it is always lawful to perform the prescribed Communion already on the preceding day or during the following octave.[81] Sometimes, however, still greater liberty is granted, for example, for the "As Often As" (*Toties Quoties*) indulgences of the Portiuncula and of the Rosary. Special rules must be observed for the jubilee indulgence.
3. If Communion and the visit of some church are prescribed for gaining an indulgence, by receiving Communion in this church and reciting the prayers both precepts are fulfilled at the same time; Communion can nevertheless be received in any church and afterward the visit can be made in the church specially prescribed.[82]
4. Those who, because of prolonged illness or another permanent physical impediment (for example, those confined in prison, those sailing at sea, and so forth), cannot receive Communion and perform the prescribed visit of a church, can, after making sacramental confession, obtain from the confessor a commutation of Communion and the visit into another pious work.[83]
5. Members of several confraternities, sodalities, and so forth can obtain a commutation of Communion and the visit still more easily, as is to be seen in the privileges of each confraternity.
6. Ordinarily the obligation of receiving Communion cannot be commuted into another work for children who have not yet approached the most holy Eucharist.

[80] *Decreta authentica Congregationis Indulgentiarum*, n. 291 ad 1, and Code of Canon Law, c. 933.

[81] Code of Canon Law, c. 931.

[82] *Raccolta*, pp. XIII and XVIII.

[83] Sacred Congregation of Indulgences, September 18, 1862, and January 16, 1886; Code of Canon Law, c. 935.

555. c) On the visit of a church.

1. The visit of a church is not required for gaining an indulgence unless this is expressly established in the grant. If the visit of a determinate church is prescribed, this church must certainly be visited; but if the visit of some church is prescribed in general, then it suffices and is required that any church properly so called, or at least a public oratory, be visited. The visit of some semipublic oratory, however, would not suffice apart from an indult, such as has been granted to the faithful living in community, as will be said below under n. 5. Although, therefore, all can fulfill the Sunday precept in a semipublic oratory by

hearing Mass, nevertheless not all fulfill the obligation of visiting a church annexed to the gaining of some indulgence.[84] Concerning the "As Often As" (*Toties-Quoties*) indulgences of the Portiuncula, the Sacred Penitentiary declared that the Christian faithful can gain them on August 2 in one church and, on the immediately following Sunday which may have been substituted according to n. VII of the decree of the Sacred Apostolic Penitentiary of July 10, 1924, in another church (Sacred Penitentiary, January 13, 1930: *Acta Apost. Sed.* XXII, 43).

2. For gaining several indulgences, for each of which a visit is prescribed, it does not suffice to make one longer visit, but as many distinct visits are required as the indulgences to be acquired. Therefore it is necessary that one leave the church after each visit.

3. If a visit is required on an appointed day, it can be made from noon of the preceding day until midnight which closes the appointed day.[85]

4. It is controverted among authors whether someone, by hearing Sunday Mass, can at the same time gain an indulgence for which the visit of a church is prescribed. The affirmative opinion is held by authors of great name, for example, by Reiffenstuel, Minderer, and others; but the negative opinion is the truer, since works for gaining indulgences must be supererogatory, as was said above.[86] If, however, someone remains in the church before or after Mass, he seems to satisfy the prescribed visit.

5. The faithful of either sex who, for the sake of instruction or education, or even of health, lead a common life in houses lacking a church or public chapel but established with the consent of the Ordinaries, as well as all persons dwelling there to minister to them, whenever for gaining indulgences the visit of some church in general, that is, one not determined, or of some undetermined public oratory is prescribed, can visit the chapel of their own house, in which they can lawfully fulfill the obligation of hearing Mass.[87] Those who live in perpetual enclosure are accustomed to have the privilege of gaining all indulgences for which even the visit of a determinate church is prescribed, if they visit their own church.[88]

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[84] *Decreta authentica Indulgentiarum*, n. 310; *Raccolta*, p. XV. Cf., however, below under n. 4.

[85] Code of Canon Law, c. 923.

[86] Cf. Beringer-Steinen, *Die Ablässe*[15] I, n. 124.

[87] Holy Office, January 14, 1909 (*Acta Apost. Sed.* I, 210); Code of Canon Law, c. 929.

[88] Sacred Congregation of Indulgences, July 8, 1896.

556. d) On the prayers to be recited.

1. If certain prayers are determined for gaining an indulgence, it is required that they be recited orally and not only mentally, unless, however, someone is assisting at public prayers enriched with indulgences.[89] The prayers can be recited in any language, provided that the translation has been approved by some local Ordinary.

2. The prayers to be recited for the intention of the Supreme Pontiff are left to the free determination of the one praying. Hence any supererogatory prayer (therefore not the recitation of the breviary already prescribed from another source) suffices: one Our Father, Hail Mary, Glory Be, or any other prayer.[90] The intention of the Supreme Pontiff according to which the prayers are to be recited is: the exaltation of Holy Mother Church, the extirpation of heresies, the propagation of the faith, the conversion of

sinners, and peace among Christian princes. But it is not required that someone have explicitly in mind all these individual intentions; it suffices that he pray in general according to the intention of the Supreme Pontiff.[91]

3. It is lawful to recite the prescribed prayers alternately with a companion, for example, the Rosary, the Our Father, and so forth; but any addition, subtraction, or interpolation prevents the gaining of the indulgence.[92]

4. For the mute it has been granted: a) if public prayers are prescribed, they must join themselves to the people and pray mentally; b) if private prayers are prescribed, they can recall them mentally, express them by signs, or merely run through them with their eyes;[93] c) if the visit of a church is prescribed, it suffices that they visit this church and pray there mentally.

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[89] Sacred Congregation of Indulgences, September 13, 1888, and Code of Canon Law, cc. 934 and 936.

[90] Cf. Sacred Penitentiary, September 20, 1933 (*Acta Apost. Sed.* XXV, 446). For gaining the "As Often As" (*Toties-Quoties*) indulgences, six Our Fathers, Hail Marys, and Glory Bes are required. Cf. Sacred Penitentiary, July 10, 1924 (*Acta Apost. Sed.* XVI, 347), January 13, 1930 (*Acta Apost. Sed.* XXII, 43), and July 5, 1930 (*Acta Apost. Sed.* XXII, 363).

[91] *Decreta authentica Congregationis Indulgentiarum*, n. 344 ad 3.

[92] *Decreta authentica Congregationis Indulgentiarum*, n. 249 ad 4; Code of Canon Law, c. 934, § 2. In the recitation of the Rosary, however, it is lawful also to add after each Hail Mary the mystery to be meditated upon. Sacred Penitentiary, January 22, 1921 (*Acta Apost. Sed.* XIII, 164).

[93] Code of Canon Law, c. 736.

557. Scholion. On the collections pertaining to the matter of indulgences. It has already been said above that the matter of indulgences was devolved upon the Holy Office as regards dogmatic doctrine, and upon the Sacred Penitentiary as regards use and concession. The Congregation of Indulgences was suppressed by Pius X through the Constitution *Sapienti consilio* of June 29, 1908. There exist two authentic collections concerning indulgences. The first is the *Collection of Prayers and Pious Works for Which the Holy Indulgences Have Been Granted by the Supreme Pontiffs* (*Raccolta di orazioni e pie opere per le quali sono state concesse dai Sommi Pontefici le ss. indulgenze*), edited by Canon Telesphorus Galli in 1807. A new and more complete edition of this work appeared in 1898. All the indulgences contained in this collection are certainly authentic; but from this it is not yet lawful to conclude that all other indulgences are apocryphal, especially if they were granted to determinate places or confraternities. All the indulgences which the *Raccolta* presents are applicable to the souls in purgatory. The second authentic collection is the *Authentic Decrees of the Sacred Congregation Set over Indulgences and Sacred Relics from the Year 1668 to the Year 1882, Published by the Command and Authority of Our Most Holy Lord Pope Leo XIII. Ratisbon, 1883* (*Decreta authentica S. Congregationis Indulgentiis sacrisque Reliquiis praepositae ab anno 1668 ad annum 1882 edita iussu et auctoritate Sanctissimi D. N. Leonis PP. XIII. Ratisbonae 1883*). This collection contains the authentic decrees of the Sacred Congregation of Indulgences, but since the year 1883 very many new decrees concerning indulgences have been issued which are not contained in this collection. A new authentic edition is greatly desired.

Article IV. On The Jubilee Indulgence

558. Historical notes. The first jubilee was granted by Boniface VIII in the year 1300. Yet in the Old Testament there was already a jubilee year, namely, every fiftieth year, in which slaves were set free and contracted debts were remitted.[94] The name *jubilee* is taken from the word *iobel*, which signifies a sounding

horn or trumpet, because the priests had to sound the trumpet in the forty-ninth year to begin the jubilee. Boniface VIII established that a jubilee should be held every hundredth year, but Clement VI already (1343) commanded that a jubilee be celebrated every fiftieth year. Finally, Paul II (1470) ordained that there should be a jubilee year every twenty-fifth year, and in fact, from the year 1475 down to our own days, a jubilee has been celebrated every twenty-fifth year.

Besides this ordinary jubilee, extraordinary jubilees have rather often been granted. Thus, for example, every Pope at the beginning of his pontificate is accustomed to grant an extraordinary jubilee; sometimes jubilees are also granted, not for the whole world, but for a particular place. From the history of many centuries it is evident that the fruits of the jubilee are most abundant for the Catholic religion and the spiritual good of the faithful. Therefore the jubilee year is not undeservedly called the Holy Year.

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[94] Lev. 25:8 ff.

559. Notion. A jubilee is nothing other than a holy year in which, under certain conditions, the faithful can gain a plenary indulgence, and almost every reservation of jurisdiction in the sacrament of penance ceases. A jubilee therefore includes two things: a plenary indulgence and an extension of jurisdiction granted to confessors. The conditions which are customarily prescribed in an ordinary jubilee are confession, Communion, and the visitation of churches; for an extraordinary jubilee, fasting and almsgiving are customarily required in addition.

560. Conditions required for gaining the jubilee. Very few things are to be said about this matter, because these conditions are customarily determined accurately in each jubilee Bull, and, if a doubt remains, the Holy Office or the Sacred Penitentiary will give clarifications. Furthermore, the same conditions are not required for every jubilee. It is useful briefly to note the following:

1. The rules to be observed in an ordinary or extraordinary jubilee are customarily almost the same as those which Benedict XIV established for the jubilee of the years 1750 and 1751.[95] Therefore the Sacred Congregation of Indulgences answered on March 15, 1852, that all the rules established by Benedict XIV still remain in force unless they have been expressly revoked.
2. Works already owed from another source do not suffice for gaining the jubilee; hence annual confession and Easter Communion cannot at the same time serve for gaining the jubilee indulgence. Viaticum, however, suffices for gaining the jubilee.[96]
3. He who, after having made confession, has fallen into mortal sin before he has performed the last prescribed work must repeat confession, nor does it suffice to elicit perfect contrition. A general confession is not required for gaining the jubilee, but it is often to be counseled.
4. Particular statutes are customarily given in each jubilee concerning the visits of churches to be made; only this is to be noted generally: if several churches are to be visited once in a day, the day can be reckoned either according to the civil manner, that is, from midnight to the following midnight, or according to the ecclesiastical manner, that is, from noon on the preceding day until twilight on the following day.[97]
5. The fast which is customarily prescribed in an extraordinary jubilee is a strict fast, that is, with abstinence from meat, eggs, and milk products. Not infrequently, however, a milder practice is permitted. All who wish to gain the jubilee indulgence must observe the jubilee fast, therefore even the elderly, children, and so forth, unless, however, a special dispensation has been granted.[98]

6. Alms sometimes prescribed in a jubilee must be given by all, even by the poor, unless they have obtained a commutation into another work. According to the modern discipline, the individual bishops, by the authority of the Supreme Pontiff, are customarily to determine the amount of alms to be given.

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[95] These rules are contained in the following Bulls: *Peregrinantes*, May 5, 1749; *Cum nos semper*, May 17, 1749; *Convocatis*, November 25, 1749; *Inter praeteritas*, December 3, 1749; *Paterna caritas*, December 17, 1749; *Benedictus Deus*, December 25, 1750.

[96] Cf. Sacred Penitentiary, March 28, 1900.

[97] Ibid., February 20, 1900.

[98] *Decreta authentica Congregationis Indulgentiarum*, n. 425 ad 8.

561. The special faculties granted to confessors during a jubilee are:

1. The faculty of absolving from almost all reserved sins and censures, provided, however, that a salutary penance and other things to be enjoined by law are imposed. By law, however, there are to be enjoined, for example, the obligation of restitution if the right of one's neighbor has been injured, the abjuration of heresy, the reparation of scandal, and so forth. Nevertheless, certain cases are customarily excluded from the faculty of absolving, for example, the absolution of one's own accomplice; the absolution of that priest who, by the absolution of his own accomplice, incurred an excommunication reserved in a most special manner to the Supreme Pontiff, at least if this crime was committed three or more times; the absolution of those who have been excommunicated by name by the Supreme Pontiff, and so forth. The Bull of each jubilee must be consulted.
2. The faculty of absolving even regulars and nuns from reserved cases.
3. The faculty of commuting vows, even sworn vows, not excepting a vow not to seek commutation. The following, however, are customarily excepted: a) vows made in favor of a third party and accepted by him (unless, however, he has renounced his right); b) penal vows emitted to remove the danger of sin, unless, however, the commutation is made into a work which removes the danger of sin equally efficaciously. Commutation is not the same as dispensation, and consequently the confessor must impose another work in place of the object of the vow, which can indeed be lighter, but not notably lighter.
4. The faculty of dispensing from irregularities arising from a wholly occult delict.
5. The faculty of dispensing from certain impediments of marriage for the internal forum, for example, from the impediment of crime (provided, however, that neither party plotted against the spouse's life).
6. The faculty of commuting the works prescribed for gaining the jubilee indulgence into another work of nearly the same value. In general, Communion, confession, and prayers according to the intention of the Supreme Pontiff cannot be commuted; but attention must be given to the clauses of the Bull granting the jubilee. For what older authors taught concerning the faculties granted has not infrequently been greatly changed in recent jubilees. If it is granted in that Bull that the faithful may gain the jubilee several times, the faculty of commuting the enjoined works several times is also granted.
7. A confessor cannot use these faculties except with those who have a sincere will to fulfill all things necessary for gaining the jubilee. Nevertheless, if a penitent who first had this sincere will afterward neglected the prescribed works, he can enjoy the dispensation obtained; he sins venially, however.[99]

Through a sacrilegious confession reservations and censures are not removed, because then the penitent evidently does not have a sincere will to gain the jubilee.[100]

[99] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 537.

[100] Benedict XIV, *Inter praeteritos*, § 24.

562. Suspension of graces. One of the principal ends of a jubilee is to induce the faithful to make a pilgrimage during the jubilee to the tombs of the Apostles Peter and Paul existing at Rome. Therefore, during the Holy Year, many privileges and graces are customarily suspended outside the City (with a few places excepted). In the City privileges and graces are not suspended. When the Holy Year has elapsed, however, all privileges and graces revive. Therefore the following are customarily suspended:

1. All indulgences, both plenary and partial, granted by the Roman Pontiff (but not those given by an inferior prelate), with the following excepted:

a) indulgences applicable to the deceased; indeed, all indulgences which at other times can be acquired only by the living can, during the Holy Year, be applied not to the living, but nevertheless to the deceased.

b) the indulgence at the moment of death.

c) indulgences granted for the prayer *The Angel of the Lord.*

d) the indulgence of the Portiuncula to be gained at Assisi. Outside Assisi, however, the Portiuncula indulgence, like all other "As Often As" (*Toties Quoties*) indulgences, can be acquired for the deceased alone. There are also certain other indulgences which are not suspended during the time of the jubilee.[101]

2. Many faculties granted by the Holy See, for example, the faculties of absolving from cases and censures reserved to the Roman Pontiff, of commuting vows, of dispensing from irregularities, and of dispensing from impediments of marriage. Faculties granted by the law itself are customarily to remain in force, for example, the faculty of absolving in more urgent cases from reserved sins and censures. For the rest, almost nothing certain can be said concerning these matters, since, according to the discipline in force, the old customs are not always observed. Therefore the one certain rule is the Bull itself announcing the jubilee and determining the individual prescriptions.

[101] Beringer-Steinen, *Die Ablässe*[15] I, n. 1214 ff.

Article V. On Certain Indulgences In Particular

Preliminary note. The number of indulgences is so great and the rules to be observed in gaining the individual indulgences are so manifold that it is altogether impossible to present them in a Manual of Moral Theology. Therefore works which treat professedly of indulgences must be consulted, such as, for example, Beringer-Steinen, Lepicier, Mocchegiani, and so forth. Here we briefly indicate two indulgences which frequently occur in priestly practice, namely, the indulgence at the moment of death and that of the privileged altar.

563. a) The indulgence or blessing at the moment of death.

Nature. Many confraternities grant their members a plenary indulgence at the moment of death. Similarly, many others can gain a plenary indulgence at the moment of death, for example, those who keep certain

blessed Rosaries, crosses, or medals. We are not speaking here of those indulgences, but of the papal blessing at the moment of death, which the Roman Pontiff grants with a plenary indulgence.

1. According to the discipline in force, any priest who assists the sick can impart this blessing.[102]
2. It cannot be given to hardened excommunicates and public sinners; it can and must, however, be given to all those who are capable of receiving sacramental absolution.[103]
3. The conditions required that someone validly receive it are: a) The state of grace; and therefore at least an act of contrition must be elicited by the sinner; commonly, however, this blessing is imparted after confession and Viaticum. b) The dying person must at least mentally invoke the Most Holy Name of Jesus[104] and accept death from the hand of God with an equable and willing mind;[105] therefore the priest should prudently admonish the dying person concerning this twofold act. c) The formula prescribed by Benedict XIV must be employed under pain of nullity. Hence even those priests, for example, regulars, who follow a particular rite must employ the formula prescribed in the Roman Ritual; regulars can, however, add the name of their own founder in the *Confiteor*.[106] If the papal blessing is given after Viaticum and Extreme Unction, the *Confiteor* must be repeated, so that then the *Confiteor* is to be recited three times.[107] "But if the sick person is so near death that time does not permit either the making of a general confession or the recitation of the preceding prayers, let the priest immediately impart the blessing to him," beginning with the words: "Our Lord," and so forth.[108]
4. The indulgence annexed to the papal blessing is acquired at the moment when death actually occurs, and consequently during the same illness this blessing cannot be given more than once, even if Viaticum and Extreme Unction are given several times. But if the sick person recovers and afterward, for any cause whatever, falls into a new danger of death, it is indeed lawful to repeat the papal blessing;[109] but this is not necessary, because the plenary indulgence is acquired, not at the time when the blessing is imparted, but at the time when death actually follows, as has been said.

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[102] Code of Canon Law, c. 468, § 2.

[103] Cf. Roman Ritual. This blessing can also be given to boys capable of malice, although they have not yet been admitted to First Communion.

[104] This is a condition *sine qua non*; cf. *Decreta authentica Indulgentiarum*, n. 237 ad 7.

[105] Thus the Bull *Pia mater*.

[106] Sacred Congregation of Indulgences, May 7, 1882.

[107] *Decreta authentica Indulgentiarum*, n. 286 ad 6.

[108] Cf. Beringer-Steinen, *loc. cit.* I, n. 1028.

[109] Thus expressly the Sacred Congregation of Indulgences (*Decreta authentica Indulgentiarum*, nn. 263 and 300).

564. b) The indulgence of a privileged altar.

Notion and species. A privileged altar, as we speak of it here, is nothing other than a plenary indulgence annexed to a Mass said at a certain altar or by a privileged priest.

It is distinguished, first, into a privileged altar **for the living and the deceased**, and a privileged altar **for the deceased alone**. Today a privileged altar for the living and the deceased is very rarely granted. But if the inscription "privileged altar for the living and the deceased" is found on some altar, it is to be interpreted in this way: a plenary indulgence is granted both for the living (after the manner of jurisdiction), if the sacrifice

of the Mass is applied for the living at that altar, and for the deceased (after the manner of suffrage), if it is applied for them.[110] A privileged altar for the deceased is a plenary indulgence annexed to a Mass applied for some deceased person. These privileged altars are now most frequent.[111]

It is distinguished, secondly, into a local, personal, and mixed privileged altar. A **local** privilege is annexed to a determinate fixed altar, so that all who celebrate at it can enjoy this privilege. A **personal** privilege is granted, not to some determinate altar, but to the priest himself, so that, celebrating Mass at any altar whatever, he may apply a plenary indulgence for the deceased person for whom he applies the Mass. All priests, for example, who have made the "heroic act of charity" enjoy a privilege of this kind.[112] A **mixed** privileged altar is called one which is partly local and partly personal; for example, an indult is granted that a plenary indulgence be annexed to Masses which are celebrated in this church for deceased members of such a confraternity.[113]

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[110] Sacred Congregation of Indulgences, August 25, 1897.

[111] Cf. Code of Canon Law, cc. 916 and 917.

[112] Sacred Congregation of Indulgences, September 30, 1852.

[113] Sometimes altars are granted after the manner of the altar of St. Gregory, which also have certain graces. We are not speaking of these here. Cf. Beringer-Steinen I, n. 975.

565. Conditions required for a privileged altar.

1. A local privileged altar must be fixed and not portable. In the matter of indulgences, however, all those conditions which are necessary for a fixed altar in the liturgical sense are not required for a fixed altar. For a privileged altar it suffices that it be in some manner stable and dedicated to some saint, containing a consecrated portable altar in the middle. Therefore it is not required that it be consecrated and that its table consist of one whole stone.[114] Sometimes by a special indult it is granted that even a portable altar be privileged.[115] Nothing prevents a personal privileged altar from being portable.

2. The plenary indulgence is not acquired: a) unless the Mass and the indulgence are applied for the same deceased person. Therefore the application of the Mass and the plenary indulgence cannot be separated from one another, so that the Mass is applied for A and the indulgence bestowed upon B;[116] b) unless it is applied to **one** soul, although the Mass is applied for many.[117] This holds also if, on the Commemoration of All the Faithful Departed, a priest applies the Mass for all the souls in purgatory; and therefore it is to be counseled that the celebrating priest then designate in some manner the soul to whom he wishes to apply the indulgence, for example, to the most abandoned soul, or to the soul which God wishes to liberate first, and so forth; c) unless both the celebrating priest and the faithful person offering the stipend have elicited at least a virtual intention of gaining this indulgence for the deceased.[118]

3. A priest cannot accept a larger stipend for this sole reason, that he is to say the Mass at a privileged altar.[119] If a priest obliged to say a Mass at a privileged altar has forgotten or neglected this, he has not, of itself, satisfied the obligation of justice, nor can he satisfy it by applying another plenary indulgence to the deceased for whom he ought to have celebrated at the privileged altar.[120] The reason is that other plenary indulgences do not seem to be as infallible and efficacious for the deceased as that which is joined with the sacrifice of the Mass. In practice, it is sometimes not expedient to accept Mass stipends with the strict obligation of celebrating them at a privileged altar, because it can easily happen that, for one reason or another, those Masses are not celebrated at a privileged altar. Then difficulties by no

means small would arise. Indults of a privileged altar are not always of the same amplitude; therefore attention must first of all be given to the clauses added.

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[114] Sacred Congregation of Indulgences, July 18, 1902.

[115] Sacred Congregation of Indulgences, January 13, 1841.

[116] Sacred Congregation of Indulgences, August 25, 1897, and January 23, 1901.

[117] Sacred Congregation of Indulgences, December 19, 1885; Sacred Penitentiary, July 6, 1917 (*Acta Apost. Sed.* IX, 440).

[118] Holy Office, June 16, 1915 (*Acta Apost. Sed.* VII, 410).

[119] *Decreta authentica Indulgentiarum*, n. 228; Code of Canon Law, c. 918, § 2.

[120] "Whether one who, for any reason whatever, does not gain the indulgence of a privileged altar can satisfy by applying another plenary indulgence to the deceased for whom he ought to have celebrated at the privileged altar? - In the negative." Thus the Sacred Congregation of Indulgences, May 2, 1852 (*Decreta authentica Indulgentiarum*, n. 357 ad 2). This declaration must be observed, whatever the same Congregation otherwise answered for a particular case on February 22, 1847, as it itself explained on July 24, 1885. Hence the opposite opinion no longer seems sufficiently safe in practice. Cf. St. Alphonsus (*Theol. mor.*, l. 6, n. 329, note II, and the note added by Gaudé).

566. Note. For gaining the indulgence of a privileged altar, a Requiem Mass, or a Mass of the feria or vigil with the proper collect for the deceased, is no longer required under pain of nullity (this is nevertheless laudably done when it is lawful and fitting out of piety toward the deceased). Thus the Holy Office, February 20, 1913.[121] Therefore the earlier decrees establishing the contrary have been abolished, and by any Mass whatever (the other conditions having been fulfilled) the indulgence of a privileged altar can be acquired.

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[121] *Acta Apost. Sed.* V, 122.

567. Scholion. Rules for distinguishing true indulgences from apocryphal ones. Although the Supreme Pontiffs at all times have treated the whole matter of indulgences with the greatest vigilance, nevertheless apocryphal indulgences are sometimes circulated, to the harm of the faithful and the derision of the enemies of the Church. Therefore, on August 10, 1899, Leo XIII approved nine rules prudently elaborated by the Sacred Congregation of Indulgences for distinguishing true indulgences from apocryphal ones:[122]

Rule I. "All indulgences contained in the latest collection edited by the Sacred Congregation of Indulgences are authentic." This rule concerns the collection commonly called the *Raccolta.*[123]

Rule II. "General indulgences which are not presented in the aforesaid collection, or which are said to have been granted after the collection was edited, are to be held as authentic only when the autograph document of their grant has been reviewed by the Sacred Congregation of Indulgences, to which it must be presented under pain of nullity before it is published." This rule has now been changed slightly by the Code of Canon Law, c. 920; for all indulgences, whether general or particular (provided that they do not concern only the persons of the petitioners themselves), must be reviewed by the Sacred Penitentiary, and this under pain of nullity. Indulgences and faculties granted by the Sacred Congregation for the Propagation of the Faith, however, do not need such review,[124] as was already said above under n. 549.

Rule III. "Indulgences granted to orders and religious congregations, archconfraternities, confraternities, archsodalities, sodalities, pious unions, pious societies, certain more celebrated churches, pious places, and objects of devotion are to be held as authentic when they are contained in summaries reviewed and approved by the Sacred Congregation of Indulgences and printed by its authority or permission."

Rule IV. "Indulgences, whether general or particular, which are contained in books, booklets, summaries, sheets, small papers, or even printed images without the approval of the competent authority are not to be held as authentic; this approval is to be granted after diligent review and distinctly expressed."

The competent authority in general is the Sacred Penitentiary, with the following cases excepted, however, in which even the approval of the Ordinary suffices:

1. If it is a question of publishing the grant of some particular indulgence, or of publishing a summary of indulgences which has been taken from only one apostolic rescript.
2. If it is a question of a new edition of some summary already published by the authority of the Sacred Penitentiary, with the following excepted, however: a) the list of apostolic indulgences; b) any translation of the complete collection of the *Raccolta*. In these two cases the permission of the Sacred Penitentiary is always required.
3. If it is a question of publishing a summary of those confraternities which either have been committed to some religious institute or are aggregated to an archconfraternity; for then the review and approval of that bishop in whose diocese the institutes or archconfraternities have their principal seat suffices.[125]

Rule V. "All indulgences of a thousand or several thousand years, at whatever time they are said to have been granted, are apocryphal or now altogether revoked."

Rule VI. "Plenary indulgences which are asserted to have been granted to those reciting only a few words are to be held suspect, with indulgences at the moment of death excepted."

The Supreme Pontiffs have been accustomed with great liberality to grant a plenary indulgence to the Christian faithful placed at the moment of death, because then a man most needs indulgences, and ordinarily time and strength for performing greater works are lacking.

Rule VII. "Indulgences are to be rejected as apocryphal when they are circulated in printed or handwritten booklets, sheets, or small papers, in which, from slight or even superstitious causes and uncertain revelations, or under illusory conditions, indulgences and graces exceeding measure and manner are promised."

An example of such a superstitious and false prayer is that prayer which is said to have been found in the tomb of Our Lord Jesus Christ and once revealed to Saints Elizabeth, Mechtilde, and Bridget, and which was rejected as apocryphal by the Sacred Congregation of Indulgences on May 26, 1898.

Rule VIII. "Sheets and booklets in which liberation of one or more souls from purgatory is promised to the faithful reciting one or two prayers are to be rejected as fictitious; and the indulgences which are customarily added to the said promise are to be held as apocryphal."

Although in past centuries the Supreme Pontiffs sometimes granted an indulgence for the liberation of a certain soul, nevertheless this signifies nothing other than that a plenary indulgence was granted. The Supreme Pontiffs, however, never granted indulgences for liberating several souls from purgatory at the same time, and still less for a few short prayers.

Rule IX. "Indulgences asserted to have been granted more recently are to be held as apocryphal or at least gravely suspect if they are extended to an unusual number of years or days."

For a long time now the Church has granted partial indulgences, for example, of 30, 100, or 300 days, or of 1, 2, 3, 7 years, and so forth; but it is altogether foreign to the practice of the Holy See to grant, for example, an

indulgence of 1,080 days, as was read to be annexed to a certain medal. Therefore the Sacred Congregation of Indulgences declared this indulgence apocryphal on February 23, 1856.[126] In our times, certain persons, led by bad zeal, calculate together all the indulgences granted to some prayer or confraternity, so that, this calculation having been made, at once a thousand or several thousand days and years of indulgence result. This manner of acting is to be reproved; for it often arises from an insane rivalry wishing thus to show that the indulgences granted to some confraternity are greater than those which have been granted to similar confraternities. It is to be desired that bishops by no means permit sheets or booklets of this kind to be printed, although the calculation may appear to correspond to the truth in every respect.[127]

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[122] Cf. *Analecta eccl.* VII (1899), 494 ff., and the commentaries added there.

[123] Cf. above, n. 557.

[124] Holy Office, July 13, 1910 (*Acta Apost. Sed.* II, 575).

[125] *Decreta authentica Congregationis Indulgentiarum*, n. 388.

[126] *Decreta authentica Indulgentiarum*, n. 370.

[127] Thus Beringer-Steinen rightly says, *loc. cit.* I, n. 221, explaining this ninth rule.

Treatise VIII. On The Sacrament Of Extreme Unction

568. Preliminary matters. Just as Confirmation is a certain complement of Baptism, so Extreme Unction is, as it were, the consummation of Penance. In Confirmation a baptized man is strengthened for strenuously defending the faith; in Extreme Unction, however, a man now about to depart from this world is strengthened for victoriously carrying through the final combat. St. Bonaventure beautifully and concisely institutes a comparison between Confirmation and Extreme Unction, saying:[1] "From the variation of the end in Confirmation and Extreme Unction there arises diversity ... **in efficacy**, because the former sacrament disposes one to struggle better, the latter to fly away more swiftly; **in matter**, because the former is in oil mixed with balsam, the latter, however, in pure oil; **in form**, because the former is in the indicative, the latter, however, in the deprecative; **in place**, because the former is on the forehead, the latter, however, on several parts; **in time**, because the former is in health, the latter, however, in sickness; **in the recipient**, because the former is not only for adults but also for children, the latter, however, only for adults; **in the giver**, because the former is from bishops, the latter, however, from any priests."

Besides the authors cited above in the first treatise, cf. Ignatius Schmitz, *De effectibus sacramenti extremae unctionis*, Freiburg im Breisgau, 1893; J. Kern, *De sacramento extremae unctionis*, Ratisbon, 1907; M. Heimbucher, *Die heilige Ölung*, Ratisbon, 1888.

We shall treat: 1. the notion and existence of Extreme Unction; 2. its matter and form; 3. its effects; 4. its subject; 5. its minister.

[1] *Breviloquium*, 6, 11.

Article I. On The Notion And Existence Of The Sacrament Of Extreme Unction

569. Name. The sacrament of Extreme Unction has been called by many names, for example, holy oil, oil of blessing, oil of unction, the sacrament of those departing, and so forth. By the Greeks, however, it is called ἅγιον ἔλαιον, εὐχέλαιον, ὑστεραχρίσις, θεῖον μύρον, and so forth.

Definition. Extreme Unction is a sacrament of the New Law by which, through the anointing of blessed oil and the prayer of a priest, the salvation of soul and sometimes of body is conferred upon a man capable of malice and gravely ill.

This definition will become clearer from what is to be said below concerning the matter, form, effects, and subject of this sacrament.

Errors. Although the Waldensians and Wycliffites perhaps did not totally deny the existence of this sacrament, nevertheless they spoke of it rather irreverently.[2] Luther, in the sermon *On the New Testament* (in the year 1520), n. 24, still enumerates Extreme Unction among the sacraments, but in the book *On the Babylonian Captivity* (in the same year 1520) he rejects this sacrament, although he admits it as a kind of sacramental. Calvin,[3] however, calls Extreme Unction "histrionic hypocrisy."

[2] Cf. Billuart, *De extr. unct.*, diss. unica, a. 1.

[3] *Instit.*, l. 4, c. 19, § 18.

570. Thesis. Extreme Unction is a true sacrament of the New Testament.

It is defined as of faith. The Council of Florence[4] says: "The fifth sacrament is Extreme Unction, whose matter is olive oil blessed by a bishop." The Council of Trent[5] defines: "If anyone says that Extreme Unction is not truly and properly a sacrament instituted by Christ Our Lord and promulgated by the blessed Apostle James, but only a rite received from the Fathers or a human invention, let him be anathema."

Proof 1. From Sacred Scripture. "Is anyone among you sick? Let him bring in the priests of the Church, and let them pray over him, anointing him with oil in the name of the Lord; and the prayer of faith shall save the sick man, and the Lord shall raise him up; and if he be in sins, they shall be forgiven him."[6] Almost all Protestants, from Martin Chemnitz down to Hase, explain this text of the gift of healings, which was signified by the anointing with oil. But this explanation is forced and false. For: a) If bodily healing were treated here, there is no reason why St. James should command the priests to be called. For then physicians, or those who have the gift of healings, which priests did not always exercise, ought rather to be called. b) The gift of healings was given not only for the sick who were bedridden, but also for the lame, blind, deaf, and so forth. Why, therefore, does St. James speak only of the sick? c) St. James adds: "And if he [the sick man] be in sins, they shall be forgiven him."[7] But it is impossible for sins to be infallibly remitted by some natural anointing or prayer. Protestants indeed think that sins are remitted neither through the anointing nor through the prayer, but through the faith of the man anointed; but this faith is asserted gratuitously, since the Apostle speaks of the prayer of faith of the priests, and not of the man anointed.

Since these things are so, the argument from the cited text of St. James is constructed thus: A sacrament is a sensible sign efficacious of grace, permanently instituted by Christ. But Extreme Unction is such a sign. Therefore Extreme Unction is a true sacrament. **Proof of the minor:** Extreme Unction is: a) a sensible sign, for a sensible anointing and the words of the priest are employed; b) it effects grace, because it remits sins, if any are present; c) it was permanently instituted by Christ. This is evident *a priori*, because no one except God alone can annex grace to a sensible sign. Furthermore, St. James speaks neither to one church nor for one time, but simply, without any limitation. Moreover, he could not do this except by the authority of God.

If it is further asked when Christ instituted this sacrament, theologians do not agree. Some (Maldonatus, Sainte-Beuve, and others) think that Christ instituted this sacrament already before the Passion, since it is said of the Apostles in Mark 6:13: "They anointed with oil many who were sick and healed them"; but this opinion is deservedly rejected, since the Apostles were not yet priests at that time and consequently could not administer this sacrament. Therefore the better and more common opinion teaches that Extreme Unction was instituted by Christ together with the sacrament of Penance after the Resurrection and was afterward promulgated by St. James.

Proof 2. From tradition. Origen[8] (third century) presents Extreme Unction as a complement of the sacrament of Penance. Innocent I (402-417), when asked by Decentius, Bishop of Gubbio, concerning certain doubts about this sacrament, responds: 1. that the words of St. James are to be understood of the faithful who are sick; 2. that this anointing can be performed both by bishops and by priests; 3. that this anointing is not to be administered to public penitents, "because it is a kind of sacrament. For to those to whom the other sacraments are denied, how is it thought that one kind can be granted?"[9] St. Gregory the Great (sixth century) not only knows this sacrament, but in his Sacramentary prescribes the manner of administering it.[10] For other testimonies of the ancients, see Drouven.[11] The Scholastics of the twelfth and thirteenth centuries, and thereafter all Catholic authors, hold Extreme Unction to be a true sacrament, although some (Hugh of St. Victor, the Master of the Sentences, St. Bonaventure) teach that it was instituted not by Christ, but by the

Apostle St. James under the inspiration of the Holy Spirit. This opinion, however, can no longer be maintained today because of the canon of the Council of Trent already cited above.[12]

Proof 3. From prescription, that is, from the consent of the Eastern Churches, in whose most ancient Euchologia the rite of this sacrament is found.[13]

Proof 4. From the reason of fittingness. Extreme Unction very fittingly assists man in the final danger of death. For it can be administered even to those deprived of their senses, upon whom another sacrament can scarcely, if at all, be conferred. Furthermore, in agony man most needs assistance. Certainly assistance perhaps is already afforded through the Eucharist and Penance, but perhaps the remnants of sins remain. Moreover, the Eucharist cannot always be given to the dying person. Therefore it is most fitting that Christ, who during His earthly life assisted so many sick persons, should have instituted Extreme Unction as a permanent sacrament and the best assistance for a happy passage into eternal life.

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[4] Denz., n. 700.

[5] Sess. 14, can. 1, *De extr. unct.* (Denz., n. 926).

[6] James 5:14 ff.

[7] κἂν ἁμαρτίας ᾖ πεποιηκώς, ἀφεθήσεται αὐτῷ.

[8] Hom. 2 in Lev., n. 4 (Migne, *Patr. lat.* 12, 419). For an explanation of this text, cf. Kern, *De sacr. extr. unct.*, p. 53.

[9] Ep. 25 to Decentius, n. 8 (Denz., n. 99).

[10] In Migne, *Patr. lat.* 78, 233.

[11] *De re sacr.*, l. 7, q. 1, c. 1.

[12] P. 408, note 5.

[13] Cf. Goar, *Euchol.*, p. 408 ff., and Drouven, *loc. cit.*

Article II. On The Matter And Form Of Extreme Unction

571. 1. The valid remote matter is: a) olive oil, b) blessed by a bishop, and c) specially blessed as the oil of the sick. The first part of this proposition is certain, the second most probable, the third more true.

a) For St. James said: "Anointing him with oil," and by the usage of the Church olive oil is understood under the name of oil.

b) From the words of the Council of Florence cited above it is evident that the oil is to be blessed by a bishop. This episcopal blessing indeed appears to be necessary for the validity of the sacrament. Therefore the Holy Office declared the contrary opinion rash and proximate to error,[14] and declared oil blessed by a priest to be matter unfit for confecting the sacrament of Extreme Unction. Hence, not even in necessity can a priest administer this sacrament with oil blessed by himself, when it is a question of a dying person deprived of his senses who previously gave no sign of sorrow and consequently could be absolved only very doubtfully. Thus the Holy Office, May 15, 1878.[15]

Nevertheless, by delegation of the Supreme Pontiff (whether express or tacit), even a simple priest can bless the oil.[16] Certain missionaries in distant regions obtain the express delegation of the Supreme Pontiff; but all

priests of the united Greek rite, who according to the most ancient discipline are accustomed to bless the oil for administering Extreme Unction, have tacit delegation.

c) The oil is not only to be blessed by a bishop, but is also to be blessed **specially in order to this sacrament**, or as the oil of the sick. Thus the more common and more true opinion.[17] Hence, outside a case of urgent necessity, this sacrament cannot licitly be administered with the oil of catechumens or with chrism, since these are doubtful matter. Cf. above, n. 154, 4.

[14] Holy Office, January 13, 1611, under Paul V (Denz., n. 1628), and September 14, 1842 (*Collect. de Prop. Fide*, n. 956).

[15] *Collect. de Prop. Fide*, n. 1494.

[16] Benedict XIV, Bull *Etsi pastoralis*, May 26, 1742, and *De syn. dioec.*, l. 8, c. 1, n. 4; Code of Canon Law, c. 945.

[17] St. Alphonsus, *Theol. mor.*, l. 6, n. 709; cf. Code of Canon Law, c. 945.

572. 2. The licit remote matter in ordinary cases is oil blessed a) in the same year and b) by the bishop of the diocese.

Each year, on Thursday in the Supper of the Lord, the oil of the sick is to be blessed by the bishop. The individual churches must burn the old oil in the lamp burning before the Most Holy Sacrament and procure for themselves new blessed oil; this precept indeed appears to be grave.[18] If during the year the oil begins to run short and other blessed oil cannot be obtained, it is lawful to mix in unblessed oil, and this several times, but always in a smaller quantity than that which remained.[19] The oil of the sick is to be blessed by the bishop of the diocese (and, when the see is vacant, by a neighboring bishop). But all priests (even exempt regulars) must use oil blessed by the bishop of the place; this precept indeed appears to some authors to be grave.[20]

The Roman Catechism[21] thus describes the fittingness of this matter: "This matter most aptly signifies that which is effected inwardly in the soul by the power of the sacrament; for just as oil is of great benefit for mitigating the pains of the body, so the power of the sacrament lessens the sadness and pain of the soul. Oil, moreover, restores health, brings cheerfulness, and supplies nourishment, as it were, to light; and furthermore it is most suited for restoring the strength of a wearied body. All these things declare what is effected in the sick person by divine power through the administration of this sacrament."

Place of reservation. The oil of the sick is to be diligently kept in a clean and becomingly adorned place, in a vessel of silver or tin; nor is it to be retained at home except because of necessity or another reasonable cause, with the permission of the Ordinary.[22]

[18] St. Alphonsus, *Theol. mor.*, l. 6, n. 708.

[19] Roman Ritual, tit. 5, c. 1, n. 3.

[20] Cf. Holy Office, January 10, 1850.

[21] P. 2, c. 6, q. 5.

[22] Code of Canon Law, cc. 735 and 946.

573. 3. The proximate matter of this sacrament is the application of the remote matter, that is, the anointing of the sick person made with blessed oil.

Whether several anointings are required for the validity of the sacrament, or whether one (on the forehead) suffices, was formerly controverted. The older theologians, such as St. Thomas,[23] St. Bonaventure,[24] and several others cited by St. Alphonsus,[25] affirm that several anointings are necessary, because, although no

mention is made of several anointings in the words of St. James, nevertheless this is gathered from the constant usage of the Church. Almost all modern authors deny the necessity of several anointings: a) because even in one anointing made on the forehead the whole signification of the sacrament is had, since on the forehead or in the head all the external and internal senses are united; and then b) because a most diverse practice has always existed in the Church concerning this matter. Thus, from the diverse Rituals re-edited and collected by Martène,[26] it is evident that anointings were made on the neck, on the throat, between the shoulder blades, on the crown of the head, on the forehead, on the cheeks, on the temples, on the breast, on the navel, on the head alone, on the chin, and so forth. In a case of necessity, one anointing on the forehead indeed suffices with the form: "Through this holy anointing may the Lord forgive you whatever you have sinned. Amen." But when the danger has ceased, the individual anointings are to be supplied,[27] and indeed not conditionally, but absolutely.

According to the discipline in force, the anointing of the loins is always to be omitted, but the anointing of the feet can be omitted for any reasonable cause.[28]

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[23] *Suppl.*, q. 32, a. 6.

[24] *In 4, dist.* 23, a. 2, q. 3.

[25] *Loc. cit.*, n. 710.

[26] *De antiq. Eccl. rit.*, l. 1, c. 7.

[27] Code of Canon Law, c. 947, § 1.

[28] Ibid., §§ 2 and 3.

574. The manner of making the anointings. The anointings are to be made: a) with the right thumb; b) in the form of a cross; c) on each organ (if it is present), beginning with the right; d) with the order of the senses prescribed in the Ritual and the other rubrics observed.

As to a). Outside a case of grave necessity, the anointings are not to be made with another finger or with an instrument.[29] A necessity of using an instrument, for example, a brush, can be present if, for example, the sick person is suffering from plague or another very contagious disease. The instrument is to be burned after use.

As to b). Thus according to the precept of the Ritual, which nevertheless does not appear to oblige under grave sin. Consequently, if it is difficult to form a cross, it suffices to perform the anointing by a simple touch.

As to c). There appears to exist a grave precept of the Church to anoint both organs of the senses, unless some necessity excuses, for example, great difficulty in turning the sick person.[30] The hands, which in other sick persons must be anointed on the inside, are to be anointed on the outside in priests, since their hands were already anointed on the inside in ordination.

As to d). It is not indeed of the necessity of the sacrament to observe the order among the anointings of the parts, but theologians almost commonly teach (with some denying it) that an inversion of the order is gravely illicit if it is done without a grave cause.[31]

If someone lacks some organ, he is to be anointed on the neighboring part; but if he lacks some sense, as, for example, those blind from birth, nevertheless the organ of that sense is to be anointed. Formerly seven anointings were prescribed, namely, as the Council of Florence says, following the exposition of St. Thomas:[32] "On the eyes on account of sight, on the ears on account of hearing, on the nostrils on account of smell, on the mouth on account of taste or speech, on the hands on account of touch, on the feet on account of walking, on

the loins on account of the pleasure prevailing there." But today the seventh anointing is always to be omitted; the sixth, however, can be omitted for any reasonable cause, as has already been said.

The prayers prescribed in the Ritual, both after and before the anointing, of themselves oblige under grave sin (unless necessity excuses); the litanies and penitential psalms, however, are not prescribed, but are commended.

In ancient times Extreme Unction was administered **before** Holy Viaticum, and it is still done thus in the rite of the Friars Preachers; but according to the Roman rite now in force, this sacrament is conferred **after** Viaticum.

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[29] Sacred Congregation of Rites, May 9, 1857; August 31, 1872; July 12, 1901; Code of Canon Law, c. 947, § 4.

[30] Cf. Lehmkuhl, *Theol. mor.* II, n. 720.

[31] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 710.

[32] *Suppl.*, q. 32, a. 6.

575. 4. The form of Extreme Unction in the Latin Church is: "Through this holy anointing and His most tender mercy, may the Lord forgive you whatever you have sinned (through sight, hearing, smell, taste and speech, touch, walking). Amen." If the priest doubts whether the person to be anointed still lives, let him say: "If you are alive, through this holy anointing," and so forth.[33]

The Greek form is this: "Holy Father, physician of souls and bodies, who sent Your Only-begotten Son, Our Lord Jesus Christ, healing every disease and delivering us from death, heal also Your servant N. from the infirmity of body which holds him, and give him life through the grace of Your Christ, through the intercessions of ... (the names of saints are recited) and of all the saints. Amen."[34]

In the form of Extreme Unction, only those words are essential which express the act of anointing and the effect of the sacrament, namely, the health of soul and body. Therefore in the form of the Latin Church only these words are essential: "Through this anointing may the Lord forgive you whatever you have sinned."[35]

According to the discipline in force, in a case of necessity the form prescribed by the Holy Office on April 25, 1906, is to be employed: "Through this holy anointing may the Lord forgive you whatever you have sinned. Amen." But when the sacrament has been conferred by one anointing under this form, afterward, when the danger has ceased, the individual anointings are to be supplied, and this not conditionally but absolutely.[36] This indeed is prescribed by the Church, not because otherwise the validity of the sacrament would be doubtful, but for the greater benefit of the sick person and for greater reverence toward the sacrament.

The deprecative form. Theologians dispute greatly whether the form of Extreme Unction must necessarily be deprecative or can be indicative. Many have taught that an indicative form is valid, for example, Durandus, Tournely, Juénin, and, among modern authors, Christian Pesch,[37] who confidently says: "Therefore, with these three sacraments [the Eucharist, Penance, Matrimony] excepted, in all the other sacraments the form is deprecative according to its sense in the same manner as in Extreme Unction; nor can any solid argument be brought forward why in Extreme Unction the form ought to be more deprecative than in the other sacraments." Therefore, according to this author, the form of Extreme Unction is no more deprecative according to its sense than, for example, the form of Baptism. St. Thomas,[38] Blessed Albert,[39] St. Bonaventure,[40] the Roman Catechism,[41] and very many theologians of the first rank cited by St. Alphonsus[42] deservedly reject this opinion; St. Alphonsus himself also calls the opinion of St. Thomas the more true and more common. The reason, however, is had from the very words of St. James: "And let them pray over him,

anointing him with oil ... and the prayer of faith shall save the sick man." Nor do the various ancient forms which appear to have been pronounced in the indicative manner stand in the way, because: a) it is by no means evident that all the ancient forms were valid; b) in those words which are found in all the forms cited (the legitimate ones), "that you may be able," since they are optative, a prayer or wish is included, so that the sense is: I anoint you, praying to God that you may be able, and so forth.[43]

[33] Roman Ritual, tit. 5, c. 1, n. 14. If the priest doubts whether the person to be anointed (being deprived of his senses) is baptized, or whether he has the intention of receiving the sacrament, let him add mentally the condition: "if you are capable"; but let him never add the condition: "if you are rightly disposed."

[34] Goar, *Euchol.*, p. 417. Martène reviews many other ancient forms, *De antiq. Eccl. rit.*, l. 1, c. 7, a. 4.

[35] Cf. Billuart, *De extr. unct.*, a. 3, first question.

[36] Holy Office, March 9, 1917 (*Acta Apost. Sed.* IX, 178); Code of Canon Law, c. 947, § 1.

[37] *Prael. dogm.* VII, n. 533.

[38] *Suppl.*, q. 29, a. 8.

[39] *In 4, dist.* 23, a. 4, q. 2.

[40] *In 4, dist.* 23, a. 1, q. 4.

[41] P. 2, c. 6, qq. 6 and 7.

[42] *Theol. mor.*, l. 6, n. 711.

[43] Cf. St. Alphonsus, *loc. cit.*, and Benedict XIV, *De syn. dioec.*, l. 8, c. 2, toward the end.

Article III. On The Effects Of Extreme Unction

The Council of Trent[44] enumerates the effects of Extreme Unction in this manner: "Moreover, the thing and effect of this sacrament are explained by those words: *And the prayer of faith shall save the sick man, and the Lord shall raise him up; and if he be in sins, they shall be forgiven him.* For this thing is the grace of the Holy Spirit, whose anointing wipes away offenses, if any still remain to be expiated, and the remnants of sin, and relieves and strengthens the soul of the sick person by arousing in him great confidence in the divine mercy, by which the sick person, sustained, bears the inconveniences and labors of sickness more lightly; and he more easily resists the temptations of the devil lying in wait for his heel; and he sometimes obtains health of body, when this is expedient for the salvation of the soul." From these words it is lawful to deduce the following conclusions:

[44] Sess. 14, c. 2, *De extr. unct.* (Denz., n. 909).

576. Proposition 1. The primary effect of Extreme Unction is not the remission of sins (whether mortal or venial), but an increase of habitual grace, which of itself destroys the remnants of sin and, consequently, sins themselves.

Concerning this matter the Roman Catechism[45] teaches: "For this sacrament was not instituted in the first place for the remission of graver crimes, but Baptism alone and Penance effect this by their own power." Therefore Extreme Unction is truly a sacrament of the living and not of the dead. Hence one receiving Extreme Unction must already be in the state of sanctifying grace, which is ordinarily to be obtained by a sinner through the sacrament of Penance; but in a case of necessity it suffices that, before receiving Extreme Unction, he elicit an act of contrition at least putatively perfect (although in reality it is imperfect). Although,

according to the common opinion of theologians, the other sacraments of the living also produce first grace in a case of necessity after contrition (at least imperfect) has been elicited, nevertheless Extreme Unction produces this much more certainly, because: a) St. James says of it: "And if he be in sins, they shall be forgiven him"; b) in the form of this sacrament there is: "May the Lord forgive you whatever you have sinned"; c) the Council of Trent[46] defines: "If anyone says that the sacred anointing of the sick does not confer grace or remit sins, ... let him be anathema." Therefore Extreme Unction produces first grace not only accidentally, as do Confirmation and the Eucharist, but was directly instituted by Christ **that it might proximately dispose the soul for entrance into heaven** and consequently remit all sins perhaps standing in the way. Therefore Extreme Unction is primarily indeed a sacrament of the living, but consequently (and indeed from its specific nature) a sacrament of the dead.

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[45] *Loc. cit.*, q. 14.

[46] Sess. 14, can. 2, *De extr. unct.* (Denz., n. 927).

577. Note. Although Extreme Unction remits mortal sins for a man who is in the impossibility of confessing, nevertheless, when this impossibility ceases, there arises the obligation of integrally confessing the sins thus remitted.

For dying persons deprived of their senses, Extreme Unction is a most precious sacrament. For although it is piously believed that sacramental absolution can also be validly given to them if they are at least attrite, nevertheless this is not altogether certain. For contrition and confession are the proximate matter of the sacrament of Penance, as was said above under n. 326. But the proximate matter, as an essential part of the sensible sign of the sacraments, must be manifested externally. It is difficult, however, to understand how a dying person deprived of his senses can externally manifest contrition and confession, and consequently the absolution granted to him is not altogether certainly efficacious. On the contrary, Extreme Unction, when conferred, is certainly efficacious provided that the sick person is at least inwardly truly attrite. Since these things are so, the pastor and the others standing by should strive altogether that the sacrament of Extreme Unction be conferred upon a dying person deprived of his senses.

578. Proposition 2. The sacramental grace of Extreme Unction produces: a) strength of soul; b) the wiping away of venial sin and of the remnants of sin; c) sometimes bodily health.

a) **Strength of soul is an effect of Extreme Unction.**

For St. James says: "And the Lord shall raise him up." The weakness of the soul, however, is produced especially from a threefold cause, that is, from past, present, and future evils: 1. from **distrust** concerning the sins of one's past life; for the sinner knows certainly that he has sinned often and gravely, but he does not know with equal certainty that God has forgiven all those sins; 2. from **pusillanimity** on account of present hardships, which indeed arise both from bodily illness, which weighs down the soul, and from diabolical assaults, which especially attack a man now about to die; 3. from **trepidation** because of one's uncertain lot in eternity. Against all these weaknesses Extreme Unction confers the most powerful strength.

b) **The wiping away of venial sin and of the remnants of sin is the second effect.**

Since Extreme Unction is the immediate preparation for heaven, it must remove all those things which obstruct entrance into heaven. These indeed are sins not yet destroyed and the punishments of sins not yet discharged. Therefore Extreme Unction *ex opere operato* destroys sins and the remnants of sins, if the man is rightly disposed, that is, if he sincerely grieves over all and each of his sins, even the least. But since such a

disposition is not always present, Extreme Unction sometimes cannot wipe away all sins and all their remnants.

c) **Bodily health is sometimes produced by this sacrament, if this is expedient for the salvation of the soul.**[47]

This indeed follows from the words of St. James: "The prayer of faith shall save the sick man." Certainly this effect is not produced suddenly, nor even if the powers of the body are already altogether exhausted. Hence, also for the sake of recovering bodily health, it is to be counseled that Extreme Unction be conferred upon the sick person as soon as possible and not be deferred until the very end of life.

[47] Thus the Council of Trent, *loc. cit.* The Scholastics instituted subtle indeed, but practically useless, disputations concerning the precise conditions under which the sick obtain bodily health through Extreme Unction. See Kern, *De extr. unct.*, l. 3, c. 2.

579. Scholion. On the moment at which Extreme Unction produces its effects. Theologians go into diverse opinions in disputing about the moment at which Extreme Unction produces its effects. For there are several successive anointings. Concerning this question (which is purely speculative, since after the decision of the Holy Office cited above it is certain that in a case of necessity one anointing and one form suffice), St. Thomas[48] writes: "When there are many actions ordered to the same effect, the last is formal with respect to all the preceding actions and acts in their power; and therefore in the last action grace is infused, which affords the effect to the sacrament."

[48] *Suppl.*, q. 30, a. 1 ad 3.

Article IV. On The Subject Of Extreme Unction

580. Principle. The subject of Extreme Unction is every baptized man capable of malice and placed in probable danger of death, and this not from another source, but from illness or old age.

Thus it follows from the words of the Code of Canon Law, c. 940: "Extreme Unction cannot be given except to a member of the faithful who, after attaining the use of reason, is placed in danger of death because of illness or old age."

It is said, first: **a baptized man**, because Baptism is the gateway of all the sacraments. But Baptism of water is required, nor does Baptism of desire suffice, which indeed confers sanctifying grace but is not a sacrament. Therefore neither pagans nor catechumens can receive this sacrament; but if a gravely ill adult pagan is baptized, he can receive Extreme Unction immediately after Baptism, because he is capable of an increase of grace and still needs strengthening against diabolical temptations. Thus the Sacred Congregation for the Propagation of the Faith on September 26, 1821, and the Holy Office on May 10, 1703,[49] appear to have determined. Nor is St. Thomas contrary to this doctrine when he says: "[Extreme Unction] is not given against the remnants of original sin, except insofar as they are in some manner strengthened by actual sins. Hence it is given principally against actual sins, which are not in children."[50] For the Angelic Doctor: a) speaks only of children incapable of actual sin; b) teaches that Extreme Unction is **principally** against the remnants of actual sin. But in a baptized adult there can be remnants of actual sins committed before Baptism, for example, if perhaps his attrition did not extend to all sins.

More probably, however, the Blessed Virgin neither received nor was capable of receiving Extreme Unction, because she was without every sin and the fomes of sin, nor did she need strengthening against diabolical temptations.

It is said, secondly: **capable of malice**, that is, capable of personal sins. For children before the use of reason, as also those perpetually insane, cannot sin by their senses, and therefore in them the form is not verified: "Whatever you have sinned through hearing, sight," and so forth. But as soon as children are capable of sin, they are to be anointed when placed in a dangerous illness, although they have not yet approached first confession nor completed their seventh year. Insane persons who have or have had lucid intervals are capable of sin and consequently also of Extreme Unction.

It is said, thirdly: **placed in probable danger of death, and this not from another source, but from illness or old age.** Therefore a probable danger of death arising from a grave illness is altogether required. Consequently, if the danger of death arises from another source and not from illness, this sacrament cannot be validly administered; for example, Extreme Unction can be conferred neither licitly nor validly upon soldiers setting out for battle or upon those soon to be punished by death. The reason is that St. James expressly says: "Is anyone among you sick?" (ἀσθενεῖ), and: "shall save the sick man" (τὸν κάμνοντα). Therefore, as long as someone is healthy or not gravely ill, he is incapable of Extreme Unction.

Since advanced old age is itself an illness, Extreme Unction is to be administered to a decrepit old person placed in probable danger of death, as is evident from the cited words of the Code of Canon Law.

Note. 1. This sacrament is not to be conferred upon those who contumaciously persevere impenitent in manifest mortal sin.[51] But if this impenitence is not altogether certain but doubtful, Extreme Unction is to be conferred under condition. Similarly, it is to be conferred under condition in three other cases, namely, when it is doubted: a) whether the sick person has attained the use of reason; b) whether he is actually placed in danger of death; c) whether he is dead. The condition added must be: "if you are capable," and not: "if you are disposed." For otherwise, in a case in which the sick person was indeed indisposed but capable, the sacrament would not afterward revive when the obstacle had been removed.

2. Before childbirth this sacrament cannot be administered to a healthy woman, just as neither can Viaticum. But if a danger to life arises during childbirth, it is lawful to confer both sacraments, because then an illness is also truly present.

3. It is not required that the danger of death be altogether imminent and certain. Indeed, it is counseled that Extreme Unction not be deferred until the very end of life, because then the effect of recovering health is always frustrated.

4. Since Extreme Unction is a sacrament of the living, the sick person must make confession beforehand if he is in the state of mortal sin. But if confession is impossible, there must be made beforehand: a) an act of supernatural sorrow on the part of the sick person, and b) sacramental absolution, at least conditionally.[52]

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[49] *Collect. de Prop. Fide*, nn. 768 and 256.

[50] *Suppl.*, q. 32, a. 4 ad 2.

[51] Code of Canon Law, c. 942.

[52] Ibid., c. 941.

581. The obligation of receiving Extreme Unction is not considered grave, apart from scandal or contempt. The reason is: a) because no certain precept concerning this matter is found either in Sacred Scripture, in tradition, or in ecclesiastical law; b) because this sacrament is ordinarily not of such necessity for

salvation; and therefore, in the time of an interdict, Extreme Unction formerly could not be administered to those who were able to receive other sacraments, for example, Penance and the Eucharist.[53] But since even in the time of an interdict the Church permits sacraments necessary for salvation to be administered, it follows from this that Extreme Unction is not altogether necessary.[54] It is evident of itself that one who refuses the reception of Extreme Unction with grave scandal (for example, a bishop or priest), or who contemns this sacrament, sins gravely.

Although ordinarily there is only a light obligation of receiving Extreme Unction, nevertheless the faithful are to be strenuously exhorted not to deprive themselves of so excellent an assistance in the danger of death. Therefore the Code of Canon Law, c. 944, establishes: "Although this sacrament is not of itself of the necessity of means for salvation, nevertheless no one is permitted to neglect it; and it is to be ensured with every zeal and diligence that the sick receive it while they are fully in possession of themselves."

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[53] Cf. c. 11, X 5, 38. According to the discipline in force, it is lawful during the time of an interdict to administer sacraments and sacramentals to the dying (Code of Canon Law, c. 2270, § 1).

[54] Cf. St. Thomas, *Suppl.*, q. 29, a. 2 ad 1; St. Alphonsus, *Theol. mor.*, l. 6, n. 733.

582. Extreme Unction cannot be repeated (validly and licitly)[55] in the same illness and in the same danger of death, because the efficacy of this sacrament endures as long as the same danger of death remains for which it was conferred. This repetition remains prohibited even when this sacrament (validly conferred) was sacrilegiously received. For such a sacrilegious sacrament afterward revives when the obstacle has been removed through Penance.

Concerning this matter the Council of Trent[56] defined: "But if the sick recover after receiving this anointing, they will be able to be aided again by the assistance of this sacrament when they fall into another similar danger of life"; and the Code of Canon Law, c. 940, § 2, establishes: "In the same illness this sacrament cannot be repeated unless the sick person, after receiving the anointing, has recovered and has fallen into another danger of life." The general rule is this: As often as an imminent danger of death departs and a new one succeeds, even during the same prolonged illness, so often is it lawful to repeat this sacrament.[57] In practice it is not infrequently difficult, indeed impossible, to decide whether the same danger of death has remained or not. If the sick person for some time, for example, for a month or even for a week, has been notably better, and then falls again into danger of death or "another danger of life," it is lawful to repeat Extreme Unction; but if the change for the better is very doubtful, the same danger of death is considered to continue.

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[55] A few theologians (for example, Kern, *De extr. unct.*, l. 5, prop. XIII) teach that Extreme Unction is validly conferred in the same illness and in the same danger of death.

[56] Sess. 14, c. 3, *De extr. unct.* (Denz., n. 910).

[57] Cf. St. Thomas, *Suppl.*, q. 33, a. 2. Blessed Albert (IV, d. 23, a. 21) and other older Scholastics thought that Extreme Unction could not be repeated in the same illness except once each year.

Article V. On The Minister Of Extreme Unction

583. Principle. This sacrament is validly administered by a priest alone; licitly, however, by the pastor of souls alone, or by his substitute or delegate.

1. That a priest alone is the minister of valid Extreme Unction is evident:

a) From the words of St. James, who says: "Let him bring in the priests of the Church." Now, by the name of priest here are understood priests, and not lay elders; for in the New Testament the priests of the Church are always understood to be priests.[58]

b) From the definitions of the Councils of Florence and Trent:[59] "If anyone says that the priests of the Church, whom blessed James exhorts to be brought in to anoint the sick man, are not priests ordained by a bishop, but elders in age in any community, and that for this reason the proper minister of Extreme Unction is not a priest alone, let him be anathema."

c) From the very nature of this sacrament, which is, as it were, the complement of Penance. Therefore the minister of Penance and of Extreme Unction ought to be the same.

Therefore a priest alone can validly administer this sacrament, and in no case can a deacon or layman do so.[60] But since the administration of this sacrament is an exercise of order and not of jurisdiction, any priest (although he be excommunicated, suspended, or interdicted) validly confers Extreme Unction, just as he also validly consecrates the Eucharist.

That one priest suffices for administering Extreme Unction is the constant teaching of the Church.[61] Nor do the words of St. James, "let him bring in the priests," stand in the way; for in Sacred Scripture the plural is often employed for the singular.[62] In ancient times, however, several priests were employed even in the Latin Church in administering Extreme Unction.[63] In the Greek Church, even in our times, this sacrament is customarily conferred by seven, or at least by three, priests.[64] If several priests administer this sacrament in such a way that some make the anointings and others pronounce the form, the sacrament appears to be invalid, because it is required that the same minister apply the matter and pronounce the form; but if one makes one anointing with its form and another makes another with its form,[65] or if several simultaneously make the anointings and pronounce the forms, then the sacrament is valid.

2. The pastor of souls alone, or his delegate, can ordinarily administer this sacrament licitly. Thus from positive ecclesiastical law.[66] Anyone who exercises ordinary jurisdiction over subjects is regarded as a pastor of souls. Hence superiors in a clerical religious institute are considered pastors of souls capable of legitimately administering Extreme Unction to all their subjects (namely, the professed, novices, members of the household, and those continually sharing the common table).[67] For the rest, the general rule is: Any priest who licitly administers Viaticum also licitly administers Extreme Unction. In a case of necessity, for example, when the parish priest is absent or impeded or unjustly refuses to administer this sacrament, or with the at least reasonably presumed permission of the parish priest or local Ordinary, any priest validly and licitly administers Extreme Unction, since the parochial right ought to yield to the salvation of souls.[68]

The obligation of administering Extreme Unction gravely binds all pastors of souls whenever faithful subjects rightly disposed reasonably request this sacrament. The reason is that pastors are bound in justice by virtue of their office to provide their sheep with those things which are necessary, and indeed not only those necessary by a necessity of means, but also those necessary by a necessity of precept. Hence, for example, a parish priest who refused, either personally or through another priest, to administer Extreme Unction to his subject who greatly needed this sacrament would sin gravely. Cf. what was said above under n. 72 ff. concerning the obligation of giving the sacraments. Other priests are bound in charity to administer this sacrament to a dying person who did not receive the other sacraments shortly before.

[58] Cf. Acts 14:12; 15:2; 1 Tim. 5:17; 1 Pet. 5:4. Cf. also Billuart, *De extr. unct.*, a. 5.

[59] Sess. 14, can. 4, *De extr. unct.* (Denz., n. 929).

[60] See the difficulties arising from certain texts of Innocent I and the Venerable Bede resolved in Billuart, *loc. cit.*

[61] Cf. c. 14, X 5, 40, and Benedict XIV, Constitution *Etsi pastoralis*, May 26, 1742.

[62] Cf. Matt. 27:44, "the thieves," for one of the thieves.

[63] Cf. *Summa contra gentiles*, l. 4, c. 73; the Sacramentary of St. Gregory in Martene, *De antiq. Eccl. rit.*, l. 1, c. 7, a. 3.

[64] Papp-Szilagyi, *Enchir. iur. eccl. orient.*, p. 2, § 81.

[65] Cf. *Suppl.*, q. 20, a. 2 ad 3.

[66] c. 1, l. 5, tit. 7, in *Clem.*; Code of Canon Law, c. 938, § 1.

[67] Code of Canon Law, c. 514, § 1. Cf. what was said above under n. 219 concerning the administration of Viaticum, and our *Man. iur. can.*, q. 243.

[68] Code of Canon Law, c. 938, § 2.

584. The rubrics prescribed in the Ritual are to be observed in the administration of this sacrament. Under what guilt, however, the individual rubrics oblige is not so certainly established. Thus, for example, outside a case of necessity, to omit every sacred vestment is considered a grave sin; likewise, it is grave to omit the prayers to be recited by the priest before and after the anointings; but to omit a light or an assisting server is thought to be a light fault; the penitential psalms and the litanies are recited not from a strict precept, but by way of counsel,[69] as was already said above under n. 574.

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[69] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 726 ff.

Treatise IX. On The Sacrament Of Order

Literature. Besides the authors cited above who treat of all the sacraments, the following may be consulted: Gasparri, *De sacra ordinatione*, 2 vols., Paris, 1883; Many, *De sacra ordinatione*, Paris, 1904; Wernz, *Ius Decretalium* II, Rome, 1906; Cardinal van Rossum, *De essentia sacramenti ordinis disquisitio historico-theologica*, Freiburg im Breisgau, 1914.

Preliminary note. Since the treatise on the sacrament of Order pertains for the greater part either to Dogmatic Theology or to ecclesiastical law, we speak here only very briefly: 1. of the nature of this sacrament; 2. of its minister; 3. of its subject.

Chapter I. On The Nature Of The Sacrament Of Order

We divide this chapter into three articles: 1. on the notion and distinction of Order; 2. on the effects of Order; 3. on the matter and form of Order.

Article I. On The Notion And Distinction Of Order

585. Notion. In a general sense, Order is defined by St. Thomas,[1] following the Master of the Sentences: **Order is a certain seal of the Church by which spiritual power is handed on to the one ordained.** This definition indeed applies to all orders (even minor orders), which according to the opinion of several authors are not sacraments strictly so called. What that power is which is conferred in the individual orders will be stated in the following article, where the effects of Order will be treated. Order, insofar as it is a sacrament strictly so called, can be defined: **A sacrament of the New Law by which spiritual power is handed on and grace is conferred for duly discharging ecclesiastical offices.**[2]

Order is taken either actively, and then it is better and more clearly called **ordination**, since it is that action by which spiritual power is conferred; or passively, and then it signifies the power conferred in the ordination itself.

That Order or sacred ordination is a true sacrament of the New Law was defined against the heretics by the Council of Trent, sess. 23, can. 3, *De sacr. ord.*: "If anyone says that Order or sacred ordination is not truly and properly a sacrament instituted by Christ the Lord ... let him be anathema."[3] This Catholic dogma can indeed be demonstrated from Sacred Scripture, from the consent of the Fathers, and from the consent of the Eastern Church.[4]

Christ appears to have instituted the sacrament of Order partly at the Last Supper, when He gave the Apostles the power of consecrating the Eucharist, and partly after the Resurrection, when He instructed them concerning the governance of the Church.

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[1] *Suppl.*, q. 34, a. 2.

[2] Cf. Billuart, *De ordine*, diss. 1, a. 1.

[3] Denz., n. 963.

[4] Cf. Billuart, *loc. cit.*

586. Distinction. It is certain by faith that there are several orders in the Church.[5] The number of these orders in the Latin Church is seven, namely: the orders of porter, lector, exorcist, acolyte, subdeacon, deacon, and priest.[6] In the Eastern Church only four orders are customarily expressly enumerated, namely, lector, subdeacon, deacon, and priest; but from this it is not lawful to conclude that the three omitted orders therefore do not exist in the Eastern Church. For these omitted orders are conferred with the subdiaconate (the orders of acolyte and porter), and with the lectorate or diaconate (the order of exorcist).[7]

The first four orders are customarily called **minor**; the last three, however, **major** and **sacred**.

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[5] Council of Trent, sess. 23, can. 2, *De sacr. ord.* (Denz., n. 962).

[6] Cf. ibid., c. 2 (Denz., n. 958).

[7] Cf. Papp-Szilagyi, *Enchir. iur. eccl. orient. cath.*, p. 2, § 83; Benedict XIV, Constitution *Etsi pastoralis*, May 26, 1742, § 7.

587. It is useful here to touch very briefly upon three controversies:

1. **Whether the four minor orders have the character of a true sacrament?** The affirmative opinion was taught quite commonly by the older Scholastics, among whom are cited Blessed Albert the Great, St. Thomas, St. Bonaventure, Paludanus, Scotus, and others. Nearly all modern authors, however, teach the negative opinion.[8] Neither opinion is certain, and in this question, as in several others pertaining to sacred ordination, it is necessary to be wise unto sobriety. Hence those do not act rightly who too quickly exclaim: This opinion is certain; but the opposite has now lost all probability.
2. **Whether the episcopate is an order essentially distinct from the priesthood, or only its complement?** Very many of the older Scholastics (among whom is St. Thomas) deny this, and Cardinal Raymond Capisuchius, O.P.,[9] adduces 80 authors (nearly all of whom he himself professes to have read) who deny that the episcopate is a completely distinct sacrament. Nearly all modern theologians and several of the older ones teach that the episcopate is a completely distinct order and sacrament, and therefore distinguish not seven but eight orders.
3. **Whether the episcopate is validly conferred upon one who invalidly received the priesthood?** The negative opinion appears to be preferred. Therefore, in practice, both the episcopal ordination and the other ordinations perhaps performed by such a bishop would have to be repeated conditionally.[10]

Although there are certainly several orders having the character of a sacrament, nevertheless all the orders constitute one potestative whole, "of which this is the nature, that the whole according to its complete notion is in one, while in another there is some participation in it."[11] Furthermore, all the orders constitute one sacrament from the unity of the end to which they are ordained, namely, all are ordained to the Eucharist.

The first clerical tonsure, by which a layman is enrolled in the clerical state, is neither an order nor a sacrament, but a certain sacramental. Thus the most common and certain opinion.[12] Fagnanus,[13] Reiffenstuel,[14] and certain other canonists taught the contrary without solid foundation.

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[8] Cf., on this controversy, Billuart, *De ordine*, diss. 1, a. 3, § 2; Chr. Pesch, *Prael. dogm.* VII, n. 577.

[9] *Controversiae Theol. select.* (Rome, 1670), controv. 28, § 2.

[10] Cf. Gasparri, *De s. ord.* I, n. 26.

[11] St. Thomas, *Suppl.*, q. 37, a. 1 ad 2.

[12] Ibid., q. 40, a. 2; St. Alphonsus, *Theol. mor.*, l. 6, n. 734.

[13] *Comm. in l. 1, tit. 14*, c. 11, n. 45.

[14] *Ius can.*, l. 1, tit. 11, n. 16.

Article II. On The Effects Of Order

First we shall treat of the effects of this sacrament in general, and afterward of the effects and offices conferred by the individual orders.

§ 1. On The Effects Of Order In General

588. The sacrament of Order produces four effects, of which three regard the one ordained himself and the fourth reaches the Church.

1. Order produces an increase of sanctifying grace and sacramental grace. For Order is a sacrament of the living and causes peculiar graces, as does every other sacrament.
2. Order imprints an indelible character, and therefore no order can be repeated.[15]
3. Order confers the spiritual power of exercising the functions of the respective order received. This power indeed has a greater or lesser connection with the Eucharist.
4. Order causes the permanence of the ecclesiastical hierarchy, which cannot subsist without this sacrament. Therefore this sacrament especially looks to the utility and beauty of the Church.

[15] Cf. Council of Trent, sess. 23, can. 4, *De sacr. ord.* (Denz., n. 964).

§ 2. On The Effects And Offices Of The Individual Orders

589. 1. On the minor orders. The minor orders in the Latin Church are four, as was said above:

a) **The order of porter** hands on the power, by reason of office, of opening and closing the doors of the church, of admitting the worthy and excluding the unworthy. Of how great importance this order was in the first centuries of the Church, when Christians were afflicted by such dreadful persecutions, is evident from ecclesiastical history.

b) **The lectorate** hands on the power, by reason of office, of reading the psalms and lessons in the pulpit of the church, of catechizing or instructing the people in the rudiments of the faith, and of blessing bread and new fruits.

c) **The order of exorcist** hands on the special power of expelling demons from the possessed, lest they impede them from Communion. According to the discipline in force, this power indeed cannot be exercised (at least publicly) unless there is the prior and express permission of the Ordinary.[16]

d) **The order of acolyte** hands on the power, by reason of office, of serving the subdeacon at solemn Mass, of carrying the cruets to the altar, and of kindling the lights upon it. The acolyte is sometimes called a candle-bearer.

According to modern discipline, the functions of the four minor orders (with the exception of exorcism) are often exercised by laymen.

[16] Code of Canon Law, c. 1151.

590. 2. On the major orders. The major orders in the Latin Church are three, as was said:

a) **The subdiaconate** confers the power of preparing the matter to be consecrated in the sacred vessels, of serving the deacon at solemn Mass, of chanting the Epistle, and of washing corporals, purificators, and palls.

b) **The diaconate** confers the power of immediately assisting the priest at solemn Mass, of chanting the Gospel, and (by commission of the Ordinary or parish priest) of preaching.[17] Under what conditions a deacon may solemnly baptize and distribute Holy Communion was said above under nn. 121 and 217.

c) **The priesthood** confers the power of consecrating the Body and Blood of Christ, of remitting sins, of feeding subjects by work and doctrine, and of administering the remaining sacraments which do not necessarily require the episcopal character.

d) **The episcopate** (although perhaps it is nothing other than the complement of the order of priesthood[18]), nevertheless, just as it is a special degree of the hierarchy, so also does it confer special powers, namely, of administering the sacraments of Confirmation and Order, of confecting several sacramentals (such as consecrations and blessings), and of governing the people legitimately entrusted to him.

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[17] Ibid., c. 1342, § 1.

[18] Cf. above, n. 587.

591. Scholion. On the effects of the clerical tonsure. Although the first clerical tonsure is not itself an order, as was said, nevertheless it disposes one for receiving orders and produces several effects, namely:

a) it transfers one into the clerical state and incardinates him in a diocese;[19]

b) it confers the so-called clerical privileges, namely, of canon, forum, and immunity;[20]

c) it confers aptitude for receiving orders, exercising jurisdiction, and receiving ecclesiastical benefices and pensions.[21]

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[19] Code of Canon Law, cc. 108 and 111, § 2.

[20] Cf. our *Man. iur. can.*, q. 63.

[21] Code of Canon Law, c. 118.

Article III. On The Matter And Form Of Order

Preliminary note. We treat this matter, which pertains rather to Dogmatic Theology, very briefly; nevertheless, we note that in practice the safer part is to be followed in the many controversies which are agitated concerning the matter and form of Order; and this is certain if a sacred order is in question.

592. The matter and form of the minor orders.

The remote matter of the minor orders is the instruments proper to the individual orders.

The proximate matter of the minor orders is the handing over of these instruments.

The form of the minor orders is the words of the bishop pronounced in the handing over of the instruments.

1. **In the order of porter**, the proximate matter is the handing over of the keys of the church, which the individual ordinands must touch with the right hand while the pontiff pronounces the words: "Act in

such a manner as though about to render an account to God for those things which are unlocked by these keys."

Concerning the ordination of a porter, the following Roman decisions are to be noted: a) It is lawful to use any key whatsoever.[22] Nevertheless, the Sacred Congregation of Rites on June 20, 1899, responded to the doubt: "For the keys which are to be handed over to porters in their ordination, does it suffice that only one be handed over? - Let the Roman Pontifical be observed in practice."[23] Now, the Pontifical prescribes that two keys of the church be handed over. b) It is not necessary for the porter to pull the rope for ringing the bells of the church, but it suffices that he shake the altar bells at the doors of the church.[24]

2. **In the lectorate**, the proximate matter is the handing over of the book of lessons, which the individual ordinands must touch with the right hand while the pontiff says: "Receive and be relaters of the word of God, to have, if you faithfully and profitably fulfill your office, a part with those who have well administered the word of God from the beginning."

The book to be handed over can be a Missal, a Breviary, or a volume of Sacred Scripture.[25]

3. **In the order of exorcist**, the proximate matter is the handing over of the book of exorcisms, which the individual ordinands must touch with the right hand, the pontiff saying: "Receive and commit to memory, and have the power of imposing hands upon the possessed, whether baptized or catechumens."

The Ritual, the Pontifical, or the Missal can be presented as the book of exorcisms.

4. **In the order of acolyte**, the proximate matter is constituted by a twofold handing over, namely: 1. of a candlestick with an extinguished candle, which (that is, both the candlestick and the candle) the individual ordinands must touch with the right hand, the pontiff saying: "Receive the candlestick with the candle, and know that you are appointed to kindle the lights of the church, in the name of the Lord. R. Amen"; 2. of an empty cruet, which the ordinands must similarly touch with the right hand while the pontiff says: "Receive the cruet for supplying wine and water for the Eucharist of the Blood of Christ, in the name of the Lord. R. Amen." The response "Amen" is to be made by the ordinand (and not by the bystanders).[26]

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[22] Thus the Sacred Congregation for the Propagation of the Faith, September 27, 1843 (*Collect. de Prop. Fide*, n. 984). Nevertheless, a key of a sacred place appears to be necessary, because the form of this order applied to a key of a profane place could be very irreligious.

[23] *Decr. auth.*, n. 4035 ad 5.

[24] Sacred Congregation of Rites, September 27, 1873 (*Decr. auth.*, n. 3315 ad 3).

[25] Sacred Congregation of Rites, September 27, 1873 (ibid. ad 5).

[26] Sacred Congregation of Rites, November 12, 1831 (*Decr. auth.*, n. 2682 ad 6).

593. The matter and form of the major orders.

In the subdiaconate, the proximate matter is constituted by a twofold handing over, namely: 1. of an empty chalice **with an empty paten placed upon it**, which the individual ordinands must touch with the right hand while the pontiff says: "See what ministry is handed over to you; therefore I admonish you so to conduct yourselves that you may be able to please God"; 2. of the **book of Epistles** (the Missal or the Bible), which the

individual ordinands similarly touch with the right hand, the pontiff saying: "Receive the book of Epistles, and have the power of reading them in the holy Church of God, both for the living and for the dead; in the name of the Father and of the Son and of the Holy Spirit." R. Amen.[27]

In the diaconate, the proximate matter is likewise twofold, namely: 1. the imposition of the bishop's hand, during which the pontiff says: "Receive the Holy Spirit for strength and for resisting the devil and his temptations: in the name of the Lord"; 2. the handing over of the book of the Gospels (the Missal or the Bible), which the individual ordinands must touch with the right hand, the pontiff saying: "Receive the power of reading the Gospel in the Church of God, both for the living and for the dead: in the name of the Lord." R. Amen.

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[27] It is certain among all that neither the handing over of the cruets (made by the archdeacon) nor the putting on of the vestments is an essential rite in the subdiaconate.

594. In the priesthood, theologians have gone into diverse opinions concerning what is the essential proximate matter and essential form. For in the rite of ordination, besides the twofold imposition of hands, there are diverse ceremonies of great importance.

The first imposition of hands takes place at the beginning of the ordination and consists in the imposition of the hands of the bishop and of the priests standing by upon the head of the ordinand, together with the extension of the right hand by the bishop and the priests made immediately afterward over all the ordinands, with the prayer of the bishop. The second imposition of hands takes place after Communion by the bishop saying: "Receive the Holy Spirit, whose ..." The other ceremonies are the handing over of the chasuble, the anointing of the hands, and the presentation of the chalice with wine and water and of the paten with the host.[28]

The opinion now far more common is: **The matter of the order consists in the first imposition of hands.**[29]

This opinion is favored by: 1. **Sacred Scripture**, which speaks only of the imposition of hands as the matter of ordination (1 Tim. 4:14; 5:22; 2 Tim. 1:6). 2. **Tradition**, which bears witness to the imposition of hands. All the remaining ceremonies, however, were introduced by the authority of the Church for greater solemnity. Therefore they cannot be the essential matter of the sacrament. For it is incredible that the Church can change the substance of the sacraments. 3. **The Council of Trent.** For it never speaks of the presentation of the instruments, but it does speak of the imposition of hands (Sess. 14, *De extr. unct.*, c. 3). 4. **The usage of the Greeks**, according to which priests were always ordained by the imposition of hands alone. There was never any doubt concerning the validity of those ordinations. But the substance of the sacrament of Order ought to be the same among the Greeks as among the Latins.

The other opinions are that the matter of ordination is:

1. **the presentation of the instruments alone** (the chalice and paten).

Because of the authority of the decree of Eugene IV for the Armenians[30] and because of the number of theologians of great name defending this opinion,[31] in practice the presentation of the instruments also ought to be made, besides the imposition of hands, for the sake of security. Therefore the Holy Office several times decreed that the **whole ordination** in which something was lacking in the handing over of the instruments, for example, the host upon the paten or wine in the chalice, should be repeated conditionally. Cf. Holy Office, July 6, 1898; January 11, 1899; January 17, 1900.

2. **the first imposition of hands together with the presentation of the instruments** (Billot, Tanquerey).[32]
3. **either the imposition of hands alone or the presentation of the instruments alone** (Diana, Esparza, Clericatus).
4. **the first and second imposition of hands and the presentation of the instruments** (Lugo, Gotti, Amort).
5. **the presentation of the instruments and the second imposition of hands.**

This cannot be said, because: a) those ordained certainly have already received the sacrament of Order before the consecration of the Mass, which they perform with the ordaining bishop; b) the second imposition of hands does not appear to have been in use before the twelfth century.[33]

In the episcopate, the proximate matter is the imposition of the hands of the consecrator, and the form is the prayer which accompanies this imposition. For the rest, certainty is lacking in this matter, since several theologians teach that the episcopate is not an order strictly so called, but only the complement of the priesthood.

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[28] On this question, see Diekamp-Hoffmann, *Theologiae Dogmaticae Manuale* IV, § 65, p. 403 ff.

[29] Cardinal van Rossum (*De essentia sacr. ord.*, n. 100 ff.) cites more than one hundred authors for this opinion and concludes: "Hardly anyone remains who does not follow this opinion."

[30] Denz., n. 791.

[31] Van Rossum (*loc. cit.*, n. 12) cites approximately 90 authors for this opinion.

[32] Cf. ibid., n. 79.

[33] Ibid., n. 54 ff.

595. Scholion. On supplying defects committed in ordination. If the minor orders and the subdiaconate were not sacraments, neither would they themselves have matter and form from divine law, as is evident. Therefore the Church could easily supply all defects occurring in these orders and dispense in them. In practice, however, such a dispensation is never granted; but if a founded doubt has arisen concerning the validity of such orders, a new ordination (at least conditional) is prescribed. With regard to defects committed in the ordination of a deacon and priest, let the following be noted:

1. **Light accidental defects are not afterward to be supplied.** Thus, for example, if in the anointing of the hands the oil of catechumens was not employed, but chrism, nothing is afterward to be repeated.
2. **Grave accidental defects are afterward to be supplied**, for example, if the anointing of the hands was entirely omitted, or if the third imposition of the bishop's hands was lacking.
3. **Defects which probably touch the very essence of ordination are not only to be supplied, but the whole ordination is to be repeated conditionally.** Such defects are considered to be: a) if the hand of the bishop did not physically touch the head of the ordinand;[34] mediated touch, however, suffices; b) if the hand of the priest being ordained did not physically touch the chalice, paten, and host. Mediated touch suffices; for example, if the ordinand indeed touched the host and paten, but not the chalice, he is considered to have touched the chalice also mediately;[35] c) if, in the ordination of a priest, either wine in the chalice or a host upon the paten was lacking.[36]

[34] Holy Office, July 4, 1900.

[35] Cf. Holy Office, May 8, 1895; March 17, 1897.

[36] Cf. Holy Office, July 6, 1898; January 11, 1899; January 17, 1900.

Chapter II. On The Minister Of The Sacrament Of Order

We divide this chapter into two articles: 1. on the minister of valid ordination; 2. on the minister of licit ordination.

Article I. On The Minister Of Valid Ordination

596. Besides intention and the due application of the matter to the form, power is required in the minister of ordination; concerning this, let the following be stated:

1. **The ordinary minister of valid ordination is every and only a consecrated bishop.**

This is of faith and is evident from the definitions of the Councils of Florence[37] and Trent.[38] It is said: **every bishop**, therefore also a schismatic, irregular, degraded bishop, and so forth, provided nevertheless that he himself was validly consecrated. For if the bishop himself is not validly consecrated (as happens with Anglican bishops), neither can his ordinations themselves be valid, as is evident of itself. A bishop elected and confirmed, but not yet consecrated, can indeed grant dimissorial letters to his subjects to be ordained, but he cannot ordain them.

2. **The extraordinary minister of valid ordination (with regard to the minor orders and the subdiaconate) is a priest delegated by the Supreme Pontiff.**

This is evident from various Councils[39] and the constant practice of the Church.[40] Cardinals, a Vicar and Prefect Apostolic, and an Abbot or Prelate "nullius" possess such habitual delegation with regard to the first tonsure and the minor orders for their own clerics or for others "legitimately" dismissed.[41] Regular Abbots so-called "of government," who have legitimately received the abbatial blessing, can indeed licitly promote their own subjects (by reason at least of simple profession) to tonsure and the minor orders,[42] but they can neither licitly nor validly confer minor orders upon seculars, whether subjects or non-subjects.[43]

By a special indult of the Supreme Pontiff, a priest can also confer the order of subdiaconate.[44] Nor does St. Thomas contradict this opinion.[45] It is doubtful whether the Supreme Pontiff can delegate a priest to confer the order of diaconate. It is indeed related that Innocent VIII, by the Constitution *Exposcit* of April 9, 1489, granted such a delegation to certain Cistercian abbots,[46] but the authenticity of this Constitution has not yet been truly proved. All concede that a priest cannot confer the order of priesthood, although Boniface IX is said to have granted this faculty in the year 1400 to the abbots of the monastery of St. Osyth in England.

[37] Decree for the Armenians (Denz., n. 701).

[38] Sess. 23, can. 7, *De sacr. ord.* (Denz., n. 967). Certain persons erred concerning the validity of ordination performed by heretics; cf. Saltet, *Les réordinations.*

[39] Second Council of Nicaea (787), c. 14 = c. 1, D. 69; Council of Trent, sess. 23, c. 10, *De reform.*

[40] Cf. St. Thomas, *Suppl.*, q. 38, a. 2; St. Alphonsus, *Theol. mor.*, l. 6, n. 762; Code of Canon Law, cc. 951 and 957, § 2.

[41] Code of Canon Law, cc. 239 and 957, § 2.

[42] Ibid., c. 967.

[43] Ibid., c. 964; Holy Office, July 15, 1903 (*Collect. de Prop. Fide*, n. 2172). St. Alphonsus (*Theol. mor.*, l. 6, nn. 763 and 766) thinks that abbots confer minor orders upon non-subjects illicitly indeed, but not invalidly; but today the decisions just cited must be followed, since all contrary privileges have been revoked.

[44] Cf. St. Alphonsus, *loc. cit.*, n. 762.

[45] *Suppl.*, q. 38, a. 1 ad 3.

[46] Cf. *Analecta ecclesiastica* IX (1901), 311 ff.

Article II. On The Minister Of Licit Ordination

For licit ordination there are required on the part of the minister (besides the state of grace and immunity from censures and irregularities): 1. jurisdiction; 2. examination of the ordinands; 3. the due rite, for example, with regard to the intervals, appointed times, due place, and so forth.

597. 1. The minister must have ordinary or delegated jurisdiction over the ordinand. The proper bishop has ordinary jurisdiction. Therefore the Council of Trent simply establishes:[47] "Let each one be ordained by his proper bishop."

According to the discipline in force, a bishop is proper by a twofold reason or **title of competence**:[48]

a) **The title of domicile together with origin.** Therefore the ordinand must have both origin and domicile in the diocese of the ordaining bishop.

b) **The title of simple domicile without origin.** In this case, the ordinand must confirm by oath his intention of remaining perpetually in the diocese.

This oath is omitted if a professed religious, a cleric destined for another diocese, or a cleric already incardinated by the first tonsure is in question.[49]

c) The proper bishop of a professed religious to be ordained is the bishop in whose diocese is situated the religious house to whose family the ordinand belongs.[50]

The minister has **delegated jurisdiction** if he has received from the proper Ordinary of the ordinands permission to confer orders upon subjects duly dismissed. In this case both dimissorial and testimonial letters are required; these are to be granted without charge, unless there is a special Indult.[51]

Those letters are called **dimissorial** by which the proper prelate of the ordinand asks a bishop determined either specially or generally to confer orders upon his subject. These dimissorial letters are altogether necessary for a subject of another to be licitly ordained by some bishop.[52] Those who act otherwise are punished with grave penalties.[53] Who can grant dimissorial letters may be seen in the canonists, for example, in our *Man. iur. can.*, q. 318. To these dimissorial letters are to be added **testimonial letters**, which provide an authentic testimony given by the competent Ordinary concerning the fitness of the ordinand. The ordinary bishop must also require this testimony concerning the fitness of the ordinand, or at least concerning his good morals (and learning), if after puberty the ordinand has remained outside the diocese for a continuous six months, or if he was devoted to military service for a continuous three months.[54] For during military service an impediment to ordination can more easily be contracted.

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[47] Sess. 23, c. 8, *De reform.*; cf. Code of Canon Law, c. 955, § 1, and c. 957. It is established: "A Vicar and Prefect Apostolic, and an Abbot or Prelate 'nullius,' if they possess the episcopal character, are equivalent to a diocesan bishop in that which pertains to ordination; if they lack the episcopal character, they can nevertheless, in their own territory and only during their office, confer the

first tonsure and the minor orders both upon their own secular subjects and upon others who present dimissorial letters; an ordination performed by them outside these limits is invalid."

[48] Code of Canon Law, c. 956. In ancient times there were also other titles of competence, for example, benefice, membership in the household, and so forth.

[49] Code of Canon Law, c. 956.

[50] Ibid., c. 965.

[51] Cf. Council of Trent, sess. 21, c. 1, *De reform.*; Gasparri, *De ordinatione*, n. 1121. The following are customarily distinguished: letters of dismissal or an "Exeat," by which excardination is granted; dimissorial letters, concerning which above; and formed letters, by which an authentic testimony concerning orders received is presented.

[52] Cf. Council of Trent, sess. 14, c. 2, *De reform.*; sess. 23, c. 8, *De reform.*, and Pontifical Commission, February 17, 1930 (*Acta Apost. Sed.* XXII, 195).

[53] Cf. above, n. 531.

[54] Sacred Congregation of the Council, June 25, 1904. Cf. our *Man. iur. can.*, q. 318 (6).

598. 2. The ordaining bishop (who ordains by his proper right) must always conduct an examination of the ordinands, mindful of the saying: "Impose hands hastily on no man."[55] Therefore immediately before ordination the bishop asks the archdeacon: "Do you know them to be worthy?" If the bishop ordains by delegated right, this examination is customarily made by him who gave the dimissorial letters.[56] Moreover, a threefold other investigation is to be made concerning the worthiness of the ordinands:

a) Secular candidates to be promoted (or those religious who, in that which pertains to ordination, are governed by the law of seculars) are to bring four testimonies, namely:

1. a testimony of the last ordination, or, if the first tonsure is in question, of received Baptism and Confirmation;
2. a testimony concerning the completion of a) the ordination examination, b) the studies required for the individual orders, c) the spiritual exercises;
3. a testimony of the rector of the seminary, or of the priest to whom the candidate outside the seminary was commended, concerning the good morals of the same candidate;
4. testimonial letters of the Ordinary of the place in which the candidate to be promoted has remained for so much time that he could have contracted a canonical impediment there. Such a time is considered to be three months for soldiers and a continuous six months after puberty for others, unless the ordaining bishop prudently determines even a shorter time in a particular case.[57] If the candidate has wandered through so many dioceses that to seek all the testimonial letters would become impossible or excessively difficult, let the Ordinary provide at least by a supplementary oath to be given by the candidate.[58] Exempt religious ordinands must bring testimonial letters from their major superior.[59]

b) The names of those to be promoted to the individual sacred orders (except religious with perpetual vows, whether solemn or simple) are to be publicly announced in the parish church of each candidate; but the Ordinary according to his prudence can either dispense from this publication or substitute for it a public posting upon the doors of the church for several days, among which at least one feast day is to be included. The publication is to be made on a feast day of precept in the church during the solemnities of the Masses, or on another day and hour when a greater attendance of the people is present in the church.[60]

c) All ordinands (whether secular or religious) must undergo an examination properly so called concerning the order to be received and, if the reception of a sacred order is in question, also concerning some theological treatment, according to the method established by the bishop.[61]

Scholion. Even before episcopal consecration an informative process is conducted; indeed, sometimes a certain true examination in theology or canon law is held.[62]

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[55] 1 Tim. 5:22.

[56] Code of Canon Law, c. 997.

[57] Code of Canon Law, c. 994.

[58] Ibid., § 2.

[59] Ibid., c. 995.

[60] Ibid., c. 998.

[61] Ibid., c. 996.

[62] Cf. Pius X, Motu Proprio *Romanis Pontificibus*, December 17, 1903.

599. 3. The due rite to be observed in ordination includes several things, namely:

a) **That ordination not be made by a leap**, that is, that a higher order not be conferred while the lower has not yet been conferred, for example, that the priesthood not be conferred upon one who is not yet a deacon.[63] An order conferred by a leap is valid,[64] with the exception of the episcopate, which cannot validly be conferred upon one who is not yet a priest. Ordinations knowingly performed by a leap are always gravely illicit and subject to grave penalties.[65] The omitted orders must altogether be supplied.

b) **That the intervals be observed.** Intervals are the spaces which must intervene between the conferrals of the individual orders. The Code of Canon Law, changing the former discipline, establishes:[66] a) The intervals between the first tonsure and the order of porter, or between the individual minor orders, are committed to the prudent judgment of the bishop. b) The interval between the order of acolyte and the subdiaconate is one year. c) The intervals between the individual major orders are three months. The bishop can dispense from the intervals if the necessity or utility of the Church requires it. Nevertheless, without the special permission of the Roman Pontiff, the minor orders with the subdiaconate, or two sacred orders, are never to be conferred on one and the same day, any contrary custom being reprobated. Indeed, neither is it lawful to confer the first tonsure together with the order of porter, nor all the minor orders at the same time,[67] unless nevertheless a legitimate contrary custom exists.

c) **That the orders be conferred at the due time**, namely: a) The first tonsure can be conferred on any day and at any hour and even outside Mass.[68] b) The minor orders can be conferred on individual Sundays and feasts of double rite, but in the morning.[69] c) The major orders can be conferred during the solemnities of the Masses on six Saturdays, namely, the Saturdays of the Ember Days, and the Saturdays before Passion Sunday and Easter Sunday. d) Episcopal consecration must be conferred during the solemnities of the Masses on a Sunday or the birthday of an Apostle.

When a grave cause intervenes, a bishop can confer the major orders on any Sunday or feast of precept, and this not only upon his own subjects but also upon the subjects of another duly dismissed.

d) **That the orders be conferred in the due place.** The first tonsure and the minor orders can be conferred even in private oratories.[70] Sacred orders must be conferred in the cathedral church or in a more dignified

church, if general ordinations are in question.[71] By legitimate custom, however, not only particular but also general ordinations can be held in some at least semi-public oratory.

e) **That the statutes of the Pontifical be observed.**[72]

[63] Code of Canon Law, c. 977.

[64] St. Thomas, *Suppl.*, q. 25, a. 5.

[65] Code of Canon Law, c. 2374.

[66] Ibid., c. 978, § 2.

[67] Code of Canon Law, c. 978, § 3.

[68] Cf. Roman Pontifical, p. 1, *De clericis faciendis.*

[69] Code of Canon Law, c. 1006, § 4.

[70] Ibid., c. 1009, § 3.

[71] Council of Trent, sess. 23, c. 8, *De reform.*

[72] Code of Canon Law, c. 1002.

600. Scholion. The bishop imposes upon ordained subdeacons and deacons a Nocturn to be recited, which he can freely determine. But if he employed only the words of the Pontifical, the Nocturn of such a day is understood to be the ferial Nocturn, or the first Nocturn of the feast or Sunday in the Psalter, according as the ordination was held on a feria, feast, or Sunday. It is not necessary, however, to add the Invitatory, Hymn, and Lessons.[73] Upon ordained priests the bishop imposes three Masses to be said, namely, of the Holy Spirit, of the Blessed Virgin, and for the dead. It is indeed to be counseled that the new priests also apply these Masses for the Church and for the dead, but such an application is not obligatory, and therefore a stipend can be accepted.

[73] Sacred Congregation of Rites, June 27, 1899; July 10, 1903.

Chapter III. On The Subject Of Order

601. Preliminary note. Here we treat of those conditions which are required on the part of the subject for valid and licit ordination. For valid ordination three things are required, namely, that the ordinand: 1. be male; 2. be baptized; 3. have at least the habitual intention of receiving the order, if he is an adult. Of itself nothing prevents even infants from validly receiving orders, but such an ordination is subject to many inconveniences and is therefore obsolete today. The conditions required for valid ordination do not need a special explanation, and therefore we treat only of the qualities required for a worthy and licit ordination. All these qualities can be distributed into two categories, namely: 1. those qualities which regard rather the soul of the ordinand and are already prescribed by divine law; 2. those qualities which are rather extrinsic and are established by ecclesiastical law. Among these qualities established by ecclesiastical law, immunity from irregularities and impediments is preeminent; these must be treated specially. Hence we divide this chapter into three articles: 1. on the qualities required by divine law; 2. on the qualities required by ecclesiastical law; 3. on irregularities and impediments.

Article I. On The Qualities Of The Ordinand Required By Divine Law

By divine law and by the very nature of the sacrament of Order, there are required in the ordinand: 1. divine vocation; 2. right intention; 3. the state of grace and probity of life.

602. 1. Divine vocation[74] is altogether necessary for receiving orders.

Therefore St. Paul says of the priesthood: "Neither does anyone take the honor to himself, but he who is called by God, as Aaron was. So Christ also did not glorify Himself that He might become a high priest, but He who spoke to Him: You are My Son."[75] Therefore the Apostles, considering the substitution of someone into the place of Judas Iscariot, prayed to God thus: "You, Lord, ... show whom You have chosen."[76] Christ said to the Apostles: "You have not chosen Me, but I have chosen you,"[77] and elsewhere: "He who does not enter by the door into the sheepfold ... is a thief and a robber; but he who enters by the door is the shepherd of the sheep."[78] Even reason itself manifestly shows the necessity of divine vocation. For the priest is a) a mediator between God and men,[79] b) a dispenser of the mysteries of God.[80] Now, no one can arrogate to himself the office of mediator between two unless he is called or at least admitted by the parties whose interest is involved. Likewise, no one can licitly dispense the things of another unless he is legitimately deputed. From what has been said it follows that a greater and more special vocation is necessary for the clerical state than for the religious state. For in the religious state no greater power is conferred, but only the best means are provided for exercising the virtues and obtaining Christian perfection, to which all are called.

The signs of a clerical vocation are: a) **right intention**, by which one does not seek leisure or his own temporal advantage, but the honor of God and the spiritual salvation both of himself and of his neighbor;[81] b) **fitness** for undertaking the offices of the clerical state, for example, sufficient learning and health; c) **proven virtue and constancy of soul**; hence all teach that it does not suffice for the ordinand to be absolved after sincere contrition from grave sins committed, but also that by a long exercise of the virtues he have provided moral certainty concerning a constant virtuous life;[82] d) **vocation by a legitimate ecclesiastical superior**; therefore the Roman Catechism[83] says concisely: "Those are said to be called by God who are called by the legitimate ministers of the Church." Therefore a certain special internal attraction is by no means required for a priestly vocation. Three propositions approved and promulgated by a special commission of Cardinals by order of Pius X are to be noted: 1. "No one ever has any right to ordination antecedently to the free election of the bishop.[84] 2. The condition which must be attended to on the part of the ordinand, and which is called the priestly vocation, by no means consists (at least necessarily and by ordinary law) in a certain internal aspiration of the subject, or invitations of the Holy Spirit to enter the priesthood. 3. But, on the contrary, nothing more is required in the ordinand, in order that he be duly called by the bishop, than a right intention together with fitness placed in those gifts of grace and nature and proved by that probity of life and sufficiency of learning which provide a founded hope that he will be able rightly to discharge the offices of the priesthood and holily to observe its obligations."[85]

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[74] Divine vocation is rightly defined: a disposition of divine providence by which, according to His good pleasure, He chooses and sets apart certain men for the work of His ministry and grants them the qualities and graces necessary for it. Thus Abelly, *Sacerdos christianus*, p. 9.

[75] Heb. 5:4.

[76] Acts 1:24.

[77] John 15:16.

[78] John 10:1.

[79] Cf. St. Thomas, *S. theol.* 3, q. 22, a. 1.

[80] Cf. 1 Cor. 4:1.

[81] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 802.

[82] Cf. Council of Trent, sess. 23, c. 14.

[83] P. 2, c. 7, q. 3.

[84] Nevertheless, it by no means follows from this that a bishop can at will turn away a suitable person from receiving orders, since the Code of Canon Law, c. 971, establishes: "It is unlawful to turn away anyone ... canonically suitable [from the clerical state]."

[85] *Acta Apost. Sed.* IV (1912), 485. Lahitton wrote excellently on the priestly vocation, *La vocation sacerdotale*, 4th ed., Paris, 1914, which work is called by Cardinal Merry del Val "a masterly study" (*Acta Apost. Sed.* V [1913], 290).

603. 2. Right intention is likewise necessary in the ordinand, since it is a grave disorder to intend most holy things (such as orders) as instruments for obtaining vile things, such as all earthly things are.

Therefore the ordinand must intend before other things the glory of God, the salvation of souls, and other spiritual goods. But if as his principal end he intends leisure, temporal goods, honors, and so forth, he sins gravely; hence Cajetan deservedly says:[86] "If a layman were to direct the clerical state toward temporal goods as toward the end of the clerical state, without doubt he would sin mortally." Nothing prevents the ordinand who primarily intends spiritual goods from secondarily seeking temporal goods, at least insofar as they are necessary for sustaining life honestly and fittingly: "For those who serve the altar partake with the altar."[87]

[86] *Comm. in* 2, 2, q. 185, a. 1.

[87] 1 Cor. 9:13.

604. 3. The state of grace and probity of life are required under grave obligation in the ordinand.

For the sacrament of Order is a sacrament of the living and therefore presupposes the state of grace in the recipient; this is further necessary because ordinands must receive the Eucharist on the day of their ordination. Concerning probity of life the Council of Trent admonishes: "Let bishops know that not all ... are to be assumed to these orders, but only the worthy, and those for whom a proven life may stand in place of old age."[88] The Sacred Congregation of the Sacraments issued on December 27, 1930, to local Ordinaries a new Instruction of the greatest importance in this matter concerning the scrutiny of students to be carried out before they are promoted to orders. Likewise, the Sacred Congregation of Religious issued on December 1, 1931, a similar Instruction to the supreme Moderators of religious institutes and clerical societies.[89]

Besides the state of grace and probity of life, the Council of Trent[90] further requires that ordinands have received the sacrament of Confirmation before the first tonsure. The reason for this statute is easily evident; for the sacrament of Confirmation is of great service in obtaining constancy in the exercise of the virtues.

[88] Sess. 23, c. 12, *De reform.*

[89] *Acta Apost. Sed.* XXIII, 120 ff., and XXIV, 74 ff.

[90] Sess. 23, c. 4, *De reform.* The Code of Canon Law, c. 974, § 1, n. 1, establishes the same.

Article II. On The Qualities Of The Ordinand Required By Ecclesiastical Law

By ecclesiastical law it is required: 1. that the ordinand be immune from censures and irregularities;[91] 2. that he have testimonial and sometimes dimissorial letters;[92] 3. that he have the legitimate age; 4. that he have sufficient learning; 5. that he have a title of ordination, if he receives sacred orders; 6. that he have already exercised the order received; 7. that he perform spiritual exercises before ordination; 8. that he emit a profession of faith.

[91] Irregularities will be discussed in the following article; concerning censures, however, cf. above, n. 475 ff., the special treatise.

[92] Concerning these, something was already said above under n. 598.

605. The legitimate age is that which the Council of Trent,[93] the Pontifical, and the Code of Canon Law determine.

1. For the first tonsure and for the minor orders, no determined age is required in law; nevertheless, since the theological course must have been begun,[94] in practice these orders ordinarily cannot be conferred before the eighteenth year of age.
2. For the subdiaconate, the completed twenty-first year is required.
3. For the diaconate, the completed twenty-second year is required.
4. For the priesthood, the completed twenty-fourth year is required.[95]
5. For the episcopate, the completed thirtieth year is required.[96]

Note. Certain bishops have special faculties for dispensing from a defect of age for receiving the priesthood.

[93] Sess. 23, c. 12, *De reform.*

[94] Code of Canon Law, c. 976.

[95] Ibid., c. 975.

[96] c. 2, X 1, 6; Council of Trent, sess. 7, c. 1, *De reform.*; Code of Canon Law, c. 331, § 1, n. 2.

606. Sufficient learning in the ordinand must be proved by an examination conducted either by the bishop himself or by his delegate.[97]

The bishop can examine not only his own subjects to be ordained, but also exempt regulars already examined by their own prelate.[98] What learning is required for the individual orders has been established in this manner:

a) For the first tonsure it is required that the one to be tonsured have begun the theological course (c. 976, § 1).

b) For the minor orders, almost the same learning appears to be required as for the first tonsure.

c) For the subdiaconate, the end of the third year of the theological course is required; but the beginning of the fourth year for the diaconate.[99]

d) For the priesthood it is required that the ordinand have completed half of the fourth year of the theological course, and that he know not only those things which pertain to the celebration of Mass, but also those things which are necessary for teaching the people and administering the sacraments. Hence every ordinand to the priesthood must know how, at the moment of death, he can and ought to administer the sacraments.[100]

[97] Council of Trent, sess. 23, c. 7, *De reform.*

[98] Code of Canon Law, c. 997.

[99] Ibid., c. 976, § 2.

[100] St. Alphonsus, *Theol. mor.*, l. 6, n. 791.

607. According to its original notion, the title of ordination signifies the incardination of a cleric among the clergy of some title or determinate church, to which the titled cleric devotes sacred ministry, and which in turn grants sustenance to the cleric from its revenues.[101] According to the discipline in force, a title (of sustenance) is **a legitimate security for the sufficient and perpetual**

sustenance of a cleric in major orders. For since a cleric in major orders, wholly devoted to the divine ministry, cannot care for his bodily sustenance, it is very fitting that from the beginning of his ordination he have a certain security for suitable support.

By common law, the following titles of ordination exist today:[102]

1. **The title of benefice**, which consists in this: that the candidate to be promoted to the subdiaconate peacefully possesses an ecclesiastical benefice which perpetually suffices for his honorable sustenance. This title is proper and ordinary, but today, on account of the changed conditions of the Church, it is rather rare. Therefore the following three other subsidiary titles are employed:
2. **The title of patrimony**, consisting in this: that the candidate to be promoted to the subdiaconate possesses certain goods of his own, from the revenues of which he can receive fitting sustenance. The amount of this patrimony is determined by the local Ordinary.
3. **The title of pension** is a certain revenue (whether ecclesiastical or civil) providing certain, perpetual, and sufficient sustenance.
4. **The title of poverty (or of religious profession)** is the right granted to the solemnly professed to have sufficient sustenance from the goods of the monastery.[103]

Besides these four admitted titles, several others now exist, for example, the title of the mission, the title of the episcopal mensa, the title of diocesan service, the title of the common mensa for religious with perpetual simple vows, and so forth; concerning all of these the legitimate particular statutes are to be seen.[104]

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[101] Cf. Wernz, *Ius Decretalium* II, n. 90.

[102] Code of Canon Law, c. 979.

[103] Ibid., c. 982.

[104] Ibid., c. 981 f.

608. The exercise of an order received is prescribed by the Council of Trent.[105] But several authors think that this statute does not oblige under grave sin, since the words of the Council are exhortative rather than preceptive: "Let them exercise themselves in each one according to the prescription of the bishop."[106] For the rest, whether by privilege or by special dispensation, sacred orders are sometimes conferred on three continuously successive days. But then the exercise of the order previously received is almost impossible.

Spiritual exercises must be performed by ordinands, and indeed a) for three full days before the first tonsure and the minor orders; b) for six full days before each major order; but if some are to be promoted to several major orders within six months, the Ordinary (that is, the bishop or religious superior) can reduce the time of the exercises for ordination to the diaconate, but not below three full days. These spiritual exercises are to be performed in a religious or pious house to be designated by the Ordinary, and a testimony concerning the completed exercises is to be brought to the ordaining bishop. If, after the exercises have been completed, sacred ordination is delayed for any reason beyond six months, the exercises are to be repeated; otherwise, let the Ordinary judge whether they are to be repeated or not.[107]

Profession of faith. All ordinands to the subdiaconate are bound to emit the profession of faith (and, until it shall have been established otherwise, also the Anti-Modernist Oath). Even before the diaconate and priesthood, the Ordinary can, but is not bound to, require this profession of faith.[108]

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[105] Sess. 23, cc. 11 and 13, *De reform.*

[106] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 801.

[107] Code of Canon Law, c. 1001. Cf. Sacred Congregation of the Sacraments, May 2, 1928 (*Acta Apost. Sed.* XX, 359).

[108] Code of Canon Law, c. 1406.

Article III. On Irregularities And Impediments

We shall treat 1. of irregularities in general, and then of irregularities in particular, namely, 2. of irregularities from defect, 3. of irregularities from delict. Certain things concerning impediments to ordination are added.

§ 1. On Irregularities In General

609. Notion. Irregularity is a perpetual impediment instituted by ecclesiastical law, which primarily prohibits the reception of order, and secondarily the exercise of orders received.

Explanation. It is called a) **an impediment** or a certain incapacity (but not a censure or penalty), because irregularity does not always presuppose fault, but was principally introduced lest anyone unworthy enter the clerical state or exercise sacred ministry. It is called b) **instituted by ecclesiastical law**, whence it is held as an axiom: **no irregularity is incurred unless it is expressed in the Code of Canon Law**, and consequently there exists no irregularity *ab homine*.[109] Therefore he who is barred by divine law from receiving or exercising order, for example, a woman, or he who lacks a divine vocation, is not properly irregular, but unfit. It is called c) **which prohibits**, etc., by which words the effect of irregularity is signified, which is namely to prohibit (not to invalidate) the reception and exercise of orders. Under the name of order here is understood also the first tonsure, which would be given almost fruitlessly if the reception of orders were prohibited. Irregularity indeed prohibits the conferral and reception of a benefice to which is annexed an office that the irregular person is forbidden to exercise, but it by no means prevents the irregular person from retaining a benefice already accepted or from exercising jurisdiction already possessed. Nevertheless, an irregular person cannot licitly exercise the power of sacred order (outside a case of necessity).

[109] Code of Canon Law, c. 983.

610. Division. 1. Irregularity **from defect** and **from delict** is distinguished.[110] The former arises from an innocent defect; the latter is induced by a personal, mortal, external sin, consummated in act, which was committed after baptism.

2. Irregularity is **total** or **partial**, according as it prevents the reception or exercise of every order, or only a) ascent to a higher order, or b) the partial exercise of an order. Thus, for example, a priest lacking a thumb is irregular with regard to the celebration of Mass, but by no means with regard to hearing confessions.

There are still other divisions, such as antecedent and consequent irregularity, etc., which are easily understood from the terms themselves.

[110] Ibid., c. 984 ff.

611. Conditions required for incurring irregularity. Irregularity is not present unless:

1. it is **certain**, that is, the fact inducing irregularity must certainly exist.

Hence a doubtful irregularity is no irregularity. The reason is that irregularity, as something odious, is of strict interpretation, and must not be presumed but proved.

2. the action by which irregularity from delict is contracted is a personal, mortal, external sin, consummated in act, committed after baptism.[111]

But an occult sin suffices. (Irregularity from defect, however, can be incurred without any fault.) Therefore all those things which excuse an action from being a mortal sin (for example, parvity of matter, defect of advertence, good faith, etc.) also excuse from irregularity.

No ignorance excuses from contracting an irregularity, whether from delict or from defect.[112] Thus according to the discipline in force and contrary to the older doctrine.

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[111] Code of Canon Law, c. 986. One delict induces irregularity, although it was committed before or in baptism, namely, if an adult permits baptism to be conferred upon him by non-Catholics. Cf. below, n. 620 (2).

[112] Code of Canon Law, c. 988.

612. Cessation. A contracted irregularity can cease: 1. through the cessation of the total cause; 2. through baptism; 3. through solemn profession; 4. through dispensation.

1. Through **the cessation of the total cause**, irregularity from defect ceases (but not irregularity from delict). Thus irregularity from a defect of the body ceases through a surgical operation which removes the infirmity, etc.

2. Through **baptism**, which wipes away all sins, the arising of irregularity from a delict perpetrated before baptism is prevented. Thus, for example, a pagan who perpetrated homicide is not irregular from delict after receiving baptism, since the delict has been wiped away through baptism with regard to all its effects; on the contrary, the same pagan who was a bigamist still labors under irregularity from defect after receiving baptism.

3. Through **solemn religious profession**, by the law itself only irregularity from defect of birth ceases, and only for receiving orders, but not for dignities and prelacies.[113] Certain religious institutes have special privileges in this matter.[114]

4. Through **legitimate dispensation**, any irregularity can be removed, since it is solely of ecclesiastical law. To obtain this dispensation, both the facts from which the irregularity (or irregularities) arose and the cause for which the dispensation is sought must be sincerely manifested. No determinate form in which the dispensation is to be given is prescribed by law. Hence, if a dispensation is given in the confessional, the confessor can use, after absolution from sins, these or similar words: "I dispense with you concerning the irregularity which you incurred because of such a cause, for example, abortion." One dispensing from irregularity from delict must impose a salutary penance upon the person dispensed.[115]

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[113] c. 18, X 1, 17.

[114] Cf. Gregory XIII, Constitution *Ascendente*, May 25, 1584, for the Society of Jesus.

[115] Cf. Council of Trent, sess. 24, c. 6, *De reform.*

613. Who can dispense. a) **The Supreme Pontiff** can dispense from absolutely all irregularities, and indeed according to the discipline in force through the Sacred Congregation of the Sacraments if public irregularities are in question, but through the Sacred Penitentiary if a dispensation in the internal forum for occult irregularities is in question. Religious clerics, however, must seek dispensations from public irregularities from the Sacred Congregation of Religious.

b) **Ordinaries** can dispense with their subjects: a) from all doubtful irregularities (whether the doubt is of law or of fact);[116] b) from all irregularities arising from an occult delict, except that which arises from voluntary homicide and the procuring of abortion, or another which has been brought into the judicial forum.[117] How an irregularity arising from the procuring of abortion can be dispensed from was stated above, II, 144.

c) **Major superiors in exempt clerical religious institutes** can dispense with their subjects just as bishops can by common law.[118] For they are Ordinaries. Special privileges in this matter have been granted to certain religious institutes.

d) **Regular confessors** can dispense all penitents from those irregularities from which bishops can by common law dispense their subjects.[119] This is by privilege, which does not appear to have been abolished by the Code of Canon Law.

e) **Confessors by common law** cannot dispense from irregularities; nevertheless, in more urgent occult cases, when the Ordinary cannot be approached and danger of grave harm or infamy is imminent, they can dispense as Ordinaries can, but only so that the penitent may licitly exercise orders already received.[120]

Note. Impediments to ordination (concerning which below, n. 623) cease either through a dispensation of the Holy See or in the manner determined for each impediment.

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[116] Code of Canon Law, c. 15; cf. Gasparri, *De s. ordinat.*, n. 230.

[117] Council of Trent, sess. 24, c. 6, *De reform.*; Code of Canon Law, c. 990, § 1.

[118] Cf. St. Pius V, July 21, 1571.

[119] Cf. St. Alphonsus, *Theol. mor.*, l. 7, n. 355; Gasparri, loc. cit., n. 229.

[120] Code of Canon Law, c. 990, § 2.

§ 2. On Irregularities From Defect

Preliminary note. What irregularities from defect are was stated above, n. 610. According to the discipline of the Church in force, there exist seven irregularities from defect.[121]

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[121] Ibid., c. 984.

614. 1. Defect of birth has constituted an irregularity for centuries, because a) illegitimate children bearing the reproach of their parents are not sufficiently worthy for the excellence of the clerical state; b) they not rarely imitate the incontinence of their parents.[122] According to the discipline in force, those **who were born outside a true or at least putative marriage** are irregular from defect of birth.[123]

The following are not illegitimate and consequently not irregular:

a) foundlings; nevertheless, as a precaution, a dispensation is customarily given if their parents are entirely unknown;

b) children doubtfully illegitimate;

c) children born from adultery during a legitimate marriage, provided, however, that this adultery and the illegitimate origin of the child have not been juridically proved. For the adage holds: The father is he whom the marriage indicates, unless the contrary is proved by evident arguments.[124]

The cessation of this irregularity is obtained:

a) through a legitimate (ecclesiastical) dispensation. Who can dispense from this irregularity has already been stated above.

b) through legitimation by means of a subsequent marriage. In this manner irregularity is not removed for spurious children, but only for natural children (that is, of parents who were capable of contracting marriage at the time either of conception, pregnancy, or birth).[125]

c) through solemn religious profession.[126] But not through simple profession, nor through reception of the religious habit, unless a special privilege is present.[127]

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[122] Cf. Council of Trent, sess. 25, c. 15, *De reform.*

[123] On the contrary, "children conceived or born of a valid or putative marriage are legitimate, unless at the time of conception the use of the previously contracted marriage was forbidden to the parents because of solemn religious profession or the reception of sacred order" (Code of Canon Law, c. 1114). What a putative marriage is will be stated below, n. 640.

[124] Code of Canon Law, c. 1115, § 1.

[125] Ibid., c. 1116.

[126] Ibid.; cf. below in the treatise on marriage, n. 893.

[127] Cf. Gasparri, *De ordinatione* I, 247.

615. 2. Defect of mind is a defect of the use of reason arising from a habitual cause. Those labor under such a defect who are or have been epileptic, insane, or possessed by a demon.[128] But if they become such after receiving orders and it is now certainly evident that they are free, the Ordinary can again permit his subjects to exercise the orders received.

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[128] c. 1, X 1, 17; cf. Code of Canon Law, c. 984, n. 3.

616. 3. Defect of body is a bodily fault on account of which orders cannot be exercised either safely because of weakness or becomingly because of deformity.

The following are irregular from defect of body:

a) **the mutilated**, for example, those lacking a foot, hand, thumb, or index finger, or those who cannot becomingly break the host with thumb and index finger.

b) **those impaired or so weakened** that they cannot becomingly perform the offices connected with orders, for example, the blind (or those so dim-sighted that they cannot read in the Missal); the deaf, who hear nothing; the mute or those who stammer so much that they cannot pronounce complete words; the lame, who cannot stand at the altar without a staff; paralytics, who cannot hold the sacred vessels or perform the prescribed ceremonies.

c) **the deformed**, who labor under an external fault so easily perceptible that they excite horror or laughter in others, for example, those whose noses have been cut off, those who are true dwarfs,[129] or, on the contrary, giants,[130] and those who are notably hunchbacked.

Note. It pertains to the bishop to judge whether, in a particular case, a defect of body is so great that it causes irregularity. This judgment indeed ought to be more severe before ordination than afterward. For it is hard to lose through misfortune the exercise of an order rightly received.[131]

[129] In German: *Zwerge* [dwarfs]; in French: *nains* [dwarfs].

[130] In German: *Riesen* [giants]; in French: *géants* [giants].

[131] Code of Canon Law, c. 984, n. 2.

617. 4. Defect of bigamy (which is also called defect of the sacrament) is true bigamy, namely, when a man successively marries several wives.

Already St. Paul established that bishops, priests, and deacons be husbands of one wife.[132] For marriage signifies the union of the one Christ with the one Church. Therefore a marriage which a man contracts (successively) with two women imperfectly signifies this union and causes a certain stain in the man. Hence arose the irregularity of the sacrament, or of bigamy.

[132] Cf. 1 Tim. 3:2, 12; Titus 1:6.

618. 5. Defect of reputation arises from infamy of law alone. Infamy in general is the lack or notable diminution of a good reputation. How necessary a good reputation is for all clerics is evident of itself. Hence St. Paul says of a bishop: "It is necessary that he also have a good testimony from those who are outside, lest he fall into reproach and into the snare of the devil."[133]

Infamy of law arises only in those cases which are established by common law.[134]

Infamy of fact arises (before the condemnatory sentence of a judge) from the commission of some enormous and notorious crime, for example, from the notorious commission of adultery, perjury, sodomy, and generally of all crimes which are punished by civil laws with a gravely infamous penalty, for example, imprisonment at hard labor.

Infamy is now by no means incurred from the fact that someone or his parents exercise a base trade, for example, that of a butcher, executioner, or stage-player. But it is evident of itself that he who exercises a trade of this kind must leave it if he wishes to become a cleric.

Infamy of fact is not an irregularity properly so called, but those who labor under infamy of fact are simply impeded from orders as long as it endures in the judgment of the Ordinary.[135] This infamy of fact especially ceases through removal to a place where the disgraceful fact is entirely unknown.

[133] 1 Tim. 3:7.

[134] Cf. Code of Canon Law, cc. 2314, 2320, 2328, 2343, 2351, 2357, 2359.

[135] Ibid., c. 987, n. 7.

619. 6. and 7. Defect of lenity is twofold, namely: a) in a judge who has pronounced a sentence of death.[136] Jurors also appear to come under the name of judge.[137] b) in those who have undertaken the office of executioner and their voluntary and immediate assistants in the execution of a capital sentence.

[136] St. Thomas, *S. theol.* 2, 2, q. 64, a. 7, ad 3.

[137] In German: *Geschworener* [juror]; in French: *le juré* [the juror].

§ 3. On Irregularities From Delict

Preliminary note. What St. Paul says of a bishop, "It is necessary that a bishop be without crime,"[138] holds likewise for all clerics, or even those who wish to embrace the clerical state. Therefore criminals are rightly and deservedly barred from receiving and exercising orders. And so the Church has established certain irregularities which arise from seven crimes.

For the following are irregular from delict:

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[138] Titus 1:7.

620. 1. apostates from the faith, heretics, schismatics, and those who are or have been enrolled in an atheistic sect (Pontifical Commission, July 30, 1934: *A. A. S.* XXVI, 494);

2. **those who, except in a case of extreme necessity, have permitted baptism to be conferred upon themselves by non-Catholics in any manner.** Thus the irregularity from abuse of baptism is limited and can occur most rarely;

3. **those who have dared to attempt marriage or to place merely a civil act**, whether they themselves are bound by the bond of marriage, sacred order, or religious vows, even simple and temporary, or with a woman bound by the same vows or joined in a valid marriage. This irregularity is nothing other than an extension of that which was called by the ancient authors similitudinary bigamy. Concerning the other penalties against bigamists who attempt another marriage while the prior marriage remains, and against clerics and religious who attempt marriage, see above in the treatise on ecclesiastical penalties, n. 515.

621. 4. those who have perpetrated voluntary homicide or procured the abortion of a human fetus, the effect having followed, and all who cooperate;

5. **those who have mutilated themselves or others, or have attempted to take their own lives.**

To understand these two irregularities correctly, it must be kept before the eyes that no delict causes irregularity unless it is a grave and external sin. Consequently, he does not incur these irregularities who kills or mutilates another either with the moderation of blameless defense, or from ignorance, or accidentally beyond intention and grave fault. Likewise these irregularities are not incurred if the death of the other person did not actually follow. Hence he who administers poison to kill a man indeed sins immediately, but does not incur irregularity if the poison does not cause death; likewise he who administers a drug to procure an abortion sins gravely, but is not irregular unless the abortion actually followed. But if someone attempts to take his own life, he is immediately irregular, although suicide does not follow.

In order that mutilation induce irregularity, it is required that there be a gravely illicit cutting off or separation of some member from the body, for example, the cutting off of a hand, foot, or genital member, but not of one finger, an ear, etc. Hence a eunuch who has been castrated through his own grave fault incurs irregularity, but not otherwise.

622. 6. clerics practicing the medical or surgical art forbidden to them, if death follows from it.

Two things appear to be necessary: a) the gravely prohibited practice of the medical or surgical art; b) death actually following from it.

7. **those who place an act of order reserved to clerics constituted in sacred order, either lacking that order, or prohibited from its exercise by a canonical penalty, whether personal, medicinal or vindicative, or local.**

This irregularity was already contained in the ancient law, but was not expressed clearly enough. According to the new law, every person (whether cleric or layman) incurs this irregularity who exercises an act of sacred order (that is, of the subdiaconate, diaconate, priesthood, or episcopate), although a) he has not yet been initiated into that order, or b) he is gravely prohibited from exercising this order because of canonical penalties. Therefore this irregularity can arise from a twofold head: 1. from the usurpation of an order not possessed; 2. from the exercise of an order indeed possessed, but gravely prohibited because of certain ecclesiastical penalties. Such penalties are: local interdict, censures, vindicative penalties. According to the present discipline, when necessity exists, it is permitted that a tonsured cleric perform the office of subdeacon in a solemn Mass, provided that he does not wear the maniple (Sacred Congregation of Rites, July 17, 1894; *Decr. auth.*, n. 3832, ad VII). In such a case the cleric cannot touch or wipe the chalice. A subdeacon (and, *a fortiori*, a minor cleric or layman) does not appear able to sing the Gospel in a solemn Mass, even when not vested with the stole, because such chanting is truly an act of the order of diaconate, which he lacks. Some teach the contrary, such as Noldin, Laurentius, and others. In the chanting of the Passion of the Lord, however, it is tolerated that, when a deacon is lacking, the third chanter (acting the part of the synagogue) not be a deacon.

623. Scholion 1. On impediments to ordination. In the new Code of Canon Law, c. 987, besides irregularities from defect and from delict, temporary impediments to ordination are assigned. These impediments are enumerated as seven. For the following are declared simply impeded:

1. **"children of non-Catholics, as long as their parents remain in their error."** Among non-Catholics are included also those cited in n. 620, 1. But grandsons in the paternal line are no longer irregular, as they were previously.[139] If non-Catholic parents have died, their children appear able to be licitly ordained, since the infamy of law formerly inflicted upon these children is no longer transferred to blood relatives and relatives by affinity.[140] On the contrary, an impediment is present if not both parents, but only one or the other, has remained in error.[141]
2. **"men having a wife."** Therefore, although the wife grants permission and vows continence, nevertheless the husband cannot receive orders without the previous permission of the Holy See, which is customarily granted with difficulty.
3. **"those who hold an office or administration forbidden to clerics, of which they must render accounts, until, having laid down the office and administration and rendered the accounts, they have become free."**
4. **"slaves in slavery properly so called, before receiving liberty."**
5. **"those who are bound by civil law to ordinary military service, before they have completed it."** All who are indicated under these last four numbers labor under defect of liberty, which in the ancient law was considered an irregularity.
6. **"neophytes, until, in the judgment of the Ordinary, they have been sufficiently proved."** The ancient authors called this defect of confirmed faith.
7. **"those who labor under infamy of fact, as long as it endures in the judgment of the Ordinary."**

[139] Pontifical Commission, July 14, 1922.

[140] Code of Canon Law, c. 2293, § 4.

[141] Pontifical Commission, October 16, 1919.

624. Scholion 2. On the notation and testimony of a completed ordination. When the ordination has been completed, the names of each one ordained and of the ordaining minister, and the place and day of ordination, are to be noted in a special book to be carefully preserved in the Curia of the place of ordination, and all the documents of the individual ordinations (for example, dimissorial letters, testimonial letters, etc.) are to be accurately preserved.[142]

An authentic testimony of the ordination received is to be given to each one ordained. Those ordained, if they were promoted by a foreign bishop with dimissorial letters, are to exhibit it to their own Ordinary for the notation of the ordination in a special book to be preserved in the archive.

Furthermore, the local Ordinary for secular clerics, and the major religious superior for his ordained religious, is to transmit notice of the ordination celebrated for each subdeacon to the pastor of baptism, who is to note it in his register of the baptized.[143]

[142] Code of Canon Law, c. 1010, § 1.

[143] Ibid., cc. 1010 and 1011.

Treatise X. On Matrimony

625. Preliminary note.

a) The utility and necessity of this treatise, which is touched upon under diverse respects by diverse disciplines.

Since the source and origin of the family and of all human society consists in marriage,[1] the welfare of all society depends upon marriages rightly entered and holily preserved. Hence the history of all ages and regions has always proved that peoples, when the sanctity of marriage was violated, fell into the abysses of immorality, irreligion, and social misery. Therefore Leo XIII, near the beginning of his pontificate, wishing to provide for the happiness of the Christian people, sent the celebrated Encyclical *Arcanum* on marriage to all the bishops of the whole world. He deservedly writes: "You readily see, venerable Brethren, that these teachings and precepts concerning Christian marriage, which through these Our letters We have judged should be communicated to you, pertain greatly no less to the preservation of civil society than to the everlasting salvation of men. May God therefore grant that, the greater the moment and weight which they possess, the more docile and ready to obey may be the minds which they everywhere find." If, however, it is of such utility and necessity that true teachings and precepts concerning marriage be observed by peoples, these precepts must first be clearly known and taught. Now the office of teaching pertains to bishops and their assistants, the priests, who consequently are bound to know very well all things which touch upon Christian marriage. Certainly every priest, whether he is a pastor or a confessor (of adult laymen), is bound under grave obligation to know the laws concerning marriage enacted by God and the Church; and the better he knows these laws, and the more efficaciously and prudently he provides that they be observed, the more abundant fruits he will gather in the vineyard of the Lord.

From all these things it plainly appears that the treatise on marriage is exceedingly useful and necessary for almost all priests, although it has always seemed sufficiently difficult, so that St. Augustine already wrote:[2] "I am not unaware that the question concerning marriages is most obscure and most intricate. Nor do I dare to profess that either in this work or in another I have yet unfolded all its folds, or that I can now unfold them if I am pressed." Nevertheless, this difficulty ought by no means to deter us, and all the less because in present times it has been greatly diminished by the clear laws of the Church and the abundant explanations of learned men. This difficulty indeed appears chiefly to arise from the manifold aspect under which marriage can be considered. For marriage, insofar as it is a merely natural contract, is considered by the light of reason alone in Natural Ethics; insofar as it pertains to a dogma of faith, in Dogmatic Theology; insofar as its cases are judged in the ecclesiastical forum, it is considered in Canon Law; but insofar as it induces temporal obligations, for example, concerning the natural education of children, concerning the community of goods to be established between spouses, etc., it pertains to Civil Law. Moral Theology indeed ought to presuppose the natural principles from Ethics, the revealed principles from Dogmatics, the enacted ecclesiastical laws from Canon Law, and the just laws from Civil Law, and to treat only of the special moral obligations of spouses; nevertheless, in our times an almost universal custom has prevailed that Manuals of Moral Theology treat of marriage in such a way that they hand down the whole doctrine, knowledge of which is necessary for a priest exercising the care of souls. The reason for this method (certainly not altogether scientific) is practical utility. For today a Manual of Moral Theology is considered as a faithful guide and, as it were, a *Vademecum*, which accompanies every priest in almost all questions occurring in priestly practice. Hence juridical questions also,

for example, concerning the impediments of marriage, are customarily treated with almost the same breadth in Moral Theology as in Canon Law.

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[1] Cf. Leo XIII, Constitution *Arcanum*, February 10, 1880.

[2] *De coniugiis adulterinis*, l. 1, c. 25, n. 32 (Migne, *Patr. lat.* 40, 469).

626. b) The principal authors who wrote on marriage.

Since the treatise on marriage is of such utility and necessity, it is no wonder that in all times the more excellent authors wrote or spoke on this matter. Christ Himself performed His first miracle at the wedding of Cana, elevated marriage to a sacrament of the New Law, and established several statutes concerning the obligations of spouses in the Gospel.[3] Likewise the holy Apostle Paul issued most salutary precepts concerning marriage.[4] The Holy Fathers and ancient Christian writers very often speak of marriage. There is no leisure to enumerate them all here. Among the principal are held: St. Ignatius of Antioch,[5] Hermas,[6] Athenagoras,[7] Clement of Alexandria,[8] Tertullian,[9] Augustine.[10] But after the patristic age down to the Decree of Gratian, not so many treatises on marriage are had. Among the authors of this epoch are to be named Rabanus Maurus,[11] Ivo of Chartres.[12] Gratian, however, was the first who not only collected the canons of the Councils concerning marriage, but also composed, as it were, a scientific treatise on marriage in his "dicta" and observations. Several others walked the way thus opened by Gratian, for example, Master Roland[13] (later Alexander III), Bernard of Pavia,[14] Tancred,[15] Peter Lombard.[16] But in the thirteenth century, in which not only the theological and philosophical sciences, but also the science of Canon Law flourished exceedingly, several most celebrated authors wrote on marriage. Before all, St. Raymond of Pennafort of the Order of Preachers is to be named, who by command of Gregory IX collected and arranged the whole Canon Law in the Decretals. In the fourth book of the Decretals there is contained the complete matrimonial law, which afterward was explained by almost innumerable commentaries. St. Raymond himself treated matrimonial law specially for confessors in his *Summa*.[17]

After Peter Lombard and St. Raymond, almost all the great theologians and canonists wrote on marriage, for example, St. Thomas Aquinas, St. Bonaventure, Johannes Andreae, etc. Both the Council of Trent and the Code of Canon Law introduced great changes in matrimonial law, for example, concerning clandestine marriages, concerning impediments of natural, spiritual, and legal relationship, of public propriety, of affinity, etc. Among authors who wrote on marriage after the Council of Trent, Thomas Sanchez is eminent, extolled with great praises by some and vehemently censured by others, as though he had spoken too immodestly concerning certain matrimonial matters. In our times the following have written on marriage in an excellent manner: Feije,[18] Gasparri,[19] van de Burgt-Schaepman,[20] Wernz-Vidal,[21] Leitner,[22] Vlaming,[23] Vogt,[24] De Smet,[25] Linneborn (*Grundriss des Eherechts*), and others. Since in matrimonial cases certain questions occur which ought rather to be resolved by those skilled in the medical art, several authors have treated marriage also under this respect, for example, Eschbach,[26] Capellmann,[27] Surbled,[28] Antonelli,[29] and certain others. Several writers have also considered the civil laws concerning marriage in force in diverse regions in relation to Moral Theology, for example, in England: Stewart;[30] in North America: Bishop;[31] in Germany: Vogt in the work already cited; in Austria: Rittner;[32] in Italy: Ceraolo-Pisani;[33] in Spain: Abella.[34]

c) Division of the treatise.

Since marriage can be considered under a manifold respect (as was stated above), it is no wonder that diverse divisions are employed by diverse authors in this treatise, according as they prefer one consideration or another. But wishing to provide both for scientific method and for practical utility, we shall treat marriage

under the respect a) theological (cc. 1-5); b) canonical (cc. 6-8). At the end a dissertation on civil marriage will be appended. Therefore the whole treatise contains the following chapters:

1. On the nature and division of marriage.
2. On marriage, insofar as it is a sacrament.
3. On the properties of marriage.
4. On the goods of marriage.
5. On the obligations of marriage.
6. On preparation for marriage, namely, on betrothals, the examination of the betrothed, and banns.
7. On matrimonial consent.
8. On the form of the celebration of marriage.
9. On the impediments of marriage, and indeed a) impeding; b) diriment; c) on the dispensation from impediments.
10. On civil marriage.

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[3] Cf. Matt. 5:31 ff.; Mark 10:11; Luke 16:18.

[4] 1 Cor. 7:12 ff.

[5] *Ep. ad Polyc.*, c. 5 (Migne, *Patr. graec.* 1, 723).

[6] *Pastor*, mand. 4, 1 (Migne, loc. cit. 2, 918).

[7] *Legatio pro christianis*, c. 33 (Migne, loc. cit. 6, 966).

[8] *Strom.*, l. 2, c. 23 (Migne, loc. cit. 8, 1086).

[9] In several places, for example, *De monogamia* (Migne, *Patr. lat.* 2, 92).

[10] In several books, for example, *De bono coniugali* (Migne, loc. cit. 40, 372).

[11] *Tract. de consang. nuptiis* (Migne, loc. cit. 110, 1085).

[12] *Decretum*, p. 8; *Panormia*, p. 6 (Migne, loc. cit. 161, 583 and 1243).

[13] *Summa Magistri Rolandi*, ed. Thaner, and *Die Sentenzen Rolands*, ed. Gietl.

[14] *Summa de matrimonio*, in Laspeyres.

[15] *Summa de matrimonio*, ed. Wunderlich.

[16] *Sent.*, book IV.

[17] *Summa S. Raymundi, de poenitentia et matrimonio*, with the commentaries of John of Freiburg, O.P., Rome 1603.

[18] *De impedimentis et dispensationibus matrimonialibus*, 4th ed., Louvain 1893.

[19] *Tractatus de matrimonio.* A new edition was prepared by Schaepman.

[20] *Tractatus canonicus de matrimonio*, Utrecht 1908.

[21] *Ius canonicum*, vol. V, Rome 1925. Peter Vidal prepared this new edition.

[22] *Lehrbuch des kirchlichen Eherechts.*

[23] *Praelectiones de iure matrimoniali*, 1921, 2nd ed.

[24] *Das kirchliche Eherecht*, 3rd ed., 1910.

[25] *De sponsalibus et matrimonio*, 2nd ed., Bruges 1921.

[26] *Disputationes physiologico-theologicae*, 2nd ed., 1901.

[27] *Pastoralmedizin*, new ed. prepared by Bergmann, 1922. It is an excellent work.

[28] *La morale dans ses rapports avec la médecine et l'hygiène*, 10th ed., Paris 1905.

[29] *Medicina pastoralis in usum confessariorum*, 3rd ed., Rome 1906.

[30] *The Law of Marriage.*

[31] *New Commentaries on Marriage.*

[32] *Österreichisches Eherecht.*

[33] *Del matrimonio.*

[34] *Manual del matrimonio civil y canónico.*

Chapter I. On The Nature And Division Of Matrimony

This chapter is divided into three articles: 1. on the nature of marriage; 2. on the intimate character of the matrimonial contract; 3. on the division of marriage.

Article I. On The Nature Of Matrimony

627. Nominal definition. The ancient authors derive the name of matrimony from *mater* and *munio*, as though *matrimonium* were the same as *matris munium*, the duty of a mother, because a woman enters matrimony in order that she may become a mother. Now matrimony took its name from the mother, but not from the father, because the principal end of matrimony is offspring, whose generation imposes so many duties upon the mother; whence it is beautifully said: "To the mother an infant is burdensome before birth, painful in birth, and laborious after birth."[35] St. Thomas gives still other explanations of this name.[36] Besides the name of matrimony, other words are also employed to signify the same reality, namely:

a) **Conjugium**, because two spouses are bound, as it were, under one yoke.[37]

b) **Consortium**, because two spouses have a common lot and condition.[38]

c) **Nuptiae** or **connubium**, because according to the ancient rite (which among certain peoples is observed to this day), brides entering marriage covered themselves with a veil for the sake of modesty and subjection.[39] Yet *nuptiae* sometimes specially signified the solemnities and festivities joined to the matrimonial contract, or even conjugal intercourse itself.[40] Concina beautifully explains these diverse names.[41]

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[35] c. 2, X 3, 33. Cf. Roman Catechism, p. 2, c. 8, q. 2.

[36] *Suppl.*, q. 44, a. 2.

[37] Cf. Roman Catechism, loc. cit.

[38] l. 1, D. *De ritu nuptiarum* 22, 2.

[39] Cf. Roman Catechism, loc. cit.

[40] c. 4, X 4, 11.

[41] *De matrimonio*, c. 1.

628. Real definition. Several authors, distinguishing two elements in marriage, namely, contract and sacrament, first give a definition of the contract and afterward add a definition of the sacrament of marriage. But because in the New Law Christ elevated the matrimonial contract itself of Christians to the dignity of a sacrament without changing the original nature of marriage, Leo XIII therefore defines that "in Christian marriage the contract is not separable from the sacrament, and consequently a true and legitimate contract cannot exist without being by that very fact a sacrament."[42] Lugo already taught the same:[43] "Christ did not will to alter the conditions of that contract, but to elevate it as it was, so that whenever it was valid under the aspect of a contract, among the baptized it would also possess the character of a sacrament." Therefore it appears superfluous in Moral Theology to give one definition of the contract and another of the sacrament of marriage. Thus marriage can be described by one true classical definition:[44] **the marital union of a man and a woman between legitimate persons, retaining an undivided manner of life.** Among the baptized, a union of this kind, by the institution of Christ, is a true sacrament signifying and causing supernatural grace *ex opere operato*; among the non-baptized, however, such a union is indeed not a sacrament, but nevertheless, "since it has God as its author and was even from the beginning a certain foreshadowing of the Incarnation of the Word of God, there is therefore in it something sacred and religious, not adventitious but innate, not received from men but implanted by nature, ... and it is sacred by its own force, its own nature, and of its own accord."[45]

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[42] Encyclical *Arcanum*, February 10, 1880. Similar things follow from the propositions condemned in the *Syllabus* of Pius IX, prop. 66: "The sacrament of marriage is nothing but something accessory to the contract and separable from it"; prop. 73: "By force of a merely civil contract there can exist among Christians a marriage in the true sense, and it is false either that the contract of marriage between Christians is always a sacrament, or that the contract is null if the sacrament is excluded" (Denz., nn. 1766, 1773). The Code of Canon Law, c. 1012, asserts the same.

[43] *De iure et iustitia*, disp. 32, n. 392.

[44] This definition is deservedly called classical, for it is taken almost word for word from Roman law (*Inst.*, l. 1, c. 9); from St. Augustine in Gratian (c. 3, C. 27, q. 2); from Gregory IX (c. 2, X 3, 33); from several Scholastics of the thirteenth century, among whom St. Thomas is eminent (*Suppl.*, q. 44, a. 3); from the Roman Catechism, p. 2, c. 8, q. 3.

[45] Encyclical *Arcanum*.

629. The definition is explained. It is called 1. **a union**, which word, if taken actively, that is, for the transient act itself of internal and external consent by which a man and a woman promise conjugal fidelity to each other, is marriage *in fieri*; but if it is taken as though passively, that is, for the effect produced or for the state of life arisen from the aforesaid manifested consent, it signifies marriage *in facto esse*, namely, the bond of marriage. Christian marriage *in fieri* has the character of a sacrament, but not marriage *in facto esse*.[46]

It is called 2. **marital**, in order that the proper end of that union be signified. For a man and a woman are joined to lead a legitimate marital life, but not for the sake of lust, friendship, secular business, etc. The secondary ends of those marrying will be discussed below.

It is called 3. **of a man and a woman**, but not of men and women, in order that monogamy be signified and both polygamy and polyandry be excluded.

It is called 4. **between legitimate persons**, in order to express that certain persons impeded by law (natural or positive) cannot enter a valid or licit marriage, or that impediments of marriage exist.

It is called 5. **retaining an undivided manner of life**, in order that the indissolubility of marriage be indicated. Certain ancient Glossators (for example, Roland, Bernard of Pavia, and Tancred)[47] understood under this undivided manner or society of life, less correctly, carnal intercourse itself, although it can truly be said

that this society includes a mutual right, and one that is exclusive and of itself perpetual, to the body of the other spouse in order to the generation of offspring.

By this undivided manner or society of life there are further demanded (but only as integral parts) the following three things:

a) community of domestic life, that is, of dwelling, bed, and table;

b) union of souls through charity and a common purpose in acting;

c) at least some community of temporal goods.

These will be treated more fully below.

[46] Cf. Billuart, *De matrimonio*, diss. 1, a. 1.

[47] Cf. Freisen, *Geschichte des kanonischen Eherechtes*, § 3.

Article II. On The Intrinsic Nature Of The Matrimonial Contract

630. Since every good definition ought adequately to describe the essence of the thing defined, after the definition of matrimony has been explained, the question is proposed by authors: what properly is the formal constitutive of matrimony, or what primarily and fundamentally constitutes the essence of matrimony. Two theories have been devised to resolve this question, namely, the copular theory and the consensual theory. The former teaches that the essence of matrimony consists in the union of bodies, that is, in carnal intercourse itself, so that matrimony is not a true and perfect matrimony before carnal intercourse has been performed. Thus teach Julian, the disciple of Pelagius, Hincmar of Reims, Gratian, John Wycliffe, several Protestants, John of Faenza, and perhaps certain other ancient Catholics cited by Freisen,[48] who himself also defended this theory, but afterward (in 1892) retracted it, at least in some manner. The second theory asserts that the essence of matrimony consists in the union of wills, that is, in the consent of the contracting parties, and consequently that a true and perfect matrimony exists even if carnal intercourse is not had between the spouses. Almost all Catholics now teach thus. To elucidate this matter we posit three propositions:

[48] Ibid., p. 151 ff. Already in the time of Alexander III (1159-1181), matrimony was held to be "true and indissoluble" before carnal intercourse had been performed, "although," says the Pope, "others think otherwise, and it also was at times judged otherwise by certain of Our predecessors" (c. 3, X 4, 4). The school of Bologna especially appears to have stood for the copular theory.

631. Proposition 1. Carnal intercourse itself is not required for the essence of matrimony.

Proof a) From two biblical examples. There was a true matrimony both between Adam and Eve while still living in paradise, and between the Blessed Virgin Mary and St. Joseph. But in neither case did carnal intercourse intervene. Therefore carnal intercourse does not pertain to the essence of a true and perfect matrimony. Most commonly all theologians teach that matrimony was instituted in paradise. Now it is certain that matrimony was not consummated in paradise, because offspring generated in paradise before sin would not have had original sin. But such offspring without original sin never existed. Almost all authors, both ancient and modern, teach that a true matrimony existed between the Blessed Virgin and St. Joseph.[49] Freisen himself admits this. For in the Gospel it is said by the angel to Joseph: "Do not fear to take Mary your wife."[50] But it is certain by faith that Mary was a virgin both before and after childbirth.[51] Therefore carnal intercourse is not required for the essence of matrimony.

Proof b) From the Holy Fathers. St. Ambrose[52] says: "It is not the defloration of virginity that makes marriage, but the conjugal compact"; and St. John Chrysostom[53] teaches: "Intercourse does not make marriage, but the will." St. Thomas[54] responds to the question whether the consent which makes marriage is consent to carnal intercourse: "Those spoke well who said that to consent to marriage is consent to carnal intercourse implicitly, not explicitly." This, Sylvius says,[55] is consequently not to be understood as though there were at least a virtual purpose of carnal intercourse, but because it is consent to that power in which such intercourse is contained implicitly, as act in potency. Blessed Albert the Great especially attacks the copular theory vehemently and teaches simply: "It must be said that matrimony is perfected by consent."[56]

Proof c) From the Roman Catechism, p. II, c. 8, where § 8 is entitled: "Intercourse is not required for a true matrimony."

Proof d) From the Code of Canon Law, which says absolutely in c. 1081: "The consent of the parties, legitimately manifested between persons capable by law, makes matrimony." Nothing, therefore, is said concerning the necessity of marital intercourse.

You will object 1. Christian matrimony signifies the real union of Christ with the Church. But this union is not signified except through the carnal union of the spouses. Therefore carnal union pertains to the essence of matrimony.

I respond by distinguishing the major: Christian matrimony signifies the real union of Christ with the Church through love and the influx of graces, which signify a moral union, I concede; it signifies the physical union of Christ with the Church, I deny; and I deny the consequence.

You will object 2. St. Paul, speaking of spouses, says: "They shall be two in one flesh; this is a great sacrament. But I speak in Christ and in the Church."[57] Therefore carnal union pertains to the essence of matrimony.

I respond: These words, "They shall be two in one flesh," do not necessarily signify carnal union, but the indissoluble bond existing between the spouses; for St. Paul here evidently alludes to the words: "And Adam said: This now is bone of my bones, and flesh of my flesh; she shall be called woman, because she was taken out of man. Wherefore a man shall leave his father and mother and shall cleave to his wife, and they shall be two in one flesh."[58] But from these words nothing can be concluded concerning carnal intercourse. See other objections and their solutions in Billuart.[59]

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[49] Cf. *S. theol.* 3, q. 29, a. 2.

[50] Matt. 1:20.

[51] Epistle of Pope Siricius on the perpetual virginity of Mary (Denz., n. 91; cf. ibid., nn. 256, 993).

[52] It is contained in c. 5, C. 27, q. 2. Similar things are contained in c. 9, C. 27, q. 2, from St. Augustine, *De bono coniugali*, l. 1, c. 2.

[53] c. 1, C. 27, q. 2.

[54] *Suppl.*, q. 48, a. 1.

[55] Commentary on this place, namely, *Suppl.*, q. 48, a. 1; cf. also *Suppl.*, q. 44, a. 1.

[56] *In* 4, dist. 26, a. 15.

[57] Eph. 5:31 ff.

[58] Gen. 2:23 ff.

[59] *De matrimonio*, diss. 3, a. 5.

632. Proposition 2. The essence of matrimony *in fieri* (and consequently also of the sacrament of matrimony) consists in mutual consent externally manifested, or in the matrimonial contract.

That even Christian matrimony is a true and proper bilateral contract, although singular and *sui generis*, is today, after the Encyclical *Arcanum* cited above, so certain that the contrary assertion of a few authors is rash.[60] The reason is that in matrimony all things are found which are necessary for a true contract. A contract is customarily defined: "The agreement and consent of two or more in the same thing."[61] Now in matrimony there is the free consent of two, namely, of those about to marry, in the same thing, namely, in conjugal life. But the qualities of this matrimonial consent will be treated below.

[60] Cf. Gasparri, *De matrimonio*, n. 202 ff.

[61] l. 1, § 2, D. *De pactis* II, 14.

633. The material object of this contract is the persons themselves who contract.

The formal object is the manner of life. Philosophers call the material object the thing about which action is taken; the formal object is that one among the diverse formalities existing in the thing which is principally intended. Thus in one and the same material thing there can be a manifold formal object; for example, one and the same house, considered as the material object, when it is sold, is subject to the formal object of a contract of sale; when it is leased, it is subject to the formal object of a contract of lease. For in the former case ownership is principally intended, but in the latter only the use of the house. In contracting matrimony each spouse must principally[62] intend (or at least not exclude) a mutual, exclusive, and perpetual right to the body of the other with an order to generation. Therefore such a right is the formal object of the matrimonial contract; and if such a right were excluded, the matrimony would be null and invalid from the beginning. But once matrimony has been contracted and such a right has been truly granted, nothing prevents that right from never being reduced to practice, or even from being perpetually suspended with regard to actual exercise, for example, when the spouses by common consent emit a vow of perpetual continence, or when, after adultery committed by one spouse, the innocent party refuses to render the conjugal debt (concerning which more fully below).

[62] Nothing prevents the spouses from having other accidental intentions, for example, of preserving the honor or fortune of the family, of having a remedy for concupiscence, etc.

634. Matrimony is a plainly singular and *sui generis* contract, for:

a) every true and legitimate matrimony is a sacred contract.

Hence even the legitimate matrimony of pagans is called by Leo XIII in the Encyclical *Arcanum*: "sacred by its own force, its own nature, and of its own accord." The reason is both because the immediate author of matrimony is God, and because matrimony even from the beginning was a certain foreshadowing of the Incarnation. The history of peoples also openly demonstrates that nuptials were always held as something sacred, and therefore were celebrated with religious ceremonies, unless the peoples had fallen into the abyss of immorality. Thus Leo XIII in the often-cited Encyclical *Arcanum* deservedly says: "Both the monuments of antiquity and the customs and institutions of peoples testify, ... in the minds of all of whom it is evident that it had been formed and anticipated that, when they thought of matrimony, there occurred the form of a thing joined with religion and sanctity. For this reason nuptials among them were often accustomed to be performed not without religious ceremonies, the authority of pontiffs, and the ministry of priests."[63] From the sanctity of matrimony it follows that the matrimonial contract cannot, like other human contracts, be clothed with

arbitrary conditions or dissolved at the will of the contracting parties; for those things which are ordained by God Himself and by the natural law cannot be arbitrarily changed by men.

Note. The sanctity of the matrimonial contract must be greatly inculcated, especially in our days, when, from civil marriage introduced almost everywhere on earth and from frequent divorces, the danger has arisen that the people may consider matrimony as any other human contract. The sorrowful experience of all peoples and all ages proves more than sufficiently that divorces, and even adulteries, increase day by day because matrimony is no longer sufficiently considered as something sacred and immediately instituted by God. Hence every priest should strive with all his strength to inculcate the sanctity of matrimony in the hearts of men.

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[63] There is no leisure to treat the history of matrimony here. The history of matrimony is the history of morality. The more sacred marriages are held by a people, the better are its morals; and the more frequently matrimony is disfigured by adulteries and divorces, the more its morals are ruined. Leitner treated the history of matrimony (*Eherecht*; *Geschichte der nichtsakramentalen Ehe*). Westermarck (*History of Human Marriage*) wrote in a Darwinistic sense.

635. b) The matrimonial contract is by divine law a bilateral and indivisible contract, which cannot limp.

The Angelic Doctor writes on the matter:[64] "Since matrimony is a certain relation, and a relation cannot arise in one of the extremes without its arising in the other, therefore whatever impedes matrimony in one impedes it in the other, because it cannot be that someone is a husband who is not the husband of a wife, or that someone is a wife not having a husband, just as neither can there be a mother not having a son; and therefore it is commonly said that matrimony does not limp." This principle, "Matrimony cannot limp," understood in this negative sense, must be carefully attended to in practice, and it was employed both by the celebrated Decree *Ne temere* XI, § 2, and by the Code of Canon Law, c. 1036, § 3, in this sense explained above by St. Thomas. For the Code establishes (loc. cit.): "Although an impediment is present on the part of only one party, nevertheless it renders the matrimony either illicit or invalid." Formerly it was much disputed whether this principle could also be taken in a positive sense, so that if one of the contracting parties were capable, that party could communicate this capability to the other party. This question indeed was of great moment in the impediment of clandestinity, in which this principle could truly be applied in a positive sense;[65] today, however, after the Decree *Ne temere*, it has lost practical utility. For the negative response is certain,[66] at least for marriages contracted after that Decree. Therefore the following practical conclusion is easily deduced:

An infidel, although not bound by matrimonial impediments of purely ecclesiastical law,[67] nevertheless, even after obtaining a dispensation from the impediment of disparity of cult, cannot validly contract matrimony with a Catholic unless he observes the statutes of the Code of Canon Law. The reason is that the Catholic is bound by these statutes, and consequently the infidel also indirectly.

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[64] *Suppl.*, q. 47, a. 1.

[65] Cf. Sacred Roman Rota, in the Mohilev case, April 18, 1916 (*Acta Apost. Sed.* VIII, 422).

[66] Cf. Boeckenhoff, *Dissertatio de individuitate matrimonii*, Berlin 1901.

[67] Cf. below, n. 651.

636. Proposition 3. The essence of matrimony *in facto esse* consists in a bond permanent of itself, which arises from a legitimate matrimonial contract.[68]

Billuart writes excellently on this matter:[69] "Matrimony *in facto esse* does not consist essentially in mutual or external consent, nor in the mutual handing over of bodies, because these pass away while the matrimony

remains; nor in a mutual right to intercourse, both because that right to intercourse is something consequent upon matrimony already constituted, for the spouses have a right to intercourse because they are joined in matrimony; and because matrimony subsists without that right, as in those who by mutual consent bind themselves to preserve continence, unless perhaps you understand the radical right, which is nothing other than the formal and passive bond or union.... I said: in the formal bond, because the bond is not taken causally for the thing which binds; for thus it is the contract, but for the formal mode and bond, or the passive union resulting from the causal bond, which St. Thomas, q. 44, a. 1, places in the relation of the persons joined."

[68] Cf. Roman Catechism, p. 1, c. 8, q. 4.

[69] *De matrimonio*, diss. 1, a. 1.

637. Scholion. There is no reason for us to speak of the necessity and moral goodness of matrimony. For from what has been said it manifestly follows that matrimony is necessary for the human race and is something morally good in itself. For God commanded men in paradise: "Increase and multiply."[70] Moreover, the suitable propagation of the human race is impossible without legitimate matrimony. For not only the physical generation of offspring is required, which indeed can be had without matrimony, but also the bodily and spiritual education of the offspring born. This education indeed is morally impossible unless the father and mother are joined in legitimate matrimony and with united strength provide for the welfare of the offspring. Furthermore, true family life and the mutual love of men perish without marriages. Hence the error of certain Socialists and Mormons is most wicked, who wish to abolish all marriages and proclaim so-called free or promiscuous love. But although matrimony is something morally good and necessary for the whole human race, it does not therefore follow that every capable man must contract matrimony. For the propagation of the human race is already had so sufficiently that from the celibacy of a certain few men, not only does no harm arise, but rather the greatest utility. By accident, however, an obligation to enter matrimony can also be incumbent upon some determinate man, for example, to repair damage inflicted, to fulfill a promise made, etc. There is no leisure here to speak of the utility and excellence of virginity.[71]

[70] Gen. 1:28.

[71] Cf. *S. theol.* 2, 2, q. 152, aa. 2 and 4, and above, II, n. 659.

Article III. On The Division Of Matrimony

Preliminary note. Matrimony is not divided in the same manner by diverse authors; indeed, the same division is not always taken in the same sense. For this reason confusions and disputes easily arise, as has in fact already happened concerning the notion of legitimate and ratified matrimony.[72] But since there ought not to be a quarrel about words, we explain the following divisions of matrimony, leaving full liberty to anyone who prefers to adduce other divisions and explanations.

We therefore divide matrimony:

[72] Cf. Freisen, *Geschichte des kanonischen Eherechtes*, § 10.

638. 1. Into legitimate, ratified, consummated.

Legitimate matrimony is a matrimonial contract validly entered into by two non-baptized persons.[73] Since these persons are not bound by purely ecclesiastical laws (because they are not members of the Church), but are bound by just civil laws and by the natural law, legitimate matrimony can therefore also be defined: a

matrimony of non-baptized persons to which no diriment impediment, whether of natural law or of civil law, is opposed; or, still more briefly: **every valid matrimony which is not a sacrament.**[74] Hence it follows that the so-called civil matrimony of Christians is not legitimate matrimony, because it is either valid (for example, the marriages of Protestants), and then it is not only legitimate but also ratified, and a true sacrament; or it is invalid (because of some impediment), and then it is concubinage, at least material.

Ratified matrimony is a matrimonial contract validly entered into by Christians, to which, however, marital carnal intercourse has not yet supervened. Such a matrimony is called ratified because it is ratified by Christ and the Church through the sacrament; for in Christian matrimony the contract cannot be separated from the sacrament.[75]

Consummated matrimony is that in which carnal intercourse has been had. Two things, however, must be noted here: a) A matrimony is not said to be consummated from the fact that carnal intercourse perhaps **preceded** the valid matrimony, but only from true marital intercourse, and that apt for generation. Therefore matrimony is not consummated even through onanistic or sodomitical intercourse;[76] but it is consummated through any penetration of the vagina made by the male member with seminal emission within it. b) Even the legitimate matrimony of non-baptized persons can be consummated, but it can never be ratified, because it is not a sacrament; but in the case in which both non-baptized spouses receive baptism, by that very fact the matrimony becomes ratified and a sacrament, provided, however, that the matrimonial consent perseveres (concerning which more fully below).

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[73] Code of Canon Law, c. 1015, § 3. Formerly the matrimony even of Christians was called legitimate if all the legal forms had been observed (cf. c. 17, C. 28, q. 1, and Benedict XIV, *De syn. dioec.*, l. 8, c. 12, n. 5 at the end). Since a valid matrimony between a baptized and a non-baptized person more probably lacks the sacramental character (cf. below, n. 649), such a matrimony also appears to be legitimate, but not ratified.

[74] This matter will be treated more fully below, n. 649.

[75] Cf. condemned propositions 66 and 73 in the *Syllabus* of Pius IX, cited above in n. 628, note 1.

[76] Cf. Eschbach, *Disp. physiol.-theol.*, disp. 2, c. 2.

639. 2. Into public, clandestine, occult (secret).

Public matrimony is considered to be that which has been contracted in the face of the Church, or in another public manner recognized by the Church as valid. Hence, for example, those marriages are public which have been contracted before two witnesses and the pastor or another competent priest.

Clandestine matrimony[77] is a marriage entered into without the presence of the pastor and two witnesses. According to the discipline in force, there are no other valid clandestine marriages (outside a case of grave necessity) except marriages of non-Catholics.[78]

Occult matrimony (or matrimony of conscience)[79] is that which is validly contracted before the pastor and two witnesses, but whose celebration is concealed from the people for a most grave reason. In order that this concealment may be obtained, the banns are omitted; the matrimony is celebrated in a secret place; the Ordinary or pastor and the assisting witnesses are bound to observe secrecy; the matrimony contracted is not recorded in the ordinary register of marriages, but in a special book to be kept in the secret archive of the episcopal curia. A special permission of the bishop is required, however, in order that a matrimony of conscience of this kind may be celebrated licitly.[80] The reason for which the bishop can permit such a matrimony is, on the one hand, the moral necessity of entering matrimony and, on the other hand, the moral impossibility of celebrating a public matrimony; for example, if, because of civil laws or other circumstances,

someone cannot celebrate a public matrimony, and nevertheless matrimony is necessary in order to provide for the conscience of the contracting parties. Children born or to be born of an occult matrimony, after receiving baptism, are to be inscribed not in the parochial register of the baptized, but in some secret book preserved in the episcopal curia. The obligation of preserving secrecy on the part of the Ordinary ceases if some scandal or grave injury to the sanctity of matrimony is imminent, or if the parents do not take care that the children born be baptized, or neglect the Christian education of the children.[81]

Matrimony of conscience must by no means be confused with **morganatic matrimony,**[82] which is a legitimate marital union between a person of great nobility and a person of very disparate condition, for example, between a prince and a theatrical actress, entered into with the agreement that, although the matrimony possesses full right before the Church, in the civil forum the wife and the children begotten of her do not fully succeed to the honors, dignities, and goods of the husband.[83] The name morganatic matrimony appears to have been taken from the German word *Morgengabe*, because on the day following the celebration of such a matrimony a morning gift was granted to the wife. Moreover, several things concerning the conditions of morganatic matrimony are still obscure.[84] Its practice is greatly limited in our times.[85] Its effects, being merely civil, do not touch Christian matrimony itself. When such a case occurs, the pastor should consult his own bishop, who is to decree according to his prudence what is to be done.

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[77] [According to its native sense, clandestine matrimony signifies a marriage entered into secretly without witnesses, so that legitimate proof does not thereby appear. Later, those marriages were called clandestine which were celebrated without the customary solemnities (cf. De Smet, *De sponsal. et matrim.*, n. 93). Perhaps it would be better if this whole terminology (which, moreover, is no longer found in the new Code) were now omitted, and marriages authentically celebrated in the Catholic Church and marriages validly entered into outside the Catholic Church were distinguished.]

[78] Cf. below, n. 754.

[79] *Gewissensehe.*

[80] Cf. Benedict XIV, Constitution *Satis vobis*, November 27, 1741; Leo XIII, Letter to the Bishops of Venice, February 8, 1893; Code of Canon Law, c. 1104.

[81] Code of Canon Law, c. 1106.

[82] It is also called matrimony *ad manum sinistram* or *ad legem salicam.* Cf. Leitner, *Lehrb. des Eherechts*, p. 76.

[83] Cf. Benedict XIV, *De syn. dioec.*, l. 13, c. 23, n. 12.

[84] Cf. *Staatslexikon*, s.v. "Ebenbürtigkeit"; Freisen, *Geschichte des kanonischen Eherechtes*, § 8; Leitner, loc. cit., § 11.

[85] The most famous morganatic matrimony was contracted by Archduke Francis Ferdinand (murdered by a wicked assassination, together with his wife, on June 28, 1914), who on July 1, 1900, took Countess Sophia of Chotek in matrimony, after he had previously renounced for his wife the dignity of empress, and for the children to be born the rights of the kingdom.

640. 3. Into valid, invalid, putative.

Valid (true) matrimony is that to which no diriment impediment is opposed; but if a prohibiting impediment is opposed, the matrimony indeed remains valid, but is illicit.

Invalid (void, null) matrimony is that to which a diriment impediment is opposed; but if the contracting parties nevertheless entered the marriage in bad faith, that matrimony is called attempted.[86]

Putative matrimony is called that which is indeed in reality invalid because of a diriment impediment, but which was contracted in good faith by at least one of the contracting parties. In order, however, that a matrimony of this kind be recognized by the Church as putative, it is required that the nuptials have been entered into publicly, and neither clandestinely nor while the Church opposed them.[87] Offspring born of a

putative matrimony of this kind is ordinarily considered legitimate, and indeed both by Canon Law and by several civil laws, for example, in Germany,[88] France,[89] Austria,[90] and Spain.[91] As soon as both putative spouses become certain of the nullity of the matrimony, that matrimony ceases to be putative,[92] and consequently the putative spouses must then abstain altogether from the use of matrimony.

[86] Cf. the excommunication inflicted upon clerics in major orders and solemnly professed religious who attempt matrimony, n. 544.

[87] Cf. c. 2, §§ 11-14, X 1, 7, and c. 3, X 4, 3; Council of Trent, sess. 24, c. 1, *De reformatione matrimonii.*

[88] Civil Code, § 1699.

[89] Civil Code, arts. 201 ff.

[90] Civil Code, § 160.

[91] Civil Code, art. 69.

[92] Code of Canon Law, c. 1015, § 4.

641. Scholion. On presumed matrimony. Formerly authors discussed presumed matrimony at length, which in the external forum is presumed to exist from some fact until the contrary is clearly proved. Such a presumed matrimony was held to exist chiefly in three cases, namely, if carnal intercourse followed: 1. valid betrothals; 2. a conditional matrimony; 3. a matrimony contracted in impuberty. Presumed matrimony has certainly been abolished in the first and third cases,[93] and probably also in the second.[94]

[93] Constitution *Consensus* of Leo XIII, February 15, 1892; Code of Canon Law, c. 1067, § 1.

[94] Cf., however, below, n. 738.

Chapter II. On Matrimony, Insofar As It Is A Sacrament

This chapter is divided into four articles: 1. on the existence of the sacrament of matrimony; 2. on its matter and form; 3. on its minister; 4. on its subject.

Article I. On The Existence Of The Sacrament Of Matrimony

642. Errors. 1. The Gnostics and Manichaeans erred concerning matrimony, although they condemned rather the use of matrimony as an incentive of concupiscence and as propagative of original sin. They held the whole of matrimony to be an invention of the evil principle.

2. Nearly all Protestants (with a few exceptions, for example, the Ritualists) indeed admit that matrimony is something religious; indeed, they say that it is better than virginity, but they utterly deny that it is a sacrament properly so called; indeed, Calvin did not fear to say that the character of a sacrament belongs no more to matrimony than to agriculture or the barber's or cobbler's art, and that it was not recognized as a sacrament before the time of Gregory I (the year 590).[95]

3. Peter Lombard (the Master of the Sentences) indeed numbers matrimony among the sacraments, but appears to deny to it the power properly to cause grace.[96] John of Faenza taught the same.[97] Durandus of Saint-Pourcain (d. 1332) thinks that matrimony is a sacrament in a certain broad sense and does not produce grace *ex opere operato.*[98]

Against all these, according to Catholic dogma, let there be the following:

[95] *Institutes*, l. 4, c. 19, § 34. Luther taught similar things, saying: "Marriage is an outward worldly thing, like clothing, food, house, and farm" (*Von Ehesachen*, the year 1530). Previously, however, he had admitted the sacramentality of matrimony.

[96] IV, dist. 1. Moreover, there is dispute concerning the true mind of Peter Lombard and Durandus.

[97] In Freisen, *Geschichte des kanonischen Eherechtes*, p. 37.

[98] Commentary on IV, dist. 26, q. 3. Cf. Drouven, *De re sacr.*, l. 9, q. 1, § 2.

643. Thesis. Matrimony legitimately celebrated between Christians is a true sacrament, properly so called, of the New Law, instituted by Christ the Lord.

The proof of this dogma, which has been defined several times,[99] and especially by the Council of Trent,[100] thundering an anathema against anyone who should say that "matrimony is not truly and properly one of the seven sacraments of the evangelical law, instituted by Christ the Lord," pertains rather to Dogmatic or Apologetic Theology than to Moral Theology; hence only the following brief arguments are proposed. Although certain men (Cajetan, Estius, Vazquez) think that the dogma concerning the sacrament of matrimony cannot be proved from Sacred Scripture, but only from tradition confirmed through the definitions of Councils, the text of St. Paul soon to be cited appears to us to be strictly probative. The Catholic dogma is therefore proved:

1. From Sacred Scripture. St. Paul,[101] treating of matrimony, says: "Let women be subject to their husbands, as to the Lord, because the husband is the head of the wife, as Christ is the head of the Church.... Husbands, love your wives, as Christ also loved the Church.... For this reason a man shall leave his father and his mother and shall cleave to his wife, and they shall be two in one flesh; this is a great sacrament, but I speak in Christ and in the Church."[102]

Certainly, from the word "sacrament" alone, which is found in this text, it is not yet lawful to deduce a direct argument for the dogma, both because "mystery" is had in the Greek text and because down to the twelfth century the word sacrament was employed in diverse senses by ecclesiastical writers.[103] Nevertheless, in the cited text there is a solid argument for the Catholic dogma. For a sacrament of the New Law is a sensible sign causing grace from the institution of Christ. But Christian matrimony is a sign of this kind. Therefore Christian matrimony is a true sacrament, properly so called, of the New Law. The major of this syllogism is the very definition of a sacrament. The minor, however, is easily proved: a) Christian matrimony is a sign; for it signifies the moral union of Christ with the Church, as manifestly appears from the words of the Apostle saying: "The husband is the head of the wife, as Christ is the head of the Church." "Husbands, love your wives, as Christ also loved the Church." "He who loves his own wife loves himself; for no man ever hated his own flesh, but nourishes and cherishes it, as Christ also does the Church." Christian matrimony, therefore, is a sign of the union of Christ with the Church.

That matrimony is a sensible sign is evident of itself, since the matrimonial contract must necessarily be manifested externally. b) Christian matrimony is a sensible sign **causing grace**; for it is called by the Apostle "a great mystery, but I speak in Christ and in the Church." Certainly matrimony considered in itself, that is, the carnal union of the spouses and their mutual love and subjection, would undeservedly be called a great mystery, because nothing is more obvious and consonant with nature than such a union between a man and a woman. A union of this kind existed even before Christ; indeed, it is had in some manner among brute animals. Why, therefore, is such a union called by the Apostle a great mystery? But the Apostle himself immediately and expressly excludes this profane sense of matrimony; for he adds: "but I speak in Christ and in the Church" (in Greek it is said: "unto Christ and unto the Church"). Therefore St. Paul does not will every matrimony to be held as a great mystery, but only that which is entered into with respect to Christ and the

Church. In other words: only Christian matrimony is a great mystery. But what distinguishes Christian matrimony from every other matrimony and renders it a great mystery? Nothing other than supernatural grace joined with it. Therefore from the words of the Apostle it is proved not obscurely that Christian matrimony causes supernatural grace. This indeed becomes all the more evident because the marital union is compared with the union between Christ and the Church. Now Christ, uniting Himself with the Church, causes supernatural grace in her. c) That matrimony as a sign causing grace **was instituted by Christ** is evident of itself, because no one except God alone is able to annex supernatural grace to natural causes. But in the present order of things all grace is conferred by Christ the Redeemer. From all these things it appears that the words of the Apostle furnish a solid argument that Christian matrimony is a true sacrament, properly so called. Therefore the Roman Catechism deservedly says:[104] "Now that matrimony is a sacrament, the Church, confirmed by the authority of the Apostle, always held as certain and established; for thus he writes to the Ephesians: Husbands ought to love.... For what he says, This is a great sacrament, no one ought to doubt must be referred to matrimony: namely, that the union of a man and a woman, of which God is the author, is a sacrament, that is, a sacred sign, of that most holy bond by which Christ the Lord is joined with the Church. And that this is the proper and true meaning of those words is shown by the ancient Holy Fathers who interpreted that passage, and the holy Synod of Trent explained the same."

2. From the Holy Fathers. St. Augustine[105] writes: "The good of nuptials, therefore, among all nations and men consists in the cause of generation and in the fidelity of chastity; but insofar as it pertains to the people of God, it consists also in the sanctity of the sacrament.... In the same manner, if there is an ordination of clergy for gathering a congregation, even if the gathering of a congregation does not follow, nevertheless the sacrament of ordination remains in those ordained." In these words St. Augustine attributes the sanctity of a sacrament to matrimony which pertains to the people of God, or to the matrimony of Christians, which he denies to other marriages; moreover, he compares the sacrament of matrimony with the sacrament of order, which certainly is a sacrament properly so called. In the same book, c. 18, the Holy Doctor calls matrimony "a seal and a sacrament," and concludes thus: "For in the nuptials of our [women], the sanctity of the sacrament has more force than the fecundity of the womb." But that the sacrament of matrimony is not merely a sign but also effects grace, St. Augustine asserts in this manner:[106] "The reality of this sacrament is without doubt that a male and a female joined by marriage persevere inseparably as long as they live, and that, except for the cause of fornication, it is not lawful for one spouse to be separated from the other." Now the *res sacramenti* signifies grace, and the Scholastics also understood this etymology in this manner. Therefore the sense of the cited text is: the sacramental grace of matrimony so assists the spouses that, notwithstanding human inconstancy, they can and ought always to remain united. St. Leo the Great[107] says: "Since the society of nuptials was so constituted from the beginning that, besides the union of the sexes, it had in itself the sacrament of Christ and the Church,[108] there is no doubt that that woman does not pertain to matrimony in whom it is shown that there was no nuptial mystery."[109]

3. By the argument of prescription. From various documents and formulas of faith it is established that the Eastern Churches, separated from the Roman See for many centuries, hold matrimony as a true sacrament. But this fact cannot be explained unless it is admitted that already at the time of the separation (the fifth century), throughout the whole Church, matrimony was held to be a true sacrament. For the Eastern Churches after the schism certainly admitted nothing that had been newly introduced into the Roman Church. Therefore it must be conceded that already before the fifth century matrimony was recognized as a true sacrament,[110] and that its institution is suitably referred to Christ Himself.

4. By the argument of congruity. Since the matter here concerns a supernatural reality, reason cannot demonstrate apodictically that matrimony is a sacrament; but it manifestly shows how exceedingly fitting is the elevation of matrimony to the dignity of a sacrament. For the welfare of the whole of human society depends upon marriages rightly entered into and holily preserved, because, if marriages are not holily preserved, quarrels and dissensions arise between the spouses, the education of offspring is ruined, and morals are corrupted more and more. Thus it is clearer than light from the history of all peoples. Moreover, the sanctity of matrimony can scarcely, indeed scarcely at all, be preserved unless the spouses are assisted by special supernatural grace. For suitably to generate and educate offspring, to dwell together peacefully and charitably throughout their whole life, patiently to bear each other's burdens, all these things, I say, demand such excellent virtues that they cannot be had without special supernatural grace. Therefore God most fittingly joined sacramental grace with matrimony. Briefly comprising these things, the Roman Catechism[111] says: "Therefore it must be taught that by the grace of this sacrament it is effected that the husband and wife, joined by the bond of mutual charity, rest each in the benevolence of the other, and do not seek strange and illicit loves and intercourse, but that in all things marriage be honorable and the bed undefiled."

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[99] Already the Second Council of Lyons (the year 1274) defined: "The same Holy Roman Church also holds and teaches that there are seven ecclesiastical sacraments, one, namely, baptism, ... another is matrimony" (Profession of Faith of Michael Palaeologus; in Denz., n. 465). The Council of Florence defined: "The seventh is the sacrament of matrimony" (*Instruction for the Armenians*; in Denz., n. 702).

[100] Sess. 24, can. 1, *De matrimonio* (Denz., n. 971).

[101] Eph. 5:22-32.

[102] In the Greek text there is: Τὸ μυστήριον τοῦτο μέγα ἐστίν, ἐγὼ δὲ λέγω εἰς Χριστὸν καὶ εἰς τὴν Ἐκκλησίαν.

[103] Cf. Freisen, *Geschichte des kanonischen Eherechtes*, § 4, and above, III, n. 2.

[104] Part II, c. 8, q. 15.

[105] *De bono coniugali*, c. 24 (Migne, *Patr. lat.* 40, 394).

[106] *De nuptiis et concupiscentia*, l. 1, c. 7 (Migne, loc. cit. 44, 424).

[107] Ep. 92, *Ad Rusticum*, n. 4 (Migne, loc. cit. 54, 1204).

[108] Eph. 5:32.

[109] Several other Fathers teach the same, as can be seen in Billuart (*De matrimonio*, diss. 1, a. 3), or better in Drouven (*De re sacr.*, l. 10, q. 1); whence Freisen (*Geschichte des kanonischen Eherechtes*, § 54) says altogether undeservedly that the Holy Fathers did not touch upon the question of the sacrament, and that if they sometimes employed the word sacrament concerning matrimony, they did not understand it in our sense. Certainly the Holy Fathers do not speak so explicitly about the sacrament of matrimony as modern authors treating this matter expressly; nevertheless, from this it is by no means lawful to infer that they in no way recognized matrimony to be a true sacrament. Do the Holy Fathers speak more clearly about the sacraments of confirmation and extreme unction, and about many other things pertaining to Catholic dogma? (Cf. Schanz, *Die Lehre von den Sakramenten*, § 55, and Drouven, loc. cit.)

[110] Cf. Pourrat, *La théologie sacramentaire*, 2nd ed., pp. 252-267.

[111] Part II, c. 8, q. 15. See another argument of congruity in St. Thomas, *S. theol.* 3, q. 65, a. 1.

644. Objection. A sacrament does not diminish but increases grace and perfection. But matrimony diminishes grace and perfection, since it destroys the state of virginity, which excels matrimony, as was defined in the Council of Trent.[112] Therefore matrimony is not a sacrament.

Response: Without any doubt the sacraments of the New Law do not diminish grace, but either give or increase it actually and in a transient manner; but from this it by no means follows that he who has worthily received some sacrament is throughout his whole life in a more perfect state than another who has not received this same sacrament. Thus the sacrament of matrimony, rightly received, increases grace, but it by no means follows from this that it also constitutes a higher state. For state plainly differs from personal perfection. Thus, for example, religious and bishops are in the state of perfection, but from this it is not yet lawful to conclude that they always have greater grace than any layman. Therefore the state of matrimony is less perfect than the state of virginity, but the sacrament of matrimony causes grace *ex opere operato*, which the state of virginity does not do. On the contrary, he who preserves virginity from a motive of virtue performs a very good work and merits a great reward.

From the sacramental character of matrimony there follow several corollaries of great moment:

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[112] Sess. 24, can. 10, *De matrimonio* (Denz., n. 981).

645. Corollary 1. The sacrament of matrimony was instituted by Christ the Lord.

Above, in the treatise on the sacraments in general, it was proved that all the sacraments were instituted by Christ Himself. But if it is asked when Christ instituted this sacrament of matrimony, three opinions are customarily adduced:

1. Christ elevated the matrimonial contract to the dignity of a sacrament when He honored the nuptials celebrated at Cana of Galilee both by His presence and by a notable miracle. This opinion is more common, and St. Cyril of Alexandria,[113] St. Epiphanius,[114] and St. Augustine[115] appear also to favor it.
2. Christ instituted matrimony when He abrogated the law of repudiation and recalled matrimony to its pristine indissolubility, saying: "What therefore God has joined together, let no man separate."[116]
3. Christ instituted the sacrament of matrimony after the resurrection, when He spoke various things with the Apostles concerning the kingdom of God.

Nothing certain can be said about this question, which, moreover, is of lesser moment, since also concerning certain other sacraments the time when Christ instituted them is unknown, for example, concerning confirmation and extreme unction. This, however, appears to be certain: the sacrament of matrimony was not instituted in paradise, as certain theologians, for example, Catharinus and Maldonatus, taught, because in the Old Testament there did not exist a sacrament producing or increasing sanctifying grace *ex opere operato*. It can be conceded, however, that matrimony instituted by God in paradise was something sacred and bestowed the grace of state upon the spouses.[117]

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[113] *In Ioan.* 2:1-4 (Migne, *Patr. graec.* 73, 223).

[114] *Haer.* 67 (Migne, loc. cit. 42, 179).

[115] *In Ioan.*, tract. 9, n. 2 (Migne, *Patr. lat.* 35, 1459).

[116] Matt. 19:6.

[117] The opinion of Catharinus and Maldonatus can scarcely be sustained while preserving the faith, since Pius IX (*Ep. ad reg. Sardin.*, September 19, 1852) writes: "It is a dogma of faith that matrimony was elevated by Jesus Christ our Lord to the dignity of a sacrament."

646. Corollary 2. To the Church alone it pertains to judge and determine concerning all things which touch upon the essence of Christian matrimony.[118]

The Reformers of the sixteenth century falsely taught the contrary; to them are added Marcus Antonius de Dominis, Launoy, the Regalists, the Jansenists who participated in the Synod of Pistoia (the year 1787), and, among Catholics, Carrière,[119] who taught as a probable opinion and safe in practice that the power of establishing diriment impediments of Christian matrimony belongs not to the Church alone, but also to lay princes.[120] Against all these, the thesis stated in this corollary is proved:

1. From the Council of Trent. "If anyone says that matrimonial causes do not pertain to ecclesiastical judges, let him be anathema."[121] But that this canon is to be understood in such a way that it pertains to the Church alone to judge concerning things pertaining to the essence of matrimony is evident from several condemned propositions.[122] Hence Pius VI, explaining the cited canon of the Council of Trent in a letter to the Bishop of Mottola (September 16, 1788), writes: "It is a dogma of faith that matrimony after the coming of Christ became one of the seven sacraments of the evangelical Law.... Hence it follows that to the Church alone, to which the entire care of the sacraments is entrusted, belong every right and power to assign its form, and consequently to pronounce judgment concerning the validity or invalidity of marriages." Leo XIII has similar things:[123] "Next, the dignity of the sacrament must be considered, by the accession of which the marriages of Christians became by far the most noble. But by the will of Christ, the Church alone can and ought so to establish and command concerning the sacraments that it is plainly absurd to will that even the smallest part of her power be transferred to the rulers of the civil state." The same Pontiff[124] proves that this power of the Church was always in force: "[The Church] exercised power over the marriages of Christians in every time and place, and so exercised it that it appeared to be her own, not acquired by the concession of men, but divinely obtained by the will of her Author.... No one is ignorant how many things concerning the impediments of bond, vow, disparity of cult, consanguinity, crime, and public propriety were established by the prelates of the Church in the Councils of Elvira, Arles, Chalcedon, the Second Council of Milevis, and others, which often differed greatly from decrees sanctioned by imperial law. Indeed, so far were princely men from arrogating to themselves power over Christian marriages that they rather recognized and declared that it belonged, in its entirety, to the Church. In truth, Honorius, Theodosius the Younger, and Justinian[125] did not hesitate to confess that, in those matters which touch upon nuptials, no more was permitted to them than to guardians and defenders of the sacred canons. And if they sanctioned anything concerning impediments of marriage by edicts, they taught the reason, not unwillingly, namely, that they had assumed this for themselves from permission and authority."

2. From reason. The contract and the sacrament are inseparable realities in Christian matrimony.[126] Now the Church alone, and by no means the civil power, ought to determine and judge concerning the sacraments. Therefore the Church alone judges concerning all things pertaining to the essence of the sacrament of matrimony. This argument is so evident that it struck Calvin himself, who consequently denied that matrimony is a sacrament. For he writes: "For once the Catholics obtained that matrimony is a sacrament, they drew to themselves the cognizance of matrimonial causes, since it was a spiritual matter not to be handled by profane judgments."[127]

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[118] Code of Canon Law, c. 1960.

[119] *De matrimonio*, I, 596.

[120] Carrière afterward (in the year 1857) retracted this opinion of his (cf. Feije, *De imped. et dispens. matrim.*, n. 56).

[121] Sess. 24, can. 12, *De matrimonio* (Denz., n. 982).

[122] Propositions 59 and 60 of the Synod of Pistoia (Denz., n. 1559 ff.); propositions 68-71 and 74 of the *Syllabus* of Pius IX (Denz., nn. 1768 ff., 1774); cf. Code of Canon Law, c. 1960.

[123] Constitution *Arcanum*.

[124] Ibid.

[125] *Novell*., 137.

[126] Cf. above, n. 628.

[127] *Institutes*, l. 4, c. 19, § 37. The most celebrated Protestant jurist of Berlin, Hinschius, recognized the same, writing: "The Catholic Church must oppose such [state legislation concerning marriage]; for from the sacramental nature assumed by her there follow as consequences exclusive legislation and jurisdiction in matrimonial causes, at least insofar as property law is not involved." Holtzendorff, *Rechtslexikon*, s.v. "Ehe."

647. Corollary 3. The civil power cannot establish diriment or prohibiting impediments for Christian marriages;[128] likewise, it cannot pronounce divorce with respect to the matrimonial bond, nor permit Christians who have obtained a divorce to hasten to new nuptials.

All these things are nothing but practical conclusions deduced from the preceding corollary. For all these things pertain to the essence of the sacrament of matrimony. Moreover, the civil power has no power concerning those things which touch upon the sacrament of matrimony. The matrimonial institution indeed pertains also to the preservation and good of civil society, whose government belongs to the civil government, and consequently the civil government has a true right rightly to govern the matrimony of its subjects. But since Christian matrimony is a sacrament, the civil government now has no power concerning all those things which touch upon its sacramental character; for it must yield to the Church, whose right is higher. For it is impossible that the same Christian matrimony be governed by two independent powers, namely, the civil and the ecclesiastical. Otherwise it could happen that the same matrimony would be valid according to ecclesiastical law and invalid according to civil law. From this reasoning, however, it is not lawful to infer that power over Christian matrimony belongs to the Church from a benign concession of the civil power, which was expressly condemned by Pius VI.[129] The power of the Church in this matter depends solely upon the will of Christ elevating the matrimonial contract between Christians to the dignity of a sacrament, and therefore upon divine law alone. Hence the Church has never recognized such power in civil governments, but rather has more than once expressly rejected laws enacted by emperors concerning matrimony. Thus, for example, the perverse sanctions of Roman law concerning adultery and divorce were rejected.[130] St. Gregory the Great reproved marriages of blood relatives permitted by princes.[131] Not rarely the Supreme Pontiffs had to defend and protect the right of the Church concerning matrimony against emperors themselves and other very powerful persons. Thus, for example, Nicholas I in the most celebrated divorce case of Lothair II vindicated competence to the Church alone.[132] With no less constancy Innocent II defended the divine and canonical rights concerning matrimony against Philip Augustus, King of France. And indeed it is marvelous with what constancy Pius VII resisted the most powerful Napoleon I in the divorce case.

Just as the civil power cannot enact diriment impediments of matrimony, so also it has no power concerning **prohibiting** impediments of Christian matrimony. Binder-Scheicher, Schulte, Weber, and Silbernagl[133] indeed taught the contrary, but their opinion cannot be admitted, since prohibiting impediments also are matrimonial causes which in Christian matrimony do not pertain to the civil power, as was proved above.[134] Nevertheless, nothing prevents Catholics from observing civil statutes enacted concerning the contracting of matrimony, provided that they are not dishonorable in themselves nor expressly proscribed by the Church, for example,

that soldiers cannot contract matrimony unless certain rules are observed. The reason is that otherwise the greatest inconveniences would arise.

It is evident of itself that the civil power is unable to pronounce divorce with respect to the bond, or to admit to new nuptials those who have illegitimately obtained a divorce. For not even the Church herself has power to do all these things if a valid Christian matrimony is in question. Moreover, all these are certainly matrimonial causes touching upon the very essence of the sacrament, which consequently in no way pertain to the civil power. But how Catholic men holding the office of judge or advocate ought to conduct themselves when the pronouncement of a civil divorce or the celebration of new nuptials by those who labor under a diriment impediment is in question will be stated below in the chapter on civil matrimony, n. 893 ff.

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[128] Several ancient authors, such as Thomas Sanchez, Pirhing, Peter Soto, and others, also attributed to the civil power the faculty of establishing diriment impediments, but this opinion today is antiquated and abandoned among Catholics.

[129] Proposition 59 of the Synod of Pistoia: "The doctrine of the synod asserting that it pertains originally to the supreme civil power alone to attach to the contract of matrimony impediments of that kind which render it null and are called diriment; ... adding that, with the assent or connivance of princes supposed, the Church could justly establish diriment impediments of the matrimonial contract itself; as though the Church had not always been able and could not now by her own right establish in the marriages of Christians impediments which not only impede matrimony but also render it null with respect to the bond, by which Christians are held bound even in the lands of infidels, and dispense in the same: destructive of canons 3, 4, 9, and 12 of session 24 of the Council of Trent, heretical" (Denz., n. 1559).

[130] Cf. c. 4, C. 32, q. 4.

[131] Cf. c. 21, C. 27, q. 2.

[132] Cf. c. 4, C. 31, q. 2.

[133] Cf. Wernz-Vidal, *Ius Can.*, V, n. 60.

[134] Cf. also condemned proposition 74 in the *Syllabus* of Pius IX (Denz., n. 1774).

648. Corollary 4. The civil power can and ought by its own authority to enact just statutes concerning the merely temporal effects of matrimony.[135]

The reason is evident, because "the source and origin of the whole of human society consists in matrimony," as Leo XIII says in the Encyclical *Arcanum*. Therefore it also greatly concerns civil society that all things be rightly ordered in matrimony. Moreover, in the matrimonial contract there are found several material considerations, for example, the union and administration of goods, succession, the inheritance belonging to offspring, and so forth, which do not directly pertain to the ecclesiastical forum. Concerning all these things the civil power ought to enact just laws, which then, if they are truly just, bind subjects in conscience. It is also the office of the civil power to assist the Church in protecting the governance of Christian matrimony. It is highly expedient that in enacting laws concerning matrimony there be good concord between the Church and the civil power, in such a way that the Church strenuously admonishes the faithful to obey just civil laws, and in turn the civil power effectively prohibits subjects from transgressing the laws which the Church has enacted concerning matrimony.

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[135] Code of Canon Law, cc. 1016 and 1961: "Causes concerning the merely civil effects of matrimony, if they are treated principally, pertain to the civil magistrate according to the norm of c. 1016; but if incidentally and accessorily, they can also be cognized and decided by an ecclesiastical judge by his own power."

649. Corollary 5. A matrimony contracted between non-baptized persons is not a sacrament of the New Law, nor is a matrimony between one baptized party and another non-baptized party.

The first part of this corollary is admitted by all today, since without baptism, as the gateway of all the sacraments, no other sacrament can be validly received. Nevertheless, in a broader sense certain ancient theologians, and even Innocent III and Honorius III, call the matrimony of infidels also a sacrament. Alluding to this, Leo XIII says in the Encyclical *Arcanum*: "For since matrimony has God as its author and was even from the beginning a certain foreshadowing of the Incarnation of the Word of God, there is therefore in it something sacred and religious, not adventitious but innate, not received from men but implanted by nature. Therefore Innocent III and Honorius III, Our predecessors, were able to affirm, neither unjustly nor rashly, that the sacrament of marriage exists among the faithful and infidels."

The second part of the corollary has now been disputed among authors for centuries. Ambrose Catharinus,[136] Dominic Soto,[137] Tournely,[138] Ferraris,[139] Perrone,[140] Palmieri,[141] Christian Pesch,[142] Scherer,[143] and others teach that a baptized person who legitimately enters matrimony with a non-baptized person receives a true sacrament. Peter de Ledesma,[144] Aegidius de Coninck,[145] Pirhing,[146] Schmier,[147] Schmalzgrueber,[148] Gotti,[149] Billuart,[150] Concina,[151] and the Thomists commonly, De Smet,[152] Billot,[153] Wernz-Vidal,[154] and many others teach the contrary. We adopt this latter opinion, which also conforms to the practice of the Roman Curia,[155] chiefly for two reasons: a) St. Thomas says simply and without any limitation, "Matrimony cannot limp,"[156] which is most commonly explained only in a negative sense, that is, if the matrimonial contract is invalid on the part of one of the contracting parties, it is also invalid on the part of the other. Consequently, if the sacrament of matrimony is not present on one side, neither is it present on the other side. Now it is certain that the infidel party is incapable of receiving the sacrament of matrimony. Therefore the Catholic party also does not receive the sacrament. b) If such a matrimony were a sacrament for the Catholic party, then, since the bond arising from a sacrament is stricter than that which arises from a contract alone, the obligation of the Catholic party would be stricter than the obligation of the infidel party, which is absurd, because the obligation of the bond is equal in the spouses. Billot observes excellently:[157] "The opinion of the adversaries, however, appears to have arisen from this, that in a sacrament they see nothing other than the external rite by which grace is immediately conferred; for certainly, with respect to receiving sacramental grace, each of the spouses is entirely independent of the consort, and the condition of one cannot impede the bestowal of grace upon the other. But if you keep before your eyes that grace is not conferred except through the mediation of the sacramental bond, and that the sacramental bond itself is the sole immediate effect of the external sacrament, then the matter will not even be doubtful to you. For the bond is a certain relation between two, and indeed a relation of equiparance of the same nature in each; if therefore one is absolutely incapable of the sacramental bond because of the defect of baptism, the other, although baptized, is known likewise to be incapable of a sacramental bond, not absolutely indeed, but with respect to the non-baptized person. Therefore there is no sacrament where no sacramental effect can either exist or be conceived."

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[136] Commentary on 1 Cor. 7:14.

[137] Commentary on IV, dist. 27, q. 2, a. 3.

[138] *Prael. theol.*, II, q. 2, a. 2.

[139] *Prompta Bibliotheca*, s.v. "Matrimonium," n. 19, where the author attempts to defend his opinion against the observation of the Roman theologian.

[140] *De matrimonio*, II, 306.

[141] *De matrimonio*, 103.

[142] *Prael. dogm.*, VII, n. 728; Christian Pesch calls this opinion more probable.

[143] *Kirchenrecht*, II, § 123, note 9.

[144] *De magno matrimonii sacramento* (1592), in the additions to the *Summa*, p. 3, q. 59, a. 2.

[145] *De sacramentis*, II, disp. 24, n. 24.

[146] On IV, tit. 1, n. 71.

[147] On IV, a. 2, c. 1, n. 40 ff.

[148] On IV, tit. 1, n. 397.

[149] *Theol. dogm.*, II, tr. 13, dub. 2, n. 10.

[150] *De matrimonio*, diss. 1, a. 5.

[151] *De matrimonio*, diss. 1, c. 4, n. 29.

[152] *De sponsal. et matrim.*, n. 107.

[153] *De eccl. sacr., de matrimonio*, thesis 38.

[154] *Ius Can.*, V, n. 42.

[155] The Holy Office on November 4, 1924, declared that such a matrimony can be dissolved by a dispensation of the Supreme Pontiff (*American Ecclesiastical Review*, 1935, p. 188).

[156] *Suppl.*, q. 47, a. 1.

[157] Loc. cit.

650. Note. The things just said concerning the matrimony which a Catholic party contracts with a non-baptized party (by a pontifical dispensation) also hold if, of two non-baptized spouses, one is afterward baptized. Even such a matrimony does not become a sacrament for the party thus baptized. This opinion is so certain that it is denied by few. For such a matrimony, although it may have been consummated even after the baptism of the other party, can be dissolved with respect to the bond through the Pauline privilege and, more probably, also through a pontifical dispensation.[158] Moreover, it is unheard of that any consummated matrimony which is a sacrament should be dissolved with respect to the bond. On the contrary, when both spouses who contracted legitimate matrimony in infidelity have become Christians, by that very fact (provided that true marital consent perseveres) their matrimony becomes a sacrament. Thus holds the much truer opinion;[159] nevertheless, some contradict it, for example, Billuart,[160] Concina,[161] the Salmanticenses,[162] and others. The reason is that such a matrimony now becomes a legitimate matrimonial contract between Christian persons. Now every matrimonial contract between Christians is a true sacrament, as has already been said several times, and as Pius IX[163] and Leo XIII[164] expressly defined.

A theological reason is added: the efficient cause of matrimony is the legitimate consent of the contracting parties. But when the contracting parties, still persisting in infidelity, contracted legitimate matrimony, nothing else was lacking in order that the marital consent should produce the sacrament of matrimony except the baptismal character of both contracting parties. But after baptism has actually been received by both spouses, such an obstacle ceases and the matrimony contracted becomes a sacrament. St. Thomas[165] rather clearly favors this opinion, writing: "Although matrimony does not belong to infidels insofar as it is a sacrament, ... nevertheless it belongs to them insofar as it is an office of nature; and yet even such a matrimony is in some manner a sacrament habitually, although it is not so actually, because they do not actually contract in the faith of the Church." From the practice of the Church it is established that new marital consent is not required from new converts. For the consent previously given is supposed virtually to persevere, which suffices for the validity of the sacrament. But if the consent given in infidelity has been

expressly revoked, for example, through civil divorce, it is difficult to understand how such a matrimony then becomes a sacrament through the baptism of both spouses. For these spouses would then receive a sacrament against their own will and intention. This indeed appears not to be possible. Furthermore, the efficient cause of the sacrament of matrimony is the consent of the contracting parties. Now in the case of revocation such an efficient cause is absent. Therefore the sacrament must also be absent. Nevertheless, some authors, for example, Billot,[166] think that even when marital consent has been revoked, the matrimony becomes a sacrament through the baptism of both spouses. When such a case occurs in practice, recourse must be had to the Holy See if either of such spouses wishes to enter a new matrimony.

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[158] Cf. below, n. 676.

[159] This opinion, which was already called more common by Benedict XIV (*De syn. dioec.*, l. 8, c. 13, n. 8), is held by almost all modern authors, for example, by Perrone, *De matrimonio*, II, 298; Rosset, *De sacr. matrim.*, I, n. 340; Billot, *De eccl. sacr., de matrimonio*, thesis 38; Tanquerey, *Synopsis Theol. mor., de matrimonio*, n. 807; Vlaming, *Prael. de iure matrim.*, I, 36; van de Burgt-Schaepman, *Tract. de matrimonio*, I, 28; Christian Pesch, *Prael. dogm.*, VII, n. 727; De Smet, *De sponsal. et matrim.*, n. 106.

[160] *De matrimonio*, diss. 1, a. 5, Petes 6.

[161] *De matrimonio*, diss. 1, c. 4, n. 30.

[162] *De matrimonio*, tr. 9, n. 82.

[163] In the Consistorial Allocution *Acerbissimum*, September 27, 1852: "Among the faithful matrimony cannot exist without being at one and the same time a sacrament" (Denz., n. 1640).

[164] Encyclical *Arcanum*.

[165] *Suppl.*, q. 59, a. 2, ad 1.

[166] Loc. cit., § 2.

651. Corollary 6. The legitimate matrimony of non-baptized persons is not subject to the laws of the Church, but is subject to just laws and impediments enacted by the civil power.

Authors disputed and dispute most sharply concerning this corollary. In these times, however, it received great strength from the Decree *Ne temere* and from the Code of Canon Law, c. 1099, § 2, by which it was authentically declared: "Non-Catholics, whether baptized or non-baptized, if they contract among themselves, are nowhere bound to observe the Catholic form of betrothals or matrimony."[167] Certainly, only the form of matrimony is treated here, and consequently it is not yet lawful to infer generally that non-baptized persons are in no manner bound, or cannot be bound, by laws enacted by the Church concerning matrimony; but from the cited places it is lawful to suspect that it is not the mind of the Church to intervene in the matrimonial causes of non-baptized persons, since she does not will even to subject heretics to the observance of the matrimonial form. Hence authors most commonly teach that the Church does not enact matrimonial impediments for infidels, nor are their marriages subject to the jurisdiction of the Church. There is added also the practice of the Roman Curia, which holds the marriages of infidels to be valid, although they were contracted with an impediment of ecclesiastical law, provided, however, that no impediment of natural or divine law is opposed. Thus, for example, the Holy Office on January 17, 1872, declared marriages contracted in infidelity to be valid, although an impediment of ecclesiastical law was opposed. The same Holy Office on August 26, 1891, declared that "affinity which is naturally contracted in infidelity from intercourse both licit and illicit is not an impediment for marriages which are entered into in infidelity," but adds: "nevertheless, it becomes an impediment for marriages which are entered into after baptism, by the reception of which infidels become subjects of the Church and consequently subject to her laws."[168]

Infidels are sometimes **indirectly** subject to the jurisdiction of the Church with respect to matrimony, and especially with respect to diriment impediments of ecclesiastical law, namely, when they wish to contract matrimony with a faithful party.[169] For matrimony is an altogether indivisible contract, and consequently an incapacity which directly affects one party indirectly renders the other party incapable. Thus, for example, an infidel cannot take in matrimony a baptized person related to him by consanguinity in the second degree, or even by affinity. For matrimony cannot limp, as was said above in n. 635. Certainly the infidel party is not bound by the ecclesiastical impediment, but because the faithful party is bound and labors under incapacity, the infidel party is therefore affected by the same incapacity.

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[167] Denz., n. 2070.

[168] *Collect. de Prop. Fide*, n. 1766. The Holy Office already taught the same on September 16, 1824 (ibid., n. 784). Hence affinity, considered in itself and physically, which once has been contracted through consummated matrimony, becomes an ecclesiastical impediment **after baptism has been received**. Thus Wernz-Vidal correctly teaches (even after the new law), *De matrimonio*, n. 367. Against Cappello, *De matrimonio*, n. 67. The Sacred Congregation for the Propagation of the Faith taught the same concerning **consanguinity** on August 23, 1852: "Could an infidel converted to the faith, after the death of his legitimate infidel wife, contract matrimony with a blood relative (up to and including the fourth degree) of the same deceased wife, whether that blood relative received baptism before or after the death of the aforesaid infidel wife? Response: No." (*Collect. de Prop. Fide*, n. 1079, ad 4.) Other impediments of ecclesiastical law in no way touch non-baptized persons. Thus, for example, the impediment of **public propriety** does not touch them, as the Holy Office taught on April 19, 1837: "Titius, a pagan, married Maevia, a pagan, but did not consummate; after the death of Maevia, Titius becomes a Christian: can he marry Bertha, the sister or cousin of Maevia, who from a pagan has become a Christian? And is the same true concerning the betrothals of pagans and concerning ratified matrimony?" The Sacred Congregation responded: "The impediment does not subsist." Likewise, neither does the **impediment of crime** (cf. Sacred Congregation for the Propagation of the Faith, August 23, 1852, ad 5 [*Collect. de Prop. Fide*, n. 1079]); nor the **impediment because of defect of age** (cf. Holy Office, December 10, 1885, and August 6, 1886 [*Collect.*, nn. 1645 and 1662]).

[169] But when the Church dispenses from disparity of cult, she is considered simultaneously to dispense from impediments of ecclesiastical law to which the infidel party of itself is not subject. Cf. below concerning the impediment of disparity of cult, n. 809.

652. Concerning the other part of the corollary, Wernz-Vidal[170] deservedly writes: "The ancient theologians and canonists taught by common consent that civil princes could establish even diriment impediments for their infidel subjects, and they did not doubt that they should defend this opinion as certain." But not only the ancient theologians and canonists, but also almost all modern authors teach thus, for example, Cavagnis, Santi, De Angelis, Zitelli, Grandclaude, Gasparri, Rosset, Ballerini, D'Annibale, De Becker, De Smet, Cathrein, Hammerstein, Boeckenhoff, Vogt, and others.[171] These authors do not agree, however, whether such a right belongs to the prince in a native and original manner, or only in a devolutive manner. Liberatore, Perrone, Zigliara, Martin, Heuser,[172] and Billot[173] deny to the civil prince the right of establishing diriment impediments; their opinion acquired rather great weight from the Encyclical *Arcanum*, where Leo XIII says: "Since matrimony is sacred by its own force, its own nature, and of its own accord, it is fitting that it be ruled and regulated, not by the command of princes, but by the divine authority of the Church, which alone has the magisterium over sacred things. Next, the dignity of the sacrament must be considered, by the accession of which the marriages of Christians became by far the most noble." Leo XIII therefore appears to deny to the civil prince power over marriages, since these, even apart from the sacramental character, are something sacred. But notwithstanding these words of the Encyclical, the affirmative opinion appears to be truer. For:

1. If the civil prince has no power concerning diriment impediments of matrimony, then for infidels there exists no earthly authority governing matrimony, because the Church does not have jurisdiction over them, as was said above. But this appears to be absurd, or at least exceedingly unsuitable. For if the civil power did not enact just positive laws concerning the matrimony of infidels, and if infidels were not

bound by these laws, their marriages would most certainly be disfigured by disorders of every kind, and the state itself would suffer the greatest harms. This certainly ought to be avoided, and consequently the power of enacting laws intimately touching upon the marriages of infidels must be conceded to the civil prince. This argument is admitted in some manner by the adversaries themselves. Hence Billot says:[174] "The prince can among them [the infidels] regulate the matrimonial contract and judge matrimonial causes, not because this authority is part of the civil principate, but because by accident and by reason of necessity it devolves in the aforesaid circumstances upon him who alone legitimately presides there, so that the social good may somehow be preserved there. For then the well-worn axiom is in some manner applied: The supreme law is the welfare of the people."

2. St. Thomas favors this opinion, writing:[175] "Matrimony, insofar as it is an office of nature, is established by the natural law; insofar as it is a sacrament, it is established by divine law; insofar as it is an office of the community, it is established by civil law. And therefore by any of the aforesaid laws some person can be rendered illegitimate for matrimony." St. Thomas therefore admits that the civil power can sometimes establish diriment impediments.

3. Certain documents of the Holy See are cited in favor of this opinion,[176] the principal of which is the Instruction of the Sacred Congregation for the Propagation of the Faith, which is said to have been issued on June 26, 1820:[177] "Although among infidels there is true matrimony, nevertheless it can be referred only to the office of nature and of the community, and consequently it is plainly to be regulated by natural and civil law. It follows from this that secular princes, whether faithful or infidel, retain the fullest power over the marriages of their infidel subjects, so that, by attaching impediments which are not opposed to natural and divine law, they may entirely rescind the same not only with respect to civil effects, but also with respect to the conjugal bond, ... and what is said in this case concerning the law of a secular prince is to be understood also concerning a legitimate custom which has acquired the force of law over infidel subjects." The approval of this Instruction is found nowhere, and therefore Gasparri says:[178] "It is probable that this Instruction was approved by the Sacred Congregation, but not certain, because this approval is in fact absent."

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[170] *Ius Can.*, V, n. 68.

[171] Cf. Adrian Resemans, *De competentia civili in vinculum coniugale infidelium*, Rome 1887.

[172] *De potestate statuendi impedimenta dirimentia*, Louvain 1853.

[173] *De eccl. sacr.*, II, thesis 47.

[174] *De eccl. sacr.*, II, thesis 47, ad 5.

[175] *Suppl.*, q. 50, a. un., ad 4. Cf. *Summa c. gent.*, l. 4, c. 78; IV, dist. 39, a. 2, ad 3.

[176] Instruction of the Sacred Congregation for the Propagation of the Faith, October 8, 1631; Instruction of the Holy Office, September 20, 1854, and October 29, 1739. Besides Resemans in the work cited, Feije (*De imped. et dispens. matrim.*, n. 70) and Wernz (*Ius Decretal.*, IV, n. 81, note 209) learnedly discuss all these declarations.

[177] *Collect. de Prop. Fide*, n. 744, note.

[178] *De matrimonio*, I, n. 288.

653. Note for practice. 1. In this controversy concerning the power of the civil prince, which is not merely speculative but also of practical moment, because both among foreigners and among our own people marriages are entered into by non-baptized persons contrary to the statutes of civil law, to this day there exists

no definitive and certain decision of the Holy See; indeed, there are not so many uniform and constant particular responses of the Roman Congregations that either opinion can be said to be received and approved from the "style of the Roman Curia." For this reason, in a practical case no judgment concerning the nullity of any matrimony entered into by infidels contrary to the statutes of civil law is to be rendered without previous recourse to the Holy See. And this all the more because it is often most difficult to judge whether civil laws which intend to establish truly diriment impediments actually exist in some region. For although in the civil code of almost every country there are statutes laying down norms without which matrimony cannot be celebrated, it does not yet follow certainly from this that the legislator willed to bind under pain of nullity. For often statutes of this kind are merely penal laws, and not truly invalidating laws.[179]

2. The civil power, although it has power to establish diriment impediments for marriages of non-baptized persons, nevertheless cannot through perfect divorce dissolve their legitimately entered matrimony, since it is indissoluble by natural law.

3. Certain authors add the question whether a matrimony validly contracted between a baptized party and a non-baptized party falls under the governance of the Church alone, or, because of the non-baptized party, also under the civil power. Although certain authors, such as Van de Burgt-Schaepman,[180] De Becker,[181] and D'Annibale,[182] teach that a matrimony thus entered falls both under the governance of the Church and under the governance of the civil power, so that such a matrimony is not valid unless it is free from impediments of both ecclesiastical and civil law, nevertheless the contrary opinion, which is held by Wernz-Vidal,[183] Gasparri,[184] Resemans,[185] and De Smet,[186] appears to be preferred. For it is impossible that one and the same matrimony be governed independently by two distinct powers. For a case could then happen in which such a matrimony would be held valid by the Church and invalid by the civil power, and each statute would have force in conscience, which is certainly absurd. Hence it must be said that such marriages are subject to the superior power, namely, to the ecclesiastical power alone, although they are not sacraments, as was said above.

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[179] In Germany (Civil Code, §§ 1323-1329) and Austria (Civil Code, §§ 48-69), the statutes appear to be true diriment impediments.

[180] *Tract. de matrimonio*, I, n. 48.

[181] *De matrimonio*, 44.

[182] *Summula Theol. mor.*, III, 294.

[183] *Ius Can.*, V, n. 52.

[184] In the third edition of *De matrimonio*, n. 306, the author changed the opinion he had previously proposed.

[185] Loc. cit., p. 2.

[186] *De sponsal. et matrim.*, n. 438.

Article II. On The Matter And Form Of The Sacrament Of Matrimony

Since it is certain that in Christian matrimony the sacrament is inseparable from the contract, so that as often as a matrimonial contract is validly entered into between Christians, so often the sacrament of matrimony is present,[187] hence the matter and form of the sacrament of matrimony are the same as the matter and form of the matrimonial contract; or, as Benedict XIV says in the Constitution *Paucis* of May 19, 1758: "The legitimate contract is at once the matter and form of the sacrament of matrimony."

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[187] Cf. above, n. 628.

654. The remote matter of the sacrament of matrimony is the persons of the contracting parties, or, as others will, the mutual right over bodies in order to generation. The reason is that the remote matter of every contract is the thing concerning which the stipulation is made. Now in the matrimonial contract the stipulation is made concerning mutual dominion over bodies in order to generation.[188]

The proximate matter is the signs or words insofar as they express the handing over of bodies, or, what is the same: consent insofar as it expresses reciprocal handing over. Thus holds the far more common opinion, which is held, for example, by Billuart,[189] Dominic Soto,[190] Bellarmine,[191] Suarez,[192] Christian Pesch,[193] De Smet,[194] and others. The reason is that in every sacrament the proximate matter is called that which applies the remote matter and which is altogether determined by the form supervening. But this handing over of bodies is the application of the remote matter, namely, of the mutual right over bodies; but it is determined by the form, which is the acceptance of this handing over (as will be said immediately), so that then the whole matrimonial contract is completed.

The form is the mutual acceptance of this handing over externally manifested. Thus again holds the common opinion, which the same cited authors hold. Billuart writes excellently concerning this matter:[195] "The sacrament of matrimony is nothing other than a civil contract elevated to the being of a sacrament, with no change made concerning matter and form. Therefore the matter and form of the sacrament are those of the contract. I subsume: but in civil contracts, and consequently in the matrimonial contract, the handing over of the thing, or consent to the handing over externally expressed, is the matter; the acceptance, or consent to the acceptance externally expressed, is the form. Therefore.... I prove the subsumption: that has the character of matter which is determinable; but that has the character of form which is determinative.... But in every civil contract the handing over is determinable and is completed in the character of a perfect contract through acceptance, which has itself as determinative. Therefore...."

In other sacraments, indeed, matter is distinguished from form, and therefore the Council of Florence defined that the sacraments are perfected by three things, namely: matter, form, and the intention of the minister; but in the sacrament of matrimony these three are not distinguished except according to a formal concept. For the same marital consent, under a diverse aspect, is simultaneously matter, form, and efficient cause. This indeed proceeds from the fact that the sacrament of matrimony alone was instituted by Christ after the manner of a contract. Moreover, in a contract these three can be united in the same person, as if someone hires himself out for service. For in this contract the contracting party himself is simultaneously the matter, form, and efficient cause.

Scholion. On other opinions. Following Melchior Cano, certain men taught that the matter of the sacrament of matrimony is the words expressing consent, but that the form is the blessing of the priest, who is also the minister of this sacrament. This opinion is false, as we shall prove in the following article when there will be discussion of the minister of the sacrament of matrimony. There is no leisure here to speak of other opinions now altogether obsolete concerning this matter.[196]

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[188] Thus Billuart, *De matrimonio*, diss. 1, a. 7, and St. Alphonsus, *Theol. mor.*, l. 6, n. 880.

[189] Loc. cit.

[190] IV, dist. 25, q. 2, a. 3.

[191] *De matrimonio*, c. 6.

[192] *De sacramentis in genere*, disp. 2, sect. 1.

[193] *Prael. dogm.*, VII, 758.

[194] Loc. cit., n. 109.

[195] Loc. cit.

[196] See Christian Pesch, *Prael. dogm.*, VII, n. 754 ff.

Article III. On The Minister Of The Sacrament Of Matrimony

655. Billuart rightly writes:[197] "The opinion of the ancient theologians was unanimous, if perhaps you except William of Paris, that the contracting parties are themselves the ministers of matrimony, not only under the aspect of the contract, but also under the aspect of the sacrament, until Melchior Cano, book 8, *De locis theologicis*, c. 5, in the solution to objection 3, entering upon a new way, taught that the priest is the minister of the sacrament of matrimony; that the words, I join you together, are the form; and the matter is the mutual consent of the contracting parties." Not a few, nor ignoble, theologians followed Melchior Cano: Estius, Sylvius, Juénin, Tournely, and others; Benedict XIV,[198] as a private author, calls their opinion very probable. But with the princes of the schools, the Master of the Sentences, the Angelic Doctor, Scotus, and with the more ancient and now most common and certain opinion, let the thesis be:

The ministers of the sacrament of matrimony are the contracting parties themselves.

Proof 1. From the authority of St. Thomas. The Angelic Doctor[199] says: "The words by which matrimonial consent is expressed are the form of this sacrament; but not the blessing of the priest, which is a certain sacramental." In another place[200] he says: "Just as in other sacraments certain things belong to the essence of the sacrament, and when these are omitted there is no sacrament; but certain other things pertain to the solemnity of the sacrament, and when these are omitted the sacrament is nevertheless truly perfected, although he who omits them sins: so also consent expressed through words of the present between persons legitimate for contracting matrimony makes matrimony, because these two things belong to the essence of the sacrament. But all other things belong to the solemnity of the sacrament, because they are employed for this, that matrimony may be made more fittingly. Hence, if they are omitted, there is a true matrimony, although those contracting thus sin, unless they are excused by some legitimate cause." This argument indeed appears to be very clear if it is considered that in the time of St. Thomas the impediment of clandestinity did not yet exist.

Proof 2. From theological reasons. a) The instrumental efficient cause of a sacrament is the same as the minister of the sacrament. Now the instrumental efficient cause of the sacrament of matrimony is not the priest, but the contracting parties themselves, since the Council of Florence defined: "The efficient cause of matrimony regularly is mutual consent expressed through words of the present." Therefore the contracting parties themselves, expressing mutual consent, are the ministers of the sacrament of matrimony.

b) The marriages of Christians can sometimes be validly and licitly contracted **without any intervention of a priest.** Thus it was before the Council of Trent for clandestine marriages; thus it is after the new Code of Canon Law in a case of necessity. But every valid matrimony of Christians is a true sacrament, as Pius IX and Leo XIII declared.[201] Therefore it is clearer than light that the priest is not the minister of the sacrament of matrimony, and nothing remains except that the contracting parties themselves are the ministers of this sacrament.

Let these two reasons suffice; he who desires more should go to Billuart,[202] who proves our thesis with many arguments and excellently resolves the objections brought against it. There is no reason for us to note that, in

the celebration of matrimony through a proxy, not the proxy but the mandator is the minister of the sacrament of matrimony. For the proxy is nothing but the instrument of the mandator.

[197] *De matrimonio*, diss. 1, a. 6.

[198] *De syn. dioec.*, l. 8, c. 12, n. 4.

[199] *Suppl.*, q. 42, a. 1, ad 1.

[200] *Suppl.*, q. 45, a. 5.

[201] Cf. above, n. 628.

[202] *De matrimonio*, diss. 1, a. 6.

656. The opinion of Maldonatus. Maldonatus and a few others[203] taught that the priest is indeed the **ordinary** minister of the sacrament of matrimony, but that in extraordinary cases Christ conferred this office upon the contracting parties; just as in a case of necessity a layman is also the minister of baptism. This opinion indeed attempts to reconcile two other opposed opinions, but has no foundation either in tradition or in the infallible magisterium of the Church.

Scholion. It is not necessary that those about to marry know themselves to be the ministers of the sacrament of matrimony, because by the very fact that they intend to contract according to the institution of God, as is done in the true Church of Christ, they also have the intention of doing that which the Church does; and this suffices for the validity of the sacrament. Indeed, it is not customarily expedient that simple faithful be expressly admonished that those about to marry are themselves the ministers of the sacrament of matrimony, because they understand this with difficulty, and this knowledge can hinder rather than profit the reverence to be employed in receiving the sacrament of matrimony.

[203] Cf. Hurter, *Theol. dogm.*, III, n. 596.

Article IV. On The Subject Of The Sacrament Of Matrimony

657. 1. The subject capable of the valid sacrament of matrimony is every baptized person who does not labor under a diriment impediment.

Even heretics, provided that they are validly baptized and are not bound by any diriment impediment, validly receive the sacrament of matrimony. This holds even if the heretics do not know or do not believe that matrimony is a sacrament. For it suffices that they will to enter a true matrimonial contract, without placing any express condition against the essence of matrimony. A condition of this kind would be, for example, the lawfulness of divorce expressly stipulated. Then certainly the matrimony would be illicit and invalid. Above, in n. 649, it was proved that the sacrament of matrimony is not received by those about to marry of whom both or either one is not baptized. But all non-baptized infidels can enter a valid matrimonial contract (legitimate matrimony), provided that they are not bound by diriment impediments of natural law, positive divine law, or civil law.[204]

[204] Cf. above, n. 650.

658. 2. For the worthy and fruitful reception of this great sacrament of matrimony, it is further required that a) those about to marry be free from every impeding impediment, and b) that they be in the state of sanctifying grace.

The reason is that a) even impeding impediments induce a grave obligation in conscience, and because b) the sacrament of matrimony is a sacrament of the living. If anyone receives the sacrament of matrimony in the state of mortal sin, he sins gravely and does not receive the sacramental graces proper to matrimony. More probably, however, these sacramental graces afterward revive when the obstacle of the state of mortal sin has been removed.[205]

By common law it is not strictly commanded that those about to marry receive the sacraments of penance and the Eucharist before matrimony.[206] Nevertheless, the Council of Trent,[207] the Roman Ritual,[208] and the Code of Canon Law[209] vehemently admonish the betrothed that, before they contract, they diligently confess their sins and devoutly approach the Most Holy Eucharist. **By diocesan law or universal custom,** the prior reception of penance and the Eucharist is not rarely altogether required of the betrothed. Hence the pastor in those places can require testimony that confession has been completed. Since, however, today throughout the whole world mixed marriages are invalid unless they are contracted before the pastor, hence, if perhaps some Catholic refuses confession, the pastor should first (if he can fittingly) consult the bishop concerning what must be done. But if this consultation is impossible, it is almost always better that the pastor assist at the matrimony of this perverse man in order to avoid the greater evil of concubinage. Worthy of note in this matter is the Instruction of the Holy Office given on July 3, 1878, to the Ordinaries of Brazil: "It can in no way be tolerated ... that marriages which are contracted by Freemasons be celebrated with all the solemnity of the Catholic rite. But when the pastor can in no way impede a matrimony of this kind, the matter is to be referred to the Ordinary, who ... will be able to permit the pastor to be passively present at the matrimony, that is, without a blessing or any other ecclesiastical rite, as an authorized witness, provided that the Catholic education of all the offspring is altogether safeguarded."[210]

To the question whether it is lawful to enter matrimony with a public or occult sinner, it appears that the response must be that this is not lawful except for most grave reasons, since from a matrimony of this kind the greatest harms are accustomed to arise both for the Catholic party and the offspring to be born, and for Christian society. How the pastor can assist at such a matrimony will be stated below, n. 789.

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[205] Cf. above, n. 42.

[206] Cf. De Smet, loc. cit., n. 192.

[207] Sess. 24, c. 1, *De reformatione matrimonii.*

[208] Tit. 7, c. 1, n. 14.

[209] C. 1033.

[210] *Collect. de Prop. Fide*, n. 1495; cf. also Holy Office, January 11, 1899. The bishop can indeed permit this passive assistance, but can also refuse it for just causes; cf. Holy Office, January 30, 1867; he must refuse it in illicit mixed marriages.

Chapter III. On The Properties Of Matrimony

Since we have treated of the essence of matrimony, logical order now demands that we treat of its properties. Now there are two essential properties of matrimony: unity and indissolubility or firmness. First we treat of unity, and then of the indissolubility or firmness of matrimony.

Article I. On The Unity Of Matrimony

659. The unity of matrimony or monogamy is the matrimonial bond between one man and one woman. For this reason, in the definition of matrimony above we said in the singular and not the plural: the

marital conjunction of a man and a woman. Simultaneous polygamy and polyandry are opposed to the unity of matrimony; second nuptials after the death of either spouse, however, are by no means opposed to it.

Simultaneous polyandry, which is the marital conjunction of one woman with two or more men, exists very rarely among nations,[211] and is not only contrary to the precept of Sacred Scripture: "They shall be two in one flesh," but also directly contrary to the natural law. For the primary end of matrimony is the generation and education of offspring. Moreover, experience proves that a woman who habitually has intercourse with several men is infertile, as is evident in prostitutes. But even if offspring should perhaps be generated, education would be almost impossible, since there would be no certain father, and consequently the bodily and spiritual care of the offspring would be most difficult.[212]

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[211] Westermarck (*History of Human Marriage*, cc. 20-22) indeed brings forward several examples of polyandry among wholly depraved nations, but nevertheless one may suspect from his account that it is not simultaneous polyandry.

[212] Cf. *Suppl.*, q. 65, a. 1, ad 7.

660. Simultaneous polygamy (polygyny), which is the marital conjunction of one man with two[213] or more women, flourished before Christ not only among the nations, but also among the Israelites. In our times it still flourishes among pagans, and especially among Mohammedans.[214]

Simultaneous polygamy is indeed contrary to the primeval institution of matrimony in paradise, but it was permitted to the patriarchs in the Old Testament.[215] That polygamy was not the primeval form of matrimony is a certain opinion. For Adam exclaimed, after Eve had been handed over to him as wife: "They shall be two in one flesh." Innocent III, explaining this text, says: "He did not say three or more, but two; nor did he say he shall cleave to wives, but to his wife."[216] From the words of Christ also, "But from the beginning it was not so,"[217] it is clearly inferred that polygamy was not the primeval form of matrimony. Lamech seems to have been the first who had two wives.[218]

There are those who teach that polygamy was never lawful, and consequently that the wives of the patriarchs were called concubines; nevertheless, that the patriarchs did not sin formally by having several wives, because they were in good faith. This explanation, however, does not please, nor is it sufficiently proved. For it seems absurd that most holy men such as Abraham, Jacob, and others, who had miraculous divine revelations, should have erred in a matter of such great moment. Moreover, while David is vehemently reproached and punished because of the adultery committed with Bathsheba, he is never reproved because of the other wives of his own whom he had. The book of Deuteronomy, c. 21, vv. 15-16, seems to suppose the lawfulness of polygamy, decreeing: "If a man have two wives, one beloved and the other hated, and they have begotten children by him, and the son of the hated be the firstborn, and he will divide his substance among his sons: he cannot make the son of the beloved the firstborn and prefer him to the son of the hated." The same is confirmed from the law of the levirate,[219] by which the wife of a deceased brother (without children) had to be taken in matrimony by the surviving brother (although he was already married). But if women maritally joined to one man are called concubines in Sacred Scripture, it is not yet permissible to conclude from this that they were not legitimate wives, because frequently in Sacred Scripture by the name of concubine is signified a true and legitimate wife who was not married with such great solemnity. Thus Hagar, Keturah, Bilhah, and Zilpah are called now wives, now concubines of Abraham in the book of Genesis.[220]

The intrinsic reason, however, why simultaneous polygamy could have been lawful in the Old Testament consists in this, that polygamy is not opposed to the primary end of matrimony, namely, the generation and education of offspring. For one man suffices to fecundate several women and to educate the offspring born

from them.[221] Nevertheless, it must be admitted that some men of the Old Testament committed excesses in the number of wives, for it is difficult to understand how, for example, Solomon could have had several hundred wives[222] without a mark of intemperance.

Authors commonly teach that the dispensation to have several wives was not granted by God until after the flood. Nothing certain can be said concerning this matter. Authors do not agree whether the same dispensation was granted not only to the Jews but also to other peoples; but there does not seem to be sufficient reason why a stricter discipline should be established for pagans than for Jews, and all the less because pagans, as lacking the Mosaic law, could observe the unity of matrimony with greater difficulty than the Jews.[223] Thus Esther, a Jewess, was joined to Ahasuerus, who already had several wives; Mordecai, her adoptive father and a man fearing God, would neither have counseled nor approved this union if it had been gravely unlawful.

Simultaneous polygamy from the times of the New Law onward is unlawful and invalid for all, so that neither the faithful nor unbelievers any longer have the faculty of having several wives. For Christ restored matrimony to its primeval unity and called that man an adulterer who married another even after dismissing his first wife.[224] Therefore, a fortiori, he is an adulterer who marries another while retaining his first legitimate wife. Innocent III argues likewise in the celebrated chapter *Gaudemus*:[225] "If, therefore, after a wife has been dismissed, another cannot lawfully be married, much less while she is retained; from which it plainly appears that plurality concerning matrimony is to be rejected in each sex, since they are not judged according to unequal standards."

Although in the Council of Trent[226] it was defined only: "If anyone says that it is lawful for Christians to have several wives at the same time, and that this is prohibited by no divine law, let him be anathema"; nevertheless it is by no means permissible to conclude from this that it is still lawful for unbelievers to have several wives; for plurality of wives is contrary to the primeval institution of matrimony, and the dispensation granted in ancient times was expressly revoked by Christ. Hence St. Thomas[227] teaches: "To have several wives is contrary to the law of nature, to which unbelievers also are bound; and therefore the matrimony of an unbeliever is not true except with her with whom he first contracted."

Indeed, the Holy Office in an Instruction to the Apostolic Vicar of the Gallas, March 20, 1860,[228] says: "It is most certain that simultaneous polygamy is altogether unlawful by evangelical law; hence, after Jesus Christ[229] restored matrimony to its pristine sanctity, unity, and indissolubility, with the dignity of a sacrament added for the baptized, it was lawful neither for the faithful, nor for Jews, nor for any mortals to join several wives to themselves. Consequently, with monogamy thus divinely restored, that only one can be bound to one by a legitimate and valid marriage is held as an unshaken dogma of faith." If, however, some emperors are reported to have had several wives, as, for example, Constantius, Valentinian, and Lothair, Billuart[230] rightly responds: "No law is established from deeds unjustly done. Constantius was an Arian; Pope Nicholas I (865) excommunicated Lothair with his concubine. Valentinian I, in order to avert from himself the disgrace of a double marriage, unjustly enacted this law."

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[213] Such polygamy is properly called simultaneous bigamy.

[214] It is known to all that Luther gave his consent that Philip, Landgrave of Hesse, while his first legitimate wife was living, should marry another, namely Margaret von der Sale.

[215] Cf. *Suppl.*, q. 65, a. 2.

[216] C. 8, X 4, 19.

[217] Matt. 19:5 ff. and Mark 10:2 ff.

[218] Gen. 4:19.

[219] Deut. 25:5 ff.

[220] Cf. St. Thomas, *Suppl.*, q. 65, a. 5, ad 2.

[221] Cf. ibid., a. 1; Billuart, *De matrimonio*, diss. 5, a. 1.

[222] Cf. 3 Kings 11:3.

[223] Cf. De Smet, *De sponsalibus et matrimonio*, n. 306.

[224] Cf. Matt. 19:3-9 and Mark 10:1-12.

[225] C. 8, X 4, 19.

[226] Sess. 24, can. 2, *De matrimonio* (Denz., n. 972).

[227] *Suppl.*, q. 59, a. 3, ad 3.

[228] *Collect. de Prop. Fide*, n. 1188.

[229] Cf. Matt. 19:5 f.

[230] Loc. cit., diss. 5, a. 1.

661. Successive polygamy (which by ancient authors is customarily called simply bigamy) is lawful, and consequently among Christians constitutes a true sacrament. The same holds concerning third and further nuptials. Thus the Council of Florence, in the Decree for the Armenians given in 1441,[231] declares "that not only second nuptials, but third and fourth and further ones, if no canonical impediment stands in the way, can lawfully be contracted." The Code of Canon Law, c. 1142, decrees: "Although chaste widowhood is more honorable, nevertheless second and further nuptials are valid and lawful."

The lawfulness of successive polygamy is manifestly proved from 1 Cor. 7:39, where St. Paul says: "A woman is bound by the law as long as her husband liveth; but if her husband sleep, she is at liberty; let her marry whom she will, only in the Lord"; and ibid., vv. 8 f.: "But I say to the unmarried and to the widows: it is good for them if they so continue, even as I; but if they do not contain themselves, let them marry; for it is better to marry than to burn."[232]

The Montanists and Novatians taught that second nuptials were unlawful. Nicholas, Patriarch of Constantinople, contended that fourth nuptials were contrary to divine law. Since harm not rarely arises from second nuptials for offspring born in the prior matrimony, and since those contracting also often celebrate second or further nuptials for the sake of pleasure rather than for some other upright motive, some of the Holy Fathers, especially the Greeks, spoke more harshly concerning second nuptials. Thus, for example, St. Basil calls bigamy "chastised fornication," while he calls a third matrimony "a defilement of the Church." St. Gregory Nazianzen[233] has similar things, saying: "The first [matrimony] is law; the second pardon and indulgence; the third iniquity; but he who exceeds this number is altogether swinish." Some particular Councils also, for example, those of Ancyra and Laodicea, inflicted penances upon those who entered second nuptials. Even in our times the Easterners do not permit second nuptials except after a previous dispensation of the bishop.[234]

Scholion. Those who live in notorious simultaneous polygamy are accounted public sinners, and consequently can be admitted neither to the sacraments nor to ecclesiastical burial. Moreover, they are gravely punished by almost all penal Codes in civilized regions.[235]

[231] Mansi, *Ampl. coll. Conc.*, 31, 1741.

[232] Cf. also Rom. 7:3; 1 Tim. 5:14.

[233] Orat. 37, 8 (Migne, *Patr. graec.*, 36, 291).

[234] Papp-Szilagyi writes concerning this matter, *Enchir. iur. eccl. orient. cath.*, § 87: "The Easterners also reject successive polygamy.... For second nuptials there is indeed a prescribed rite in the Euchologia, but they reject those very nuptials after the forty-fifth year of age; third nuptials were subjected to ecclesiastical censure; but fourth nuptials were condemned as brutal.... According to modern practice, assistance is supplied through a dispensation of the bishop."

[235] Cf. German Penal Code, § 171; Belgian Penal Code, art. 391.

Article II. On The Indissolubility Of Matrimony

The other property of matrimony is indissolubility, to which divorce or the dissolution of matrimony is opposed. A twofold divorce is customarily distinguished: one **perfect,** which dissolves the matrimonial bond itself, so that it is lawful for the spouses to pass to other nuptials; the other **imperfect,** which, while the bond remains intact, grants separation of the spouses with regard to bed and habitation. After we have proved the complete indissolubility of consummated Christian matrimony, we shall treat: 1. of perfect divorce or divorce with regard to the bond; 2. of imperfect divorce or divorce with regard to bed and habitation.

662. Proposition. A valid, ratified, and consummated matrimony can never be dissolved by any human power or for any cause (except death). Thus the Code of Canon Law, c. 1118.

Proof 1. From the Council of Trent.[236] "If anyone says that the Church errs when she has taught and teaches, according to evangelical and apostolic doctrine, that the bond of matrimony cannot be dissolved because of the adultery of one of the spouses, and that neither one, even the innocent one who gave no cause for the adultery, can contract another matrimony while the other spouse is living, and that he commits adultery who, having dismissed an adulteress, marries another, and she who, having dismissed an adulterer, marries another: let him be anathema."

From these words it follows that it is of faith that the Church does not err when she teaches that the matrimonial bond cannot be dissolved because of adultery. Since, however, it is added in the canon that the Church teaches this **according to evangelical and apostolic doctrine,** the indissolubility of consummated Christian matrimony is certain from evangelical and apostolic doctrine, and consequently seems to pertain to the faith. There are some, however, who vindicate certainty indeed for this truth, but not the certainty of faith.[237] Yet whatever may be the case concerning this controversy, according to all Catholics he is a heretic who says that the Church errs when she has taught and teaches that the matrimonial bond cannot be dissolved because of the adultery of one of the spouses. Consequently, under this head Protestants are heretics. But he who should say that the bond of matrimony can be dissolved because of adultery would be at least in an error proximate to heresy.[238]

Launoy and a few others contend that this canon is not dogmatic but only disciplinary, and consequently subject to change; but this is false, as is evident from its object, which is the inerrancy of the Church teaching according to evangelical and apostolic doctrine.[239]

Proof 2. From Sacred Scripture. In diverse places Christ declares that adultery is committed by him who marries a dismissed wife. Thus He says: "And I say to you, that whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and he that shall marry her that is put away, committeth adultery."[240] Now if matrimony could be dissolved with regard to the bond, certainly he who

married a dismissed wife would not commit adultery. Therefore, according to the precept of Christ, it is not lawful to effect a divorce with regard to the matrimonial bond.

Certainly, in the cited text Christ seems to permit divorce in one case, namely, in the case of fornication, since He says: "except it be for fornication," and in St. Matthew, c. 5, v. 32: "saving the cause of fornication." For this reason many, both Protestants and heterodox Greeks, permit the dissolution of matrimony (even with regard to the bond) when adultery has been committed by one spouse. But this text, accurately examined, does not have this meaning. From the first centuries onward there has been much dispute concerning what the words "except it be for fornication" mean.[241] The best, most ancient, and more common explanation of all is that which St. Thomas brings forward:[242] "That exception [namely, saving the cause of fornication], which is in the words of the Lord, is referred to the dismissal of the wife, and therefore the objection proceeds from a false understanding."

Therefore the meaning of the words of the Lord is: It is not lawful to dismiss a wife except because of fornication or adultery committed by her; but even in this case it is not lawful to enter new nuptials; and if anyone nevertheless contracts another matrimony while the adulteress is living, he commits adultery. Thus also the Council of Florence understood the text of St. Matthew, teaching: "Although it is lawful to effect a separation of bed because of fornication, nevertheless it is not lawful to contract another matrimony, since the bond of a matrimony legitimately contracted is perpetual."[243]

That this is truly the meaning of the words of Christ appears manifestly from the parallel places in St. Mark 10:10 and St. Luke 16:18. For there Christ says simply and without limitation: "Whosoever shall put away his wife and marry another committeth adultery against her; and if the wife shall put away her husband and be married to another, she committeth adultery"; or: "Every one that putteth away his wife and marrieth another committeth adultery; and he that marrieth her that is put away from her husband committeth adultery." Hence St. Augustine[244] exclaims: "Who, then, are we that we should say: there is one who, dismissing his wife and marrying another, commits adultery, and there is one who, doing this, does not commit adultery, when the Gospel says that everyone who does this commits adultery?"

Finally, if anyone rightly understood the words of Christ, it is certainly St. Paul, the "vessel of election." Now he says: "But to them that are married, not I, but the Lord commandeth that the wife depart not from her husband; and if she depart, that she remain unmarried, or be reconciled to her husband."[245] Very few Catholic theologians taught the dissolution of matrimony with regard to the bond because of adultery committed, at least after the time of Gratian, who, after adducing many texts of the Holy Fathers, thus concludes: "By these authorities it is most evidently shown that whoever has dismissed his wife because of fornication cannot marry another while she is living, and if he marries, he will be guilty of adultery."[246]

But if some older theologians and bishops seem to have permitted this dissolution of matrimony, it must be noted: a) that frequently their words are not so clear and certain; b) that they were somewhat more lenient in particular cases because of the hardness of the spouses' hearts, in order to avoid greater evils.[247]

Leo XIII[248] beautifully and concisely says: "But the Supreme Pontiffs, as often as they resisted most powerful princes menacingly demanding that divorces effected by them be ratified by the Church, must be judged so often to have fought not only for the integrity of religion, but also for the civilization of nations. In this matter all posterity will admire the proofs of unconquered spirit given by Nicholas I against Lothair II; by Urban III and Paschal II against Philip I, King of the French; by Celestine III and Innocent III against Philip II, Prince of the French; by Clement VII and Paul III against Henry VIII; finally, by Pius VII, a most holy and most courageous Pontiff, against Napoleon I, exulting in prosperous affairs and in the greatness of his empire."

Since Protestants and civil governments permit the perfect dissolution of matrimony, the number of divorces increases from year to year, drawing with it the greatest harms against the education of offspring, the peace of society, and uprightness of morals. Leo XIII vividly describes in the truly golden Encyclical *Arcanum* how great are the evils arising from divorces:

"It is scarcely necessary to say how much matter of evil divorces contain within themselves. For because of them matrimonial covenants become changeable; mutual benevolence is weakened; pernicious incentives are supplied to infidelity; harm is done to the protection and education of children; occasion is provided for the sundering of domestic societies; seeds of discord are scattered among families; the dignity of women is diminished and depressed, and they come into danger of being held as abandoned after they have served the lust of men. And since nothing avails so much for destroying families and breaking the strength of kingdoms as the corruption of morals, it is readily perceived that divorces are especially hostile to the prosperity of families and states, for they arise from the depraved morals of peoples and, as experience testifies, open an approach and doorway to more vicious customs of private and public life. That these evils are much graver will be evident if it is considered that there will be no restraints so great as to be able to confine within fixed or previously foreseen limits the faculty of divorce once it has been granted. Great indeed is the force of examples, greater that of desires: by these incitements it must happen that the lust for divorces, creeping more widely each day, invades the minds of very many, like a disease spread by contagion or a mass of waters overflowing after the embankments have been overcome."

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[236] Sess. 24, can. 7, *De matrimonio* (Denz., n. 977).

[237] For example, Tanquerey, *Synopsis Theol. mor., De matrimonio*, n. 718.

[238] Among the propositions qualified by the Holy Office under Innocent X, this is found under n. 13: "The Supreme Pontiff can dispense so that even a consummated matrimony may be dissolved with regard to the bond because of the wife's adultery, to which the definition of matrimony is not opposed." All the Qualifiers were of the opinion that this proposition was rash and scandalous; four added that it was proximate to error; two, erroneous; and three, heretical (*Analecta ecclesiastica* IV [1896], 187). The Fathers of Trent in the earlier drafting of this canon simply taught that consummated matrimony is altogether indissoluble; but at the request of the Venetian legates the drafting was changed, lest the contrary practice of the Greeks be held condemned. Besides the Council of Trent, several other Councils maintained the same doctrine concerning the complete indissolubility of consummated Christian matrimony, for example, the Council of Elvira in 305, canons 8 and 9; the Fourth African Council (407), which in canon 6 employs almost the same words as the Council of Trent; the Second Council of Milevis, c. 17 (c. 5, C. 32, q. 7); and the Council of Florence (Decree for the Armenians). Moreover, the Supreme Pontiffs several times issued decrees concerning the complete indissolubility of consummated Christian matrimony, for example, Leo I, Zacharias, Alexander III, Innocent III, Leo XIII, and others.

[239] Cf. Van de Burgt-Schaepman, *Tract. de matrimonio*, I, n. 21.

[240] Matt. 19:9. Cf. also Matt. 5:32; Luke 16:18; Mark 10:11; 1 Cor. 7:10; Rom. 7:2 f.

[241] Diverse explanations of this text devised by theologians may be seen among the dogmatic theologians, for example, in R. Fei, O.P., *Dogm.*, V, n. 187.

[242] IV, dist. 35, q. 1, a. 5, ad 4.

[243] Denz., n. 702.

[244] *De adulterinis coniugiis*, l. 1, c. 9, n. 10 (Migne, *Patr. lat.*, 40, 457). In this entire little work St. Augustine most ingeniously explains both the texts of Sacred Scripture and Catholic doctrine.

[245] 1 Cor. 7:10.

[246] C. 16, C. 32, q. 7.

[247] Besides Freisen, already cited, the history of the indissolubility of matrimony is well narrated by Fahrner, *Gesch. der Ehescheidung im kan. Recht* (1903); A. Cígoi, O.S.B., *Die Unauflöslichkeit der christlichen Ehe und die Ehescheidung* (1895).

[248] Encyclical *Arcanum*.

663. Certain examples of the dissolution of consummated matrimony are indeed objected. Thus, for example, the Councils of Verberie (Verberie; 758) and Compiègne (Compiègne; 757) grant the dissolution of matrimony for several causes.[249] Thus Celestine III (1191-1198) permitted the dissolution of the bond of a consummated matrimony when an apostate husband abandoned his wife, unduly extending the Pauline privilege to this case.[250] Innocent III seems to allude to this opinion of Celestine, saying: "although a certain predecessor of ours seems to have thought otherwise."[251]

But the principal difficulty arises from the response given by Gregory II to St. Boniface in 726: "As to what you have proposed, that if a woman, stricken by infirmity, should not be able to render the debt to her husband, what should her spouse do? It would be good if he should remain thus, so as to devote himself to continence; but because this belongs to great men, he who cannot contain himself should rather marry; nevertheless, he should not withdraw the help of support from her whom infirmity hinders and not a detestable fault excludes."[252]

Although one should not immediately say with Gratian: "That statement of Gregory is found to be altogether contrary to the sacred canons, indeed to evangelical and apostolic doctrine," nevertheless this text has always been the cross of jurists. The genuineness of the text being admitted, two probable explanations are given, namely: a) Gregory II speaks of ratified and non-consummated matrimony; b) that infirmity is nothing other than antecedent impotence, which certainly invalidates any matrimony.[253]

As regards the particular Councils, it can be conceded that they erred. As regards Celestine III, his opinion is not so clear. But even granting that Celestine erred in a particular case, nothing can thence be deduced either against the infallibility of the Supreme Pontiff or against the complete indissolubility of consummated Christian matrimony, and all the less because Celestine III himself strenuously defended the indissolubility of Christian matrimony against Philip II, King of France.

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[249] Cf. Fahrner, *Gesch. der Ehescheidung im kan. Recht*, 74 ff.

[250] Cf. ibid., 164.

[251] C. 7, X 4, 19.

[252] C. 18, C. 32, q. 7.

[253] Cf. Freisen, *Gesch. des kan. Eherechtes*, 331; Fahrner, loc. cit., 63.

664. Scholion. On the intimate reason for the indissolubility of consummated Christian matrimony. If anyone inquires into the ultimate and adequate reason for this perfect indissolubility of consummated matrimony, certainly the natural law alone cannot be assigned; for in the Old Law marriages of this kind were lawfully dissolved by a "bill of divorce," and in the New Law they can sometimes be dissolved by force of the Pauline privilege (concerning which below); but in neither case can it be said that the natural law itself (at least according to its primary principles) is violated. Nor can this perfect indissolubility be derived solely from the character of the sacrament which belongs to Christian matrimony; for ratified matrimony also is a true sacrament, yet it can nevertheless be dissolved with regard to the bond both by pontifical dispensation and by religious profession.[254]

Since these things are so, it is better and truer to say that the consummated matrimony of Christians is altogether indissoluble **from the positive will of God manifested in the Gospel,**[255] and that this indissolubility is most fitting both to the natural law and to the character of the sacrament.[256] Indeed, Pius IX in the Syllabus proscribed proposition 67: "By the law of nature the bond of matrimony is not indissoluble, and in various cases divorce properly so called can be sanctioned by civil authority."[257]

But this proposition seems to be understood thus: 1. Civil authority cannot sanction divorce properly so called, that is, the dissolution of matrimony with regard to the bond; 2. the indissolubility of matrimony, especially consummated matrimony, rests upon the **secondary** natural law, because matrimony by its very nature requires the good education of offspring, the mutual love of the spouses, perpetual mutual services, and is instituted to restrain and satisfy carnal concupiscence in a lawful manner. All these things can scarcely, indeed hardly at all, be obtained if the dissolution of matrimony is permitted, as perpetual experience testifies. Therefore the dissolution of consummated matrimony is opposed to the secondary natural law.

But since (absolutely speaking) the procreation of offspring and their education, and all the other things, can be had even when matrimony has been dissolved, divorce with regard to the bond is not opposed to the primary principles of the natural law; as appears also from the fact that God never dispenses in the **primary** principles of the natural law. But as is evident from the things said above, God both in the Old and in the New Law sometimes dispenses in the bond of consummated matrimony.

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[254] Cf. below, n. 681.

[255] Matt. 5:32; Luke 16:18.

[256] Cf. Wernz-Vidal, *Ius can.*, V, n. 623; Billuart, *De matrimonio*, diss. 5, a. 2; cf. also the Instruction of the Holy Office, July 6, 1817 (*Collect. de Prop. Fide*, n. 725). St. Thomas teaches concerning this matter: "Inseparability belongs to matrimony insofar as it is the sign of the perpetual conjunction of Christ and the Church, and insofar as it is ordained to the good of offspring as an office of nature. But because the separation of matrimony is more directly opposed to the signification of the sacrament than to the good of offspring, to which it is opposed consequently, the inseparability of matrimony is understood more in the good of the sacrament than in the good of offspring, although it can be understood in both; and insofar as it pertains to the good of offspring, it will be of the law of nature, but not insofar as it pertains to the good of the sacrament" (*Suppl.*, q. 67, a. 1, ad 2).

[257] Denz., n. 1767.

§ 1. On Perfect Divorce Or The Dissolution Of The Matrimonial Bond

665. Proposition 1. "A non-consummated matrimony between baptized persons, or between a baptized party and a non-baptized party, is dissolved with regard to the bond:

a) by the law itself through solemn religious profession;

b) by a dispensation of the Supreme Pontiff, provided that a just cause is present and both parties request it, or at least one of them, even if the other is unwilling."[258]

The first part of the proposition is defined by the Council of Trent:[259] "If anyone says that a ratified, non-consummated matrimony is not dissolved by the solemn religious profession of one of the spouses, let him be anathema."

It is said: **through solemn religious profession.** Therefore matrimony is dissolved neither by entrance into religion, nor by simple profession,[260] nor by a solemnized vow of chastity in the subdiaconate. Solemn profession is found in several ancient religious orders of men, for example, the Benedictines, Dominicans, Franciscans, and so forth; but indeed only in a few religious orders of women, for example, the Poor Clares,

Dominican nuns of the Second Order, and so forth. Hence in practice it must be seen whether there is a profession which is recognized by the Church as solemn.

Since, however, according to the current discipline of the Church solemn vows are ordinarily not emitted until at least four years after entrance into religion, it follows that the spouse remaining in the world would have to wait for at least four years before being able to enter new nuptials. But because this is sometimes hard, when the case occurs permission is to be sought from the Holy See for solemn vows to be emitted immediately after the novitiate. Solemn profession does not dissolve a ratified matrimony unless it is joined with a vow of perfect chastity. Hence if in some military orders a solemn profession was indeed emitted, but with conjugal chastity only, or with a prohibition against proceeding to second nuptials, such a solemn profession did not dissolve a ratified matrimony.[261]

A vow, as they say, **solemnized** in the reception of the subdiaconate likewise does not dissolve a preceding ratified matrimony (although it invalidates a subsequent matrimony, as will be said below). Concerning this matter John XXII[262] decreed: "Desiring to put an end to the ancient contention ... by the present edict we declare that, although a vow solemnized through the reception of sacred order, as regards impeding a matrimony to be contracted and invalidating it if contracted afterward, must be accounted efficacious according to the statutes of the canons, nevertheless, for dissolving one previously contracted, even if it has not been consummated through carnal intercourse, since we find this decreed neither by divine law nor by the sacred canons, it is to be accounted invalid."

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[258] Thus the Code of Canon Law, c. 1119.

[259] Sess. 24, can. 6, *De matrimonio* (Denz., n. 976).

[260] A simple vow of chastity or simple profession (even that of the Jesuits) does not dissolve a ratified matrimony. Thus Pius IX expressly decreed on January 25, 1861, saying: "A ratified and non-consummated matrimony is dissolved only by solemn profession of vows, but not by profession of simple vows." A few authors, for example, Pontius, Leurenius, Bouix, and Perrone (who, however, later corrected this error), falsely attributed the same force of dissolving matrimony to simple vows emitted in the Society of Jesus after two years from entrance.

[261] Cf. Feije, loc. cit., n. 515.

[262] *Extravag.*, c. un., tit. 6, *De voto.*

666. By what law solemn religious profession dissolves a ratified matrimony is much disputed among authors. A few, for example, Habert and Collet, teach that this effect arises **from natural law,** that is, from the very nature of solemn profession; very many, for example, Suarez, Layman, Schmalzgrueber, Pirhing, Leitner, Gasparri, Wernz, De Smet, and others,[263] teach that it arises **from ecclesiastical law alone;** almost all Thomists and several outsiders, for example, Valentia, Sanchez, and Benedict XIV,[264] derive this effect **from positive divine law.** The reason for this last opinion is manifold:

a) "Before carnal intercourse there is only a spiritual bond between the spouses; but afterward there is also a carnal bond between them; and therefore, just as after carnal intercourse matrimony is dissolved by carnal death, so before carnal intercourse it is dissolved through entrance into religion; because religion is a certain spiritual death, by which someone, dying to the world, lives to God." Thus St. Thomas.[265] This comparison of profession with spiritual death occurs very frequently among the ancient authors.

b) Ratified matrimony, as a true sacrament, is indissoluble by divine law. Therefore it cannot be dissolved except through something which has the same sanction. Since, therefore, it is of faith that solemn religious profession dissolves a ratified matrimony, it is more fittingly said that this effect was granted to it also by

divine law. This is confirmed: If solemn religious profession did not dissolve by divine law, but only by ecclesiastical law, then some Pope could decree that this effect should no longer belong to it.[266] But this seems impossible because of the definition of the Council of Trent brought forward above, which is a dogmatic and not merely a disciplinary definition, as is now most commonly admitted.[267]

From c. 7, X 3, 31, theologians and canonists deduced that a two-month period was granted to spouses, within which they could deliberate upon entering religion, and therefore that they were not bound to render the conjugal debt.[268] The Code of Canon Law is altogether silent concerning this two-month period; therefore, according to the current discipline, a spouse is bound immediately after matrimony has been duly contracted to render the conjugal debt to the other party reasonably requesting it.[269]

Moreover, in our times it can scarcely ever happen that someone lawfully enters matrimony with the intention of entering religion within two months; because the civil laws existing almost everywhere and prescribing civil matrimony do not permit divorce because of mere entrance into religion, and consequently grave inconveniences could easily arise for the party left in the world if someone first contracted matrimony and then shortly afterward entered religion. Moreover, according to the current discipline, no married person can be validly admitted to the novitiate without previous permission of the Holy See.[270]

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[263] Fahrner, *Gesch. der Ehescheidung im kan. Recht*, 292 ff., clearly sets forth the diverse opinions of the diverse authors.

[264] *Quaest. can. et mor.*, q. 546, n. 35.

[265] *Suppl.*, q. 61, a. 2.

[266] Wernz-Vidal (*Ius can.*, V, n. 626, note 47) attempts to prove that the Supreme Pontiff can truly remove this effect from solemn profession, citing a fact known to all: in France, Belgium, and other regions nuns no longer emit solemn profession. Therefore the Pope removed solemn profession in some orders, and a fortiori he can remove from solemn profession the force of dissolving a ratified matrimony. No one fails to see how weak this argument is. It is freely conceded that the Pope can suppress solemn profession in some orders, indeed can suppress some entire order, as, for example, Clement XIV did concerning the Society of Jesus; but it by no means follows from this that the Pope can indeed leave a truly solemn profession to some order and nevertheless remove from that profession the effect of dissolving a ratified matrimony. This is also evident from the following example: someone can extinguish a light entirely; but while the light exists, he cannot prevent the light from producing the effect of illuminating. Still weaker is the argument repeated a hundred times: the solemnity of a vow is from the institution of the Church, as Boniface VIII testifies; therefore the Church can freely change, indeed abolish, this solemnity. The response is: Certainly accidental solemnity is from the institution of the Church, but by no means essential solemnity. We have written at greater length concerning this matter in *Commersches Jahrbuch*, XXII, 55 ff.

[267] Cf. Billot, *De eccl. sacr.*, II, thesis 45, p. 415.

[268] Cf. St. Thomas, *Suppl.*, q. 62, a. 2, ad 2.

[269] The Code of Canon Law, c. 1111, decrees concerning this matter: "Each spouse has from the very beginning of matrimony an equal right and duty as regards the acts proper to conjugal life."

[270] Code of Canon Law, c. 542, n. 1.

667. You will ask: 1. If carnal intercourse was had between the betrothed before matrimony, but not yet after matrimony was duly contracted, does the privilege of dissolving the bond of the contracted matrimony through solemn profession remain? Affirmatively. The reason is that such a matrimony is truly ratified only and not consummated. This opinion seems to be placed beyond all doubt after Leo XIII (in 1892) abolished presumed matrimony, which was judged to be present when the betrothed, with marital affection, completed carnal intercourse.[271]

2. Can solemn religious profession dissolve the bond of a matrimony which was indeed consummated in infidelity, but after the conversion of one or both spouses remained without carnal intercourse? Theoretically speaking, the affirmative opinion is truer and more ancient. St. Bonaventure[272] already taught it, and Dominic Soto,[273] Sanchez,[274] and others follow him. The reason is that the ratified matrimony of Christians, as a sacrament, constitutes a stronger bond than a consummated legitimate matrimony; which is plainly evident from the fact that, by the Pauline privilege, a subsequent ratified matrimony dissolves a preceding consummated legitimate matrimony. Now solemn religious profession dissolves the ratified matrimony of Christians. Therefore, a fortiori, it dissolves a consummated legitimate matrimony, according to the maxim of Roman Law: "If I conquer him who conquers you, much more do I conquer you."[275]

In practice, however, since a matter of great moment is involved and the proposed opinion is not certain, the Holy See is to be approached, which, according to the things said above, can dissolve the bond in marriages of this kind.[276] It is certain that the bond of such a matrimony is not dissolved by the reception of sacred orders.

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[271] Cf. Wernz-Vidal, *Ius can.*, V, n. 628.

[272] In IV, dist. 39, a. 2, q. 2 (Ad Aquas Claras, 1899, IV, 839 f.).

[273] In IV, dist. 39, q. un., a. 4.

[274] *De matrimonii sacramento*, l. 7, disp. 76, nn. 8-10, where he says that this opinion is altogether to be held.

[275] L. 14, § 3, D. 44, 3.

[276] Cf. Fahrner, *Gesch. der Ehescheidung*, 313 f.

668. The second part of the proposition is indeed not of faith, but today it is so certain that it would be rash to deny it, and therefore it is deservedly called "Catholic doctrine."[277] For the Holy See, already from the times of Martin V, has constantly and frequently dissolved non-consummated marriages if a grave cause was present. But it is impious to assert that the Holy See constantly errs in so grave a matter, namely, by using a power which it does not have.[278]

For obtaining this dispensation, two things are required: 1. **a just cause;** for divine law is involved, in which the Supreme Pontiff cannot dispense without a just cause; 2. **a petition by at least one of the spouses,** since the matrimony cannot be dissolved if both spouses are unwilling.

Certain older authors of great name denied such power to the Supreme Pontiff, since the practice of the Roman Curia at that time was not so certain. It must also be admitted that the **intrinsic** reasons brought forward by some authors for the dispensing faculty of the Supreme Pontiff are not very convincing; and consequently, before the practice of the Roman Curia in this matter was constant and known to all, the diversity of opinions is easily understood. For the argument often brought forward for this faculty of dispensing, taken from the words of Christ to Peter, "Whatsoever thou shalt loose upon earth, it shall be loosed also in heaven," truly proves too much and consequently proves nothing; for there is no reason why from the same text a faculty of dissolving even a **consummated** matrimony could not be inferred, which faculty nevertheless no one concedes to the Supreme Pontiff.

We have already admonished above that the indissolubility of matrimony cannot be derived either solely from the nature of the contract or solely from the aspect of the sacrament, but from the positive will of God. Moreover, it seems certain that a ratified matrimony of Christians is not of less dignity and efficacy, both by reason of the contract and by reason of the sacrament, than a consummated matrimony, because the copular

theory is to be rejected, as was said above. But if the Supreme Pontiffs nevertheless very frequently dissolved ratified matrimony and never the consummated matrimony of Christians, this manner of acting and faculty seems to be derived from the **positive will of Christ,** who will be with His Church even to the consummation of the world and does not permit her to err in a matter which so intimately touches the morals of the entire Christian people.[279]

The power of the Supreme Pontiff being admitted, it is remarkable into how diverse opinions theologians and canonists go in explaining the intrinsic nature of this power. Some will that it be an act of **judgment** declaring the nullity of the matrimony; some call it a dispensation properly so called, others one broadly so called; finally, some will that it be only a **declaration** of divine law. Moreover, all these appear to be sufficiently useless disputes. It must, however, be committed to memory that the Supreme Pontiff cannot even **validly** dissolve a ratified matrimony **without grave cause.** For divine law is involved, in which the Pope cannot arbitrarily dispense.

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[277] Sacred Congregation of the Sacraments, May 7, 1923 (*Acta Ap. Sed.* XV, 389).

[278] Benedict XIV (*Quaest. can.*, q. 279) says: "No question can any longer be raised concerning the power of the Supreme Pontiff in that which pertains to dispensing over a ratified and non-consummated matrimony, since today the affirmative opinion is common among theologians and canonists and received in practice, as is notorious."

[279] Among canonists, Alanus (at the beginning of the thirteenth century), in the apparatus to Compilation I, seems to have been the first who expressly taught that the Pope can dissolve the bond of a ratified matrimony. Vincentius Hispanus, Hostiensis, and Johannes Andreae follow him (cf. Fahrner, loc. cit., p. 208 f.). Among theologians, Cajetan (*Opusc.* 28) seems to have been the first explicit assertor of this doctrine. Certainly St. Antoninus (*Summa theol.*, p. 3, tit. 1, c. 21), who himself saw dispensations of this kind granted by Martin V and Eugene IV, holds this power of the Supreme Pontiff as probable, but speaks very hesitantly. Theologians of the thirteenth century denied this power of the Supreme Pontiff, for example, St. Bonaventure, Scotus, and Paludanus, whom several others later follow, for example, Francis de Vitoria, Dominic Soto, Peter Soto, Sylvius, Tournely, Drouven, Billuart, Reiffenstuel, and others. But already Thomas Sanchez, who treats this question very well (*De matrimonii sacramento*, l. 2, disp. 14-16), cited fifty authors for the opinion teaching that the power of dispensing in a ratified and non-consummated matrimony belongs to the Supreme Pontiff.

669. Scholion. On the manner of petitioning for a dispensation over a non-consummated matrimony. When there is question of a dispensation to be petitioned over a non-consummated matrimony, it is customary to proceed in the following manner: The spouse who petitions for the dissolution of the non-consummated matrimony is to present his petition to the bishop (through the pastor), with an accurate statement of the fact and of the motives for the dispensation to be petitioned. After the bishop has **extrajudicially**[280] investigated all things to be known or necessary to know, he sends the received petition to the Sacred Congregation of the Sacraments. (The bishops of missions, however, must send the petition to the Sacred Congregation for the Propagation of the Faith.)

Upon receiving this extrajudicial information, the Sacred Congregation is accustomed to delegate the bishop or an investigating judge to make the **processual informations.** How these processual informations are to be made is indicated in the Decree concerning processes in causes of dispensation over a ratified, non-consummated matrimony issued by the Sacred Congregation of the Sacraments on May 7, 1923,[281] for example, concerning the defender of the bond, bodily inspection, testimony of the seventh hand, and so forth.

The object of this information is twofold: the verification of the motives for dispensation and the proof of the non-consummation of the matrimony. To verify the motives for dispensation is not so difficult; on the contrary, it is sometimes most difficult to prove with certainty the non-consummation of the matrimony. A dispensation is never granted unless it is morally certain that the matrimony has not been consummated.

Canonists are accustomed to distinguish three cases: 1. non-consummation of a matrimony "**constrained by time,**" that is, if the spouses, after the matrimony was celebrated, never cohabited or remained secretly in the same place; 2. non-consummation of a matrimony "**with intercourse not attempted,**" that is, when the spouses indeed cohabited in the same house, but never attempted to use matrimony; 3. non-consummation of a matrimony "**with intercourse attempted,**" that is, if the spouses also attempted to use matrimony, but were unable to complete this, for example, because of impotence. The fact of the non-consummation of the matrimony is to be proved by sworn witnesses and by indications not doubtful, for example, by bodily inspection.

An example of non-consummation "constrained by time" is furnished by the Nicosian cause of January 19, 1889, where the husband's mother, immediately when the spouses went out from the church after the matrimony had been celebrated, carried the husband off by force; nor did the spouses ever meet afterward.[282] An example of non-consummation "with intercourse not attempted" is furnished by the Leopolitan cause, which had been dismissed three times and obtained the requested dispensation only on the fourth occasion. Behold the summary of the case: A certain count married a countess who was already pregnant from an illicit love; for a sufficiently long time the spouses cohabited, but both the husband and the wife swore that they had never consummated the matrimony. At length they obtained a dispensation over the ratified and non-consummated matrimony.[283] An example of the third case, namely, non-consummation of a matrimony "with intercourse attempted," is furnished by all cases in which a matrimony is dissolved because of the impediment of impotence.[284]

After the bishop has completed all the informations and sent them to the Sacred Congregation of the Sacraments, the Most Eminent Cardinals of this Congregation, after hearing the opinions of the consultors, decree whether the dispensation over the ratified matrimony is to be recommended to the Most Holy Father or not. If they decree affirmatively, the secretary of the Congregation proposes the case to the Supreme Pontiff, who is then accustomed to grant the requested dispensation. From all these things it is evident how great is the diligence employed by the Roman Curia before it dissolves the bond of a ratified and non-consummated matrimony.

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[280] Cf. the Code of Canon Law, c. 1963. If the bishop wished to proceed judicially without a special delegation of the Holy See, the whole process would be null (cf. the Piscian cause, November 24, 1906, in *Analecta ecclesiastica* XIV [1906], 441). According to the present practice, the prior judicial inquiry concerning the fact of non-consummation pertains to a single investigating judge, to whom the Sacred Congregation of the Sacraments has committed this inquiry. Code of Canon Law, c. 1966.

[281] *Acta Ap. Sed.* XV, 389 ff.

[282] Cf. Leitner, *Lehrb. des kirchl. Eherechtes*, 592.

[283] Cf. *Analecta ecclesiastica* IV (1896), 264.

[284] See the two cases related in *Analecta ecclesiastica* III (1895), 159-160.

670. Proposition 2. The matrimony of unbelievers, even when consummated, can be dissolved with regard to the bond according to the Pauline privilege in favor of the faith.[285]

Proof from Sacred Scripture. After St. Paul the Apostle inculcated the indissolubility of matrimony, he says these things: "For to the rest I speak, not the Lord: If any brother hath a wife that believeth not, and she consent to dwell with him, let him not put her away. And if any woman hath a husband that believeth not, and he consent to dwell with her, let her not put away her husband.... But if the unbeliever depart, let him depart; for a brother or sister is not under servitude in such cases; but God hath called us in peace."[286]

Innocent III[287] authentically declared this text, teaching: "For if one of the unbelieving spouses is converted to the Catholic faith, while the other wills to cohabit with him either in no way, or not without blasphemy of the divine name, or in order to draw him into mortal sin: the one who is abandoned will pass to second vows, if he wills; and in this case we understand what the Apostle says: If the unbeliever depart, let him depart; for a brother or sister is not under servitude in such cases, and also the canon in which it is said: 'An insult to the Creator dissolves the law of matrimony with respect to him who is abandoned.'"

This authentic declaration of the text of the Apostle has been reduced to practice very frequently by the Roman Pontiffs from the times of Innocent III onward, so that no doubt can exist that the matrimony of unbelievers is dissolved with regard to the bond if the conditions stated by the Apostle Paul are present. More probably this dissolution arises from divine law itself. Therefore the Holy Office, on July 11, 1866, calls this privilege one granted by Christ in favor of the faith and promulgated through the Apostle Paul.[288]

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[285] Code of Canon Law, c. 1120.

[286] 1 Cor. 7:12-15. In the Greek text there is: τοῖς δὲ λοιποῖς, that is, "but to the rest," which words are to be referred to what follows and not to what precedes.

[287] C. 7, X 4, 19. Before the times of Innocent III the interpretation of this text was by no means concordant. Cf. Fahrner, *Gesch. der Ehescheidung*, 146 ff.

[288] *Collect. de Prop. Fide*, I, n. 1297; cf. Wernz-Vidal, *Ius can.*, V, n. 631, note 56.

671. Conditions required for the Pauline privilege: A legitimate and consummated matrimony contracted by two unbelieving spouses is dissolved with regard to the bond:

1. if either party is validly baptized (whether in the Catholic Church or in any sect), and

2. if the party persisting in unbelief either a) departs or refuses to cohabit peaceably with the baptized party, or b) does not will to cohabit without insult to the Creator, for example, if that party attempts to draw the baptized party into mortal sin. In these cases the matrimony contracted in unbelief is not indeed dissolved by baptism itself, but **when the baptized party validly contracts a new matrimony.**[289] The individual conditions of the Pauline privilege are to be explained more fully.

It is said first: **if either party is baptized.**

It is therefore supposed that a valid matrimony was contracted before baptism. Hence, if a case occurs, it must first be seen whether some diriment impediment from natural, divine, or civil law perhaps stood in the way of the matrimony entered in paganism. It is evident of itself that the Pauline privilege has no place and is not necessary if the matrimony contracted was null. Since a positive doubt concerning the validity of a matrimony contracted by pagans occurs very frequently, a diligent examination and inquiry must first be made by the Ordinary.[290] But if the validity remains doubtful, one must stand for the favor of the faith, so that the converted party may be able to enter new nuptials.[291]

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[289] Code of Canon Law, c. 1126.

[290] Holy Office, December 9, 1874.

[291] Holy Office, May 19, 1892, and April 19, 1899; Code of Canon Law, c. 1127.

672. The Pauline privilege cannot be employed:

a) if both unbelieving spouses receive baptism together, as the Holy Office expressly declared on July 11, 1866.[292] For through their baptism the matrimony becomes a sacrament.

b) for catechumens not yet baptized, as the Holy Office expressly declared on March 13, 1901.

c) if, by a pontifical dispensation over disparity of cult, the Catholic party contracted matrimony with a non-baptized party who now has departed or no longer wills to cohabit without insult to the Creator. Thus the Code of Canon Law, c. 1120, § 2, decrees. It is evident of itself that in this case separation with regard to bed and habitation is lawful.[293] But if a person born and baptized in a non-Catholic sect contracted matrimony with a non-baptized person, such a matrimony can be dissolved with regard to the bond (at least through a dispensation of the Holy See),[294] after the baptized person has embraced the true faith.

d) If one of the faithful spouses passes over to heresy or to the error of paganism. This is now certain from repeated declarations of the Holy See. Celestine III seems to have thought the contrary, as was said above; but Innocent III already sanctioned the present doctrine.[295]

It is said second: **is baptized in the Catholic Church or in any sect.**

Certainly Innocent III, in his authentic interpretation of the Pauline privilege, speaks of Catholic baptism, and the privilege was not granted in favor of heresy, but of the true faith; nevertheless, since every valid baptism renders the baptized man a member of the true Church, almost all authors, for example, Feije, Scherer, Palmieri, Braun, Tarquini, Christian Pesch, Billot, Lehmkuhl, Gasparri, Wernz, De Smet, and others, teach that the privilege was granted in favor of any valid baptism. To this day, however, the Church has defined nothing expressly concerning this question.

It is said third: **if the party persisting in unbelief either departs or refuses to cohabit peaceably with the baptized party, or does not will to cohabit without insult to the Creator.**

The departure of the unbelieving party is therefore required; this departure can be either physical or moral. The unbelieving party **physically** departs if that party leaves the conjugal home and does not return. **Moral** departure is present in two cases: 1. if the unbelieving party causes quarrels and disputes or other harms; 2. when the unbelieving party attempts to draw the converted party into something gravely unlawful, for example, into apostasy, adultery, or the education of the offspring in unbelief. This moral departure renders conjugal life impossible, so that separation of the spouses is morally necessary because of the malice of the unbelieving party.

The physical departure of the unbelieving party need not necessarily be culpable, but simple absence suffices, provided, however, that the baptized party did not maliciously cause this absence, and indeed after baptism. The following case is worthy of note: A certain pagan sold his own wife into slavery, or his wife was taken away from him by force. Afterward he is baptized and desires to enter new nuptials. The wife who was sold indeed would will to cohabit with him, but he is unable to redeem her. It was asked whether in this case the baptized man could enter new nuptials. The Holy Office, on July 8, 1891, responded: "Insofar as he sold his wife before baptism, affirmatively."[296] From this response it plainly appears that a malicious physical departure of the unbelieving party is not required. It suffices that the baptized party cannot cohabit peaceably with the unbelieving party. But that there may truly be certainty concerning this departure, there is altogether required:

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[292] *Collect. de Prop. Fide*, n. 1295.

[293] Cf. Holy Office, August 5, 1759 (*Collect. de Prop. Fide*, n. 421).

[294] Decree of the Holy Office, November 5, 1924.

[295] C. 7, X 4, 19.

[296] *Collect. de Prop. Fide*, n. 1760.

673. An interpellation, which is accustomed to contain two questions, namely:

1. whether the unbelieving party is also willing to be converted and to receive baptism;

2. if the response is negative, whether that party at least wills to cohabit peaceably without insult to the Creator.[297]

The first question is the principal one; hence, "if it should ever happen that a polygamist converted to the faith, after an interpellation has been made according to apostolic sanctions, has lived conjugally under hope of conversion with his first wife (since she alone was and is his legitimate wife), who meanwhile delays conversion and the reception of baptism for a longer time, it will be lawful for the bishop, after the truth of the matter has been well weighed, to declare that the faithful and baptized spouse is free to pass to other vows, yet with a faithful person."[298]

Concerning this interpellation, the following things are to be noted:

a) Regularly it is to be made in at least a summary and extrajudicial form by the authority of the Ordinary of the baptized party; nevertheless, it suffices if it was made otherwise, even privately, provided that it is established by a written document or by the attestation of two witnesses that it was actually made.[299]

b) It is altogether necessary; indeed several authors, for example, Feije,[300] Leitner,[301] and Wernz-Vidal,[302] teach that it is necessary **by divine law;** the response of the Holy Office of June 12, 1859, favors this opinion, decreeing: "The fellow slave in question, if he has not been legitimately dispensed by the Apostolic See, is bound by divine precept to make the present interpellation to the other spouse."[303]

Nevertheless, saving a better opinion, it is not yet permissible to conclude from this: therefore, if this interpellation was omitted without a previous pontifical dispensation, the matrimony afterward contracted by the baptized party is null; for neither by St. Paul nor by the Supreme Pontiffs is this interpellation certainly prescribed under penalty of the nullity of the subsequent matrimony. For what is necessarily required from the words of St. Paul is the "departure of the unbelieving party"; but it is not determined how this departure must be established. Therefore, given the true departure of the unbelieving party, the matrimony of the baptized party afterward following does not seem to be invalid, as not being contrary to the Pauline privilege.

If perhaps in a particular case the matrimony was celebrated with the prescribed interpellation omitted, it seems that the rule established by the Sacred Congregation for the Propagation of the Faith on June 20, 1883, § 45, is to be observed (even after the Code, c. 1121, § 1): "But insofar as neither the interpellation nor a dispensation from it preceded, the first matrimony will indeed stand in the way of the second, but the Ordinary must suspend judgment and remit the case with all its circumstances to the Holy See, which will indicate to the Ordinary himself what is to be done."

c) No one can dispense from making this interpellation by his own authority except the Supreme Pontiff,[304] who has already done this several times, for example, St. Pius V by the Decree *Romani Pontificis* of August 2, 1571; Gregory XIII by the Letters *Quoniam saepe contigit* of January 25, 1583; Benedict XIV by the Letters *In suprema* of January 16, 1745.

Among the faculties which are customarily granted to apostolic vicars, it is read: "Of dispensing from the interpellation of spouses left in unbelief, provided that, after all diligences have first been employed, even through public newspapers, to discover the place where the unbelieving spouse dwells, and these have come to nothing, it is established at least summarily and extrajudicially that the said absent spouse cannot lawfully be admonished, or, having been admonished, did not signify his will within the time fixed in the admonition."[305]

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[297] Code of Canon Law, c. 1121, § 1.

[298] Holy Office, July 4, 1855 (*Collect. de Prop. Fide*, n. 1113).

[299] Instruction of the Holy Office, September 16, 1824, to the Archbishop of Quebec; Code of Canon Law, c. 1122.

[300] *De imped. et dispens. matrim.*, n. 487.

[301] *Lehrb. des kirchl. Eherechtes*, 604.

[302] *Ius can.*, V, n. 632.

[303] The Holy Office said the same on September 16, 1824, dub. 3 (*Collect. de Prop. Fide*, n. 784).

[304] Code of Canon Law, c. 1121, § 2.

[305] Formula III of the Congregation for the Propagation of the Faith. Indeed, this faculty now seems to have been granted by common law, namely, by the Code of Canon Law, c. 1125, to all Ordinaries under the same circumstances and conditions.

674. It is said fourth: the first matrimony is not dissolved through baptism, but when the baptized party validly enters a new matrimony.[306]

For Innocent III says: "Through baptism marriages are not dissolved, but crimes are forgiven."[307] Consequently, baptism is indeed the foundation and beginning of the Pauline privilege, but the completed effect is had through the subsequent matrimony of the baptized party.

Note. 1. The privilege of St. Paul is not lost even if the baptized party, after baptism, renewed marital consent or used matrimony with the unbelieving party.[308] The Pauline privilege ceases, however, if the unbelieving party also receives baptism before the new matrimony of the baptized party.

2. "In a doubtful matter the privilege of faith enjoys the favor of law." Thus the Code of Canon Law, c. 1127. Therefore, if a doubt occurs whether in some case a matrimony can be dissolved by the Pauline privilege, for example, the matrimony of a Protestant with a Jew, the presumption stands not for the validity but for the dissolution of the matrimony.

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[306] Code of Canon Law, c. 1126.

[307] C. 8, X 4, 19; cf. Code of Canon Law, c. 1126.

[308] Code of Canon Law, c. 1124.

675. The following practical cases are easily resolved from the things said thus far.

1. The baptized party chooses to lead a celibate life; but the unbelieving party contracts a new matrimony. This matrimony is null, because the first matrimony has not yet been dissolved and the privilege was granted **for the baptized party,** not for the unbelieving party;[309] for it is a favor of the faith.

2. After conversion, the baptized party lives maritally with the unbelieving party. After several years have elapsed, the unbelieving party takes other women as wives and does not will to dismiss them. The baptized party can depart and enter new nuptials, although perhaps unable to take along and

educate the offspring begotten in the matrimony. The reason is that the Pauline privilege has not been extinguished.[310]

3. An unbelieving husband casts his baptized wife out of the home, contracts a new matrimony, and generates offspring. After some time he also is converted to the faith and is baptized. He is bound to dismiss the second wife unless the first wife who was cast out has in the meantime contracted another valid matrimony. The reason is that not the unbelieving but the faithful party became free, and the second matrimony of the unbelieving party is invalid. Certainly in practice it must be seen whether the first matrimony was certainly valid.

4. Two unbelievers, after contracting a legitimate matrimony and then dissolving it, pass to other nuptials. Each is afterward converted to the faith. Neither can remain in the second matrimony, at least if they received baptism together at nearly the same time. The reason is that the first matrimony was valid and legitimate and could not be dissolved by their own will and authority, nor was it in reality dissolved by the second nuptials, since these were not legitimate.

5. The baptized party, after the prescribed interpellations have been made, enters a new matrimony. Now the unbelieving party also can enter a new matrimony. The reason is that, although the privilege was given in favor of the baptized party, nevertheless it indirectly also redounds to the favor of the unbelieving party; and because the first matrimony has been duly dissolved by the baptized party, the unbelieving party also becomes free. Thus holds the common opinion.

6. One unbelieving spouse commits adultery, and for this reason is cast out by the other party; after some years that spouse is baptized, and asks the other party whether he or she now wills to cohabit peaceably, but suffers a refusal. That spouse can enter new nuptials.[311] The reason is that the adultery committed is washed away by baptism, and the unbelieving party unreasonably repudiates the baptized party.

7. One unbelieving spouse is baptized, cohabits peaceably for some time with the unbelieving party, but afterward commits adultery and for this reason is cast out by the unbelieving party. Nevertheless, the baptized party cannot enter new nuptials, at least by force of the Pauline privilege. The reason is that the unbelieving party justly cast out the baptized party as an adulterer, nor is this crime of adultery destroyed through a subsequent baptism, since it was perpetrated after conversion.[312]

8. The unbelieving party indeed consents to cohabit without insult to the Creator, but does not permit the offspring born or to be born to be instructed in the Christian religion. The baptized party can pass to other nuptials with a Catholic person; for the refusal of the education of the offspring in the Catholic religion is equivalent to an insult to the Creator.[313]

9. An unbelieving woman who successively has several husbands is baptized. Her first legitimate husband no longer wills to cohabit with her; but the last husband indeed consents to cohabit peaceably, yet does not will to be converted. The woman must separate herself from the last man; or, if this is very hard, she must seek a dispensation over the impediment of disparity of cult in order to contract a true matrimony.[314]

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[309] Cf. Sacred Congregation of the Council, March 29, 1727 (Gasparri, loc. cit., n. 1086).

[310] Cf. Holy Office, August 5, 1759, and July 11, 1886, ad 4; Code of Canon Law, c. 1124.

[311] Thus the Sacred Congregation for the Propagation of the Faith, January 30, 1807 (*Collect. de Prop. Fide*, n. 690).

[312] Thus the Sacred Congregation for the Propagation of the Faith, January 30, 1807 (ibid.). Cf. Holy Office, July 11, 1866 (ibid., n. 1295); Code of Canon Law, c. 1123.

[313] Thus the Holy Office, December 14, 1848 (ibid., n. 1036).

[314] *Collect. de Prop. Fide*, n. 1048.

676. Scholion. On dispensation over the bond of a matrimony which was consummated in unbelief. Authors ask here whether the Pope can dispense in the bond of a consummated matrimony of unbelievers if either one or both spouses have been baptized. In this matter certain things are certain, and certain things are not placed beyond every doubt:

1. It is certain that the Supreme Pontiff possesses no authority over marriages of this kind if neither spouse has received baptism. For the Church does not have jurisdiction over the non-baptized.

2. It is certain that the Supreme Pontiff is unable to dissolve the bond of a legitimate matrimony which, through the baptism of both spouses, was made ratified and, through intercourse following after the baptism of both, was also made consummated. The reason is that such a matrimony has become a consummated matrimony of Christians. Now the Pope cannot dissolve the bond of a consummated matrimony of Christians, as was proved above.

3. It is certain that the Supreme Pontiff can dissolve the bond of such a legitimate matrimony if either spouse has been baptized and the matrimony was never consummated, that is, neither before nor after baptism. For the Pope can dissolve the bond of a ratified and non-consummated matrimony of Christians, as was proved above. Therefore it is more certain that he can dissolve the bond of some non-consummated matrimony in which only one party is Christian and which more probably is not a sacrament.

4. It is more probable that the Supreme Pontiff can dissolve the bond of a legitimate matrimony which was consummated after the baptism of either spouse. Thus holds the more common opinion among modern authors.[315] The reason for this opinion is twofold: one intrinsic, the other extrinsic. The intrinsic reason is that only the bond of a ratified and consummated Christian matrimony is indissoluble. But such a matrimony is not ratified and consummated (unless carnal intercourse took place after the baptism of both spouses). The extrinsic reason, however, is that the Supreme Pontiffs several times dissolved the bond of such marriages in which the conditions of the Pauline privilege were altogether lacking.

Thus, for example, St. Pius V[316] permitted, "by his own motion and from certain knowledge and the fullness of apostolic power," that unbelieving Indians having several wives, after receiving baptism, could live in matrimony with whichever of those wives was baptized with them. Now here no mention is made of the departure of the unbelieving party, which nevertheless is a condition without which the Pauline privilege cannot be applied.

Gregory XIII,[317] attending to the fact that "marriages contracted between unbelievers are indeed judged true, yet not so ratified that, when necessity urges, they cannot be dissolved," granted missionaries the faculty of dispensing so that any unbelieving spouse, after receiving baptism, "while the unbelieving spouse survives and without that spouse's consent being required or a response being awaited, may contract marriages with any faithful person, even of another rite, and solemnize them in the face of the Church, and, after they have subsequently been consummated by carnal intercourse, may lawfully remain in them as long as he lives, provided that it is established, even summarily and extrajudicially, that the absent spouse, as stated above, cannot lawfully be admonished, or, having been admonished, did not signify his will within the time fixed in the same admonition. And we decree that these marriages, even if it should afterward become known that the

prior unbelieving spouses, being justly impeded, could not declare their will and had even been converted to the faith at the time the second matrimony was contracted, nevertheless ought never to be rescinded, but will be valid and firm, and the offspring to be received therefrom legitimate."

It seems clearer than light that Gregory XIII here proceeded beyond the limits of the Pauline privilege, since he dissolves marriages contracted in unbelief even if perhaps both spouses had already been baptized at the time of the new matrimony.

According to the current practice of the Roman Curia, missionaries are granted the faculty "of dispensing with pagans and unbelievers having several wives, so that after conversion and baptism they can retain whichever [wife] among them they prefer, if she also becomes faithful, unless the first should will to be converted."[318] This faculty cannot be explained from the Pauline privilege, because the departure of the unbelieving party, which St. Paul requires as prior before he permits a new matrimony to be contracted, is altogether lacking. The same seems to follow from several particular decisions of the Holy Office,[319] and now it has been established generally by the Code of Canon Law, c. 1125, for **all regions,** if the same circumstances are present.

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[315] This opinion is held by Gasparri, *De matrimonio*, II, n. 1108; Billot, *De eccl. sacr.*, II, thesis 44; Scherer, *Kirchenr.*, II, n. 590; Fahrner, *Gesch. der Ehescheidung im kan. Recht*, 281; Vlaming, *Prael. de iure matrim.*, 3rd ed., II, n. 604; Wernz-Vidal, *Ius can.*, V, n. 636; and among the ancients, St. Antoninus, *S. theol.*, P. 3, tit. 1, c. 6; Navarrus, *Cons. et Resp.*, III, tit. 33, cons. 2; Thomas Sanchez, *De matrim. sacr.*, l. 2, disp. 17; Laymann, *Theol. mor.*, l. 5, tr. 10, part 2, c. 3; the Salamancans, *Cursus Theol. mor.*, tr. 9, c. 4, p. 2, n. 34; Pirhing, in tit. 1, sect. 5; and others. Indeed Lehmkuhl, *Theol. mor.*, II, n. 929, confidently says: "Every reasonable doubt concerning that power seems to be removed, so that it can be said with certainty: The Roman Pontiff, by reason of his supreme power, can for a grave reason dissolve the bond of a matrimony which was indeed consummated in unbelief, but was not consummated after one or both spouses were baptized." Nevertheless, there are some who reject this opinion, for example, Benedict XIV, *De syn. dioec.*, l. 6, c. 4, n. 3, and l. 13, c. 21, n. 4; De Angelis, *Prael.*, l. 4, tit. 19; Feije, *De imped. et dispens. matrim.*, n. 486; Leitner, *Lehrb. des kirchl. Eherechtes*, 610. The reason which Benedict XIV (Prosper Lambertini) brings forward for his opinion is this: a consummated matrimony signifies the union of Christ with the Church, while a ratified matrimony indicates the union of Christ with a sanctified soul. But just as the union of Christ with the Church is indissoluble, while the union with the soul is dissoluble, so every consummated matrimony is indissoluble, while a ratified matrimony is dissoluble. It is easily understood that this argument is weak.

[316] Constitution *Romani Pontifices*, August 2, 1571.

[317] Constitution *Populis ac nationibus*, January 25, 1585.

[318] Thus in Formula I, n. 11.

[319] Cf. Gasparri, loc. cit., II, n. 1084 ff., and the case narrated by Benedict XIV (*Quaest. can.*, Florentine cause, 1726), which was afterward decided by the Sacred Congregation against the opinion of Prosper Lambertini, then secretary of that Congregation. Cf. Lehmkuhl, *Theol. mor.*, II, n. 931.

§ 2. On Imperfect Divorce, Or Separation Of Bed, Board, And Dwelling

677. Obligation of cohabitation. From the very definition of matrimony, which contains "an undivided manner of life," there follows the obligation of the spouses to live together. The same follows both from the words of Christ: "A man shall leave father and mother, and shall cleave to his wife,"[320] and from the Code of Canon Law, c. 1128, which establishes: "Spouses must preserve the communion of conjugal life, unless a just cause excuses them." This obligation is an obligation of justice, since it arises from the matrimonial contract itself,[321] and it includes a) community under one roof, b) community of bed. Hence spouses are regularly bound not only to cohabit under the same roof, but also to sleep in the same chamber. Community under one roof and domestic cohabitation are necessary both for the suitable education of the offspring and for furnishing mutual help and solace in the difficulties of daily life. Community of bed, or at least of chamber,

conduces to fostering mutual love and avoiding the dangers of incontinence. Hence neither spouse can depart from the other for a long time, against the will of the other, unless just causes are present, which are to be weighed after all the circumstances have been considered. But if the husband must remain elsewhere for a long time, he is bound to take his wife with him, if this can be done without grave inconvenience. For experience establishes that such a separation of spouses is exceedingly harmful both to the spouses themselves and to the offspring to be educated. Likewise the wife is bound to follow the husband when he changes his domicile, unless grave harms to the wife or the offspring arise from such a change. In practice, the confessor or pastor should indeed admonish spouses to observe faithfully community under one roof and of bed or chamber; nevertheless, unless grave sins or scandals arise from the separation, he should not urge such community excessively, but should leave the spouses in good faith.

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[320] Cf. Matt. 19:5.

[321] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 939, who, according to Sanchez, says: "It is certain that spouses are bound by an obligation of justice to cohabit in the same house, at the same table, and in the same bed."

678. Imperfect divorce, or divorce as regards bed and cohabitation, can licitly be effected for legitimate causes.

Thus it follows from the Council of Trent, which defines: "If anyone says that the Church errs when she decrees that, for many causes, a separation between spouses as regards bed or as regards cohabitation can be effected for a definite or indefinite time, let him be anathema."[322] Christ Himself teaches that a divorce of this kind is sometimes not only licit but even very meritorious, saying: "Every one that hath left house ... or wife for my name's sake, shall receive an hundredfold, and shall possess life everlasting."[323]

Imperfect divorce is customarily distinguished: 1. as **perpetual or temporary,** according as it is effected for an indefinite or a definite time; 2. as effected **by private or public authority,** according as it is instituted by the authority of either or both spouses, or by a judgment of the judge in administrative form;[323a] as regards **bed alone,** according as the use of matrimony is excluded; or also as regards **dwelling,** according as the spouses dissolve common domestic life and habitation.

The causes for which imperfect divorce can licitly be effected are enumerated not taxatively, but principally: 1. carnal adultery; 2. spiritual adultery, that is, heresy or apostasy; 3. a criminal and ignominious life; 4. grave danger to soul or body; 5. mutual consent.[324]

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[322] Sess. 24, can. 8, *De matrimonio* (Denz., n. 978).

[323] Matt. 19:29. These words of Christ are to be understood either of a ratified matrimony or, if a consummated matrimony is involved, of a separation effected by mutual consent.

[323a] Pontifical Commission, June 25, 1932 (*Acta Ap. Sed.* XXIV, 284).

[324] Code of Canon Law, c. 1131, § 1.

679. 1. On divorce because of carnal adultery.

a) That divorce can be effected because of adultery committed is evident from the words of Christ: "But I say to you, that whosoever shall put away his wife, excepting for the cause of fornication, maketh her to commit adultery."[325] The same follows from several texts of canon law,[326] and is commended by natural law itself. For no one is bound to preserve fidelity toward one who has broken fidelity; and moreover, the certainty of offspring is endangered by adultery.[327]

Authors disputed whether, because of adultery, the innocent party can effect divorce by his own authority, or whether the sentence of a competent judge is still required. The better opinion seems to be this: Divorce as regards bed, or the denial of the conjugal debt, can be effected by one's own authority without the intervention of an ecclesiastical judge.[328] Divorce as regards dwelling, however, ordinarily cannot be effected by one's own authority, unless there is question of certain and notorious adultery.[329] For if the adultery committed is occult, divorce is better effected with the intervention of an ecclesiastical judge. The reason is that otherwise scandal and infamy could easily arise unjustly for the adulterer. In our days recourse to an ecclesiastical tribunal for obtaining divorce as regards dwelling (whether because of adultery or because of other reasons) is indeed greatly to be counseled, and this for many reasons; but sometimes it cannot be urged if the legitimate causes of divorce are certainly established and there is danger in delay.[330] In practice diocesan statutes, if any have been issued concerning this matter, are to be observed.[331]

b) Under the name of adultery there more probably falls any illicit carnal intercourse outside matrimony. Hence sodomy with a third person, bestiality, and onanistic intercourse permit divorce, but not other immodest acts, such as touches, looks, and kisses. Thus holds the far more common opinion.[332]

c) In order that a right of divorce arise for the innocent party from the adultery of the other spouse, it is necessary that this crime be:

α) **morally certain.**

Therefore neither does mere suspicion suffice, nor is strict juridical proof required; but it is necessary that no prudent doubt concerning its existence remain. The reason is obvious, namely, because no one can be punished except for a crime certainly committed, nor be deprived of the right of demanding the debt except because of fault certainly perpetrated.

β) **formal, culpable, and freely committed.**

Hence, for example, if a man, thinking his wife to be dead, has intercourse with another woman, he cannot, once the error has been discovered, be repudiated by his wife; likewise, if a wife is overcome by force, she cannot be dismissed by her husband.[333]

γ) **not condoned, induced, or permitted.**

Condonation of adultery can be effected both by explicit words and implicitly, namely, if the innocent party, knowing the adultery committed by the other spouse, voluntarily gives signs of marital affection, for example, if that party asks for the conjugal debt.

This tacit or implicit condonation is presumed in law if, within six months after the adultery became known, the innocent spouse neither expelled nor abandoned the adulterer nor made a legitimate accusation.[334] - Likewise, the adultery of the wife cannot be a cause of divorce if the husband himself induced the wife to commit adultery, or even if he gave his consent.[335] The reason is obvious, namely, because the husband then formally cooperated in the adultery of his wife and cannot take any advantage from his own shameful cooperation.

δ) **not mutual.**

For equal offenses are removed by mutual compensation.[336] It makes no difference which spouse perpetrated adultery first or more often.

d) The innocent party can indeed effect divorce from bed and dwelling, since Christ Himself granted such a right; but very rarely is that party bound to use this right, namely, only when no other way is available for avoiding scandal or correcting the sinner.[337] Generally, it is better that the adulterous party be reconciled to the innocent party.

e) The innocent party (even after a separation effected a long time before) does not lose the right to recall the adulterous spouse, who is bound to return, provided that peaceful cohabitation can prudently be hoped for,[338] and that spouse has not already undertaken (with the consent of the innocent party) another state contrary to matrimony.[339]

f) The innocent party can, even against the will of the adulterer, enter religion (after a dispensation of the Holy See has first been obtained) or receive sacred orders; on the contrary, the adulterer cannot enter religion or receive orders without the explicit or implicit consent of the innocent party. But if the adulterer had nevertheless done this, that party could be recalled and would be bound to return to the spouse, notwithstanding the vow or order undertaken. The reason is that the matrimonial bond always subsists, and the innocent party cannot be deprived of his or her right. St. Alphonsus[340] teaches that the adulterous spouse can enter religion or receive sacred orders: α) if the innocent party has first irrevocably undertaken the religious or clerical state; β) if the innocent party, knowing well the intention of the adulterous party, does not contradict it, although conveniently able to do so; γ) if the innocent party has utterly rejected every reconciliation sought by the adulterer; δ) if the dismissal of the adulterous party was already effected two years before and no recall has occurred. For in these and similar cases the consent of the innocent party is presumed. Today, however, no married person can be validly admitted to the novitiate unless permission of the Holy See has been obtained.[341]

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[325] Matt. 5:32 and 19:9.

[326] C. 4, § 8, X 4, 19; Code of Canon Law, c. 1129.

[327] St. Thomas, *Suppl.*, q. 62, a. 1.

[328] St. Thomas (ibid., a. 3) says: "A man can dismiss his wife in two ways: in one way, as regards bed alone. And thus he can dismiss her as soon as the fornication of his wife is established to him, by his own judgment.... In another way, as regards bed and cohabitation. And in this way she cannot be dismissed except by the judgment of the Church. And if she has otherwise been dismissed, she must be compelled to cohabit with him, unless the man can immediately prove her fornication."

[329] Cf. c. 4, X 4, 19, and c. 9, X 4, 1.

[330] Cf. Code of Canon Law, cc. 1129 and 1131, § 1.

[331] See the diocesan statutes of Bruges in De Smet, *De sponsal. et matrim.*, n. 261.

[332] Cf. St. Thomas, *Suppl.*, q. 62, a. 1, ad 4; St. Alphonsus, *Theol. mor.*, l. 6, n. 962.

[333] Cf. c. 1, C. 34, qq. 1 and 2; c. 6 ibid.; c. 16, C. 32, q. 8.

[334] Code of Canon Law, c. 1129, § 2.

[335] Cf. c. 4, C. 32, q. 1; c. 6, X 4, 13; Code of Canon Law, c. 1129, § 1.

[336] C. 6, 7, X 5, 16; Code of Canon Law, c. 1129, § 1.

[337] Certain ancient particular councils, for example, the Council of Elvira in the year 300, commanded the dismissal of the adulterer. Likewise, in the Eastern Church priests must dismiss a wife who is notoriously adulterous, lest they be judged to connive at the sin of the spouse.

[338] Cf. Blessed Albert the Great, who treats excellently of divorce because of adultery, in IV, dist. 35, aa. 3, 10, 12, 13.

[339] Code of Canon Law, c. 1130.

[340] *Theol. mor.*, l. 6, n. 967.

[341] Code of Canon Law, c. 542, n. 1.

680. 2. On divorce because of spiritual adultery.

Spiritual adultery or spiritual fornication is the name given to apostasy or heresy by which, after matrimony was contracted, one spouse gave his or her name to a non-Catholic sect.[342] Divorce as regards bed and dwelling can be effected also because of this crime.[343]

The principal reason (but not the only one) is that from such apostasy or heresy of one spouse great harm is customarily imminent both to the other spouse and also to the offspring, especially if the apostate solicits the Catholic party to defect from the faith. Another reason is that the Church abhors the intimate association of Catholics with heretics and apostates. - By private authority it is not lawful to effect divorce because of this cause unless there is danger in delay,[344] for example, grave danger of perversion; and if it has nevertheless been effected, the innocent spouse is bound to return to the other if the latter has recovered from the heresy. Urban III already expressly established this, and it is confirmed by the Code of Canon Law, c. 1131, § 2. If separation was pronounced by the local Ordinary[345] for a definite or indefinite time, the innocent spouse is not bound to restore matrimonial life except by decree of the Ordinary or when the time has elapsed. Thus the Code, loc. cit.

It is also a sufficient cause for effecting divorce if a spouse has educated the offspring in a non-Catholic manner, as not rarely happens in mixed marriages.

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[342] Cf. Jer. 3:8; Ezek. 23:37; c. 5, C. 28, q. 1. In this text St. Augustine permits divorce not only because of apostasy, but also because of other grave offenses; cf., however, *Retract.* 1, 18.

[343] C. 6, 7, X 4, 19, and c. 5, C. 28, q. 1; Code of Canon Law, c. 1131, § 1.

[344] Code of Canon Law, c. 1131, § 1.

[345] C. 6, X 4, 19.

681. 3. On divorce because of the criminal and ignominious life of the other spouse.

This cause of divorce, which is also found in several civil codes,[346] seems to require an ignominious habit; for example, it is present if the wife frequently indulges in complete drunkenness, if the husband is habitually addicted to homosexuality, and so forth. After true amendment, marital life is to be restored.

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[346] German Code, § 1568; Swiss Code, a. 139; Italian Code, a. 151.

682. 4. On divorce because of grave danger to soul or body.

Grave danger to the soul is present if one spouse constantly solicits the other to grave sin, for example, to theft, adultery, prostitution, sodomy, the education of the offspring in heresy, and so forth. For effecting divorce because of this cause, it does not suffice that a spouse furnish the other spouse merely an occasion of sinning; rather, it is required that divorce be, as it were, the sole remedy for avoiding grave sin.

Hence, for example, it is not lawful to effect divorce as regards dwelling (although it is lawful as regards bed) if the husband always exercises onanistic intercourse or abuses matrimony in another way, even if perhaps the wife thereby suffers grave temptations to consent. It would, however, be lawful for the wife to leave the conjugal home if the husband willed, for example, to establish a brothel and compel the wife to serve there.

Before divorce as regards dwelling is effected because of danger to the soul, the confessor or pastor is to be consulted, since otherwise grave errors and grave inconveniences will scarcely be avoided.

To grave danger to the body can be reduced:

a) **cruelties,** which one spouse exercises against the other, whether this is done by words or by deeds.

Cruelties are required which are truly grave, with the condition of the spouses considered. Beating alone, unless it occurs several times and is grave, is not a sufficient cause of divorce among spouses of lower station. The matter is otherwise among spouses of a more cultivated condition. Nevertheless, those things which several older authors say concerning the beating of a wife in St. Alphonsus[347] cannot be admitted, at least in our regions. Generally, in this matter the older authors are to be read with circumspection, because in their time beating was commonly employed as a punishment for many offenses. Today, however, beating is not rarely forbidden by civil law even for unruly boys in schools.

b) **troublesome cohabitation,** which is customarily produced by the perpetual quarrels and dissensions of spouses, by the habit of becoming drunk, by gross neglect of household affairs, by culpable squandering of a fortune, and so forth. It is self-evident that not every small trouble suffices for effecting divorce, but such trouble is required as renders common life intolerable.

c) **a grave disease contracted through grave fault by one spouse and very dangerous to the other spouse.**

Therefore three conditions are required: a grave disease, very contagious, contracted through grave fault. Such a disease is principally syphilis. The innocent spouse is not bound to render the conjugal debt to the other spouse who culpably contracted this contagious disease. In the case in which one spouse contracted this most foul disease from adultery - as customarily happens almost always - the innocent spouse can most certainly effect divorce, because adultery alone is already a sufficient cause for effecting divorce, as was said above. Even in the case in which a spouse contracted this disease without fault - which happens most rarely - the other spouse is not bound to render the conjugal debt, or can effect divorce as regards bed. The reason is that a spouse is not bound to render the conjugal debt with danger to his or her own life, such as would be incurred if carnal intercourse were had with a syphilitic spouse. Sometimes the innocent spouse not only can but is also bound to effect divorce (at least as regards bed) in order to avoid contagion,[348] namely, if that spouse's life is very necessary for educating offspring already born, or if it is seriously feared that the offspring to be born from such intercourse will be infected with the same syphilitic disease, as customarily happens. If neither offspring already born is to be educated, nor offspring to be born is hoped for, nor does another extrinsic reason stand in the way, the healthy spouse can perhaps render and request the conjugal debt even with danger to his or her own life. The reason is that, with a good intention supervening, such an act would proceed from great charity. - In other grave contagious diseases which one spouse contracted without grave fault, for example, in consumption, cholera, leprosy, typhoid fever, and so forth, the healthy spouse can indeed deny the conjugal debt and effect divorce as regards bed, but it is by no means lawful for that spouse by his or her own authority to abandon the conjugal dwelling. The reason is, 1. because one ought not add affliction to the afflicted, and 2. because spouses owe one another solace and protection not only in prosperity, but also in adversity and especially in infirmity.[349]

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[347] St. Alphonsus, *Theol. mor.*, l. 6, n. 972.

[348] The physicians Bergmann-Capellmann (*Pastoralmedizin*, 18th ed., p. 322) write: "On the part of the sick party, a demand for intercourse here would be a dreadful assault upon the healthy party; on the part of the healthy party, more than charity would be

required; in my opinion, madness would be required, to allow oneself to be infected with such a disease with so very great a probability. This may appear too severe; but he who has seen, and sees daily, what dreadful consequences this disease has, will agree with us."

[349] Cf. in the Decretals of Gregory IX the title *On the Matrimony of Lepers* (l. 4, tit. 8).

683. 5. On divorce by mutual consent.

a) **Perpetual divorce as regards dwelling** can be effected by mutual, free, explicit consent (and not merely implicit consent) because of the choice of a more perfect state, namely, because of the reception of sacred orders and because of embracing the religious life. Several conditions, which are explained at length by Benedict XIV,[350] were then prescribed by law. According to the current discipline, permission of the Holy See is required in both cases.[351]

b) **Temporary divorce as regards dwelling** can be freely instituted by the spouses by mutual consent, provided that truly proportionate reasons are present, for example, for the sake of making a journey or conducting business. In practice, however, a divorce of this kind, if it is of notable duration, is greatly to be dissuaded, because grave harms are very rarely absent. For the education of offspring is rendered more difficult if the parents do not cooperate with united strength; the mutual love of the spouses is diminished and grows cold; great dangers of incontinence arise, and so forth. Since these things are so, as experience testifies, let the woman follow the husband who is compelled to be absent from the domicile for a longer time.

c) **Perpetual or temporary divorce as regards bed** can be effected by the mutual and free consent of the spouses without any restriction, if honorable reasons are present. For spouses can use matrimony, but they can also preserve continence by mutual consent. Indeed, the Apostle admonishes spouses sometimes to preserve such continence for a time.[352]

d) **Denial of the bed, or at least denial of the conjugal debt,** also becomes licit whenever one spouse gravely abuses his or her right or unreasonably requests the conjugal debt. The discussion will return below, at n. 695 ff., to denial of the conjugal debt.

Scholion. On the education of offspring after the separation of the spouses. Concerning this matter the Code of Canon Law, c. 1132, establishes: "When separation has been instituted, the children are to be educated in the custody of the innocent spouse, and if one of the spouses is non-Catholic, in the custody of the Catholic spouse, unless in either case the Ordinary, for the good of the children themselves, with their Catholic education always safeguarded, has decreed otherwise." Since the good education of the offspring is a matter of the greatest moment, it seems that the Ordinary should be consulted concerning what must be done if the civil judge has wrongly determined this education.

A dissertation on civil divorce would indeed be appended here, which in our times occurs daily more frequently and more harmfully; but civil matrimony and civil divorce are better treated together below at the end.

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[350] *De syn. dioec.*, l. 13, c. 12, n. 11 ff.

[351] Cf. our *Man. iur. can.*, qq. 204 and 321. Cf. Benedict XIV, loc. cit., n. 16.

[352] 1 Cor. 7:5.

Chapter IV. On The Goods Of Matrimony

684. "A threefold good of matrimony is assigned: The first is offspring to be received and educated for the worship of God. The second is fidelity, which one spouse ought to preserve toward the other. The third is the indivisibility of matrimony, because it signifies the indivisible conjunction of Christ and the Church." Thus the Council of Florence in the Decree for the Armenians;[353] all of which is taken almost word for word from St. Thomas.[354] This enumeration of the threefold matrimonial good seems first to have been employed by St. Augustine, who says: "Therefore the whole good of nuptials ... is offspring, fidelity, sacrament,"[355] and after him by very many canonists and theologians. The Roman Catechism, however, admonishes:[356] "The faithful are to be taught that there are three goods of matrimony: offspring, fidelity, sacrament; by the compensation of these, those inconveniences which the Apostle indicates in these words, 'Nevertheless, such shall have tribulation of the flesh,'[357] are alleviated, and it is brought about that bodily unions which outside matrimony would deservedly be condemned are joined with honorableness." - These three goods must indeed be present in every matrimony, and therefore also in the legitimate matrimony of unbelievers. Yet they are present in a much more perfect manner in the matrimony of Christians, to which they are so intimately joined that without them Christian matrimony is altogether unable to subsist.[358]

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[353] Denz., n. 702.

[354] *Contra Gent.*, l. 4, c. 78.

[355] Found in c. 10, C. 28, q. 2; cf. also *De Gen. ad litt.*, l. 9, c. 7.

[356] P. 1, c. 8, q. 21.

[357] 1 Cor. 7:28.

[358] Cf. St. Thomas, *Suppl.*, q. 49, a. 2, ad 2; Gihr, *Sakramentenlehre*, § 56.

685. Note. Every action which gravely harms even one of these goods is a mortal sin.

The Angelic Doctor discusses these matrimonial goods most excellently throughout question 49 of the Supplement, where he also proves how fittingly these goods were joined to matrimony by God. The argument can be briefly summarized in this manner: No wise man sustains any loss unless he receives compensation in some equal or better good. But in matrimony several losses and several harms and inconveniences occur. Therefore....

The first harm which occurs is lust, and from it there results a detriment to the use of reason. For experience establishes that lust is not lulled by carnal acts, but rather is increased and becomes as it were a second nature. Likewise, it is established that reason is blunted by lust, and this to such a degree that during the lustful act itself the use of reason is not rarely lost entirely. To compensate for these harms, the good of offspring was conferred upon matrimony by the Creator. Through the generation of children the human race is propagated and God is perpetually worshiped. Hence St. Paul says: "She [the woman] shall be saved through childbearing."[359]

The second harm is the troublesome solicitude of pleasing the other spouse and providing for the affairs of the family; and, especially for the woman, the burdens of childbirth. This harm is compensated by the good of fidelity, by which one spouse is bound to render the conjugal debt to the other and cannot be joined to another person. Hence the Apostle Paul says: "The woman hath not power of her own body, but the man. And in like manner the man also hath not power of his own body, but the woman."[360]

The third harm is a certain perpetual servitude by which the husband is obligated to the wife and the wife to the husband. This harm is compensated by the good of the sacrament, that is, by the indissoluble bond by which the spouses represent the salutary conjunction of Christ with the Church and are bound to love one another as Christ loved the Church. - Now the individual goods must be treated individually.

[359] 1 Tim. 2:15.

[360] 1 Cor. 7:4.

686. 1. The good of offspring is the proximate end of matrimony; hence matrimony is null from the beginning if the right to the generation of offspring is excluded by those contracting, or even if carnal intercourse is indeed exercised, but with an explicit stipulation that the generation of offspring be avoided. The good of offspring is indeed a great good for the spouses, since children begotten are the glory and crown of their parents, but it also imposes grave obligations upon them, the transgression of which can easily become a mortal sin. St. Augustine[361] beautifully comprises these obligations in this one phrase: "That [the offspring] may be lovingly received, kindly nourished, religiously educated." The Code of Canon Law, c. 1113, gravely establishes: "Parents are bound by a most grave obligation to care according to their means for the religious and moral, as well as the physical and civil, education of the offspring, and also to provide for their temporal good." Therefore obligations of this kind are fittingly divided into a) those with respect to the body and b) those with respect to the soul.

a) **With respect to the body,** the good of offspring demands that, from the beginning of conception, parents not only avoid all things which are gravely harmful to the offspring, but also procure good physical education and nourishment.

Cf. those things which were said more extensively concerning this matter above, II, n. 588. - Both in the Decree of Gratian[362] and in the Roman Ritual,[363] parents are gravely admonished not to place the infant with themselves in bed, because of the great danger of suffocation. The transgression of this law is a reserved sin in some dioceses.

b) **With respect to the soul, or with respect to spiritual good,** parents are bound first of all to take care that the offspring born is freed from original sin as soon as possible by the laver of baptism. Hence parents sin if, without a most urgent cause, they delay the baptism of the offspring excessively.[364] The greatest sin against both the bodily and the spiritual good of conceived offspring is directly willed abortion, since together with bodily life it removes the possibility of baptism and consequently also of eternal life.[365] Good religious and moral education, concerning which there was discussion above, II, n. 589, also pertains to the spiritual good of the offspring.

[361] *De Gen. ad litt.*, l. 9, c. 7.

[362] C. 2, C. 2, q. 1.

[363] Tit. 2, c. 2, n. 32.

[364] Cf. above in the treatise on baptism, n. 126.

[365] Cf. the penalties against those procuring abortion above, II, n. 142.

687. 2. The good of fidelity includes two things: the conjugal debt and conjugal fidelity. There will be a special discussion of the conjugal debt in the following chapter. Conjugal fidelity is a great good of matrimony, and the more holily it is preserved, the greater the happiness which customarily exists between

spouses. The violation of conjugal fidelity, however, which is committed through adultery and all acts connected with it, is a grave sin of injustice. In the Old Testament adulterers were punished with the penalty of death: "If any man sleep with the wife of another, let them both die, to wit, the adulterer and the adulteress: and thou shalt take away the evil out of Israel."[366] In the New Testament, however, it is said: "Neither adulterers ... shall possess the kingdom of God."[367] Even if the husband has given consent for the wife to have intercourse with another man, nevertheless this act is true adultery, as is evident from proposition 50 condemned by Innocent XI, already cited above, II, n. 703. The reason is that the husband cannot alienate his right over the wife, since matrimony requires this fidelity of spouses by both divine and natural law. For just as a man does not have free and perfect dominion over the members of his own body - he cannot, for example, licitly cut off a healthy member from himself - so, by parity, the husband does not have free dominion over his wife and cannot cede her to another.

Christ Himself most strongly inculcates fidelity upon spouses, deterring them not only from evil external acts, but also from an evil internal desire: "You have heard that it was said to them of old: Thou shalt not commit adultery. But I say to you, that whosoever shall look on a woman to lust after her, hath already committed adultery with her in his heart."[368]

There are authors, for example, Sanchez,[369] the Salamancans,[370] and St. Alphonsus,[371] who teach that not only adultery properly so called is against conjugal fidelity, but also sodomy with one's own wife, so that spouses perpetrating sodomy with one another commit true adultery, because in sodomy neither spouse preserves his or her body chastely for the other. Whatever may be said of this opinion, a sodomitical spouse must say in confession whether the sin was committed with his or her own spouse or with another person; because otherwise the confessor cannot render a correct judgment.

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[366] Deut. 22:22.

[367] 1 Cor. 6:9.

[368] Matt. 5:27 f.

[369] *De matrim. sacr.*, l. 9, disp. 18, n. 4.

[370] *Theol. mor.*, tr. 26, c. 5, n. 15.

[371] *Theol. mor.*, l. 3, n. 446.

688. Scholion. On conjugal jealousy. It will not be beside the point to say a few words about conjugal jealousy,[372] which was called by the ancients "the solicitude and suspicion of one who loves," and which not only opposes the good of fidelity, but is also accustomed to cause enormous harms and dire quarrels in conjugal life. This conjugal jealousy can indeed arise without any fault and become, as it were, a "fixed idea." A jealous spouse (who is often of a melancholic temperament) suspects everywhere and in all the actions of the other spouse, if not complete infidelity, nevertheless signs of diminished love toward himself or herself and undue love toward another person. Sometimes, however, conjugal jealousy arises from the fault of the other spouse, who neglects his or her consort and is in fact excessively affected toward another person. If conjugal jealousy is not immediately extinguished and opposed with all one's strength, the life of both spouses becomes truly intolerable; indeed, not rarely homicide or suicide follows from it. The best remedy against conjugal jealousy is a candid and open manner of speaking and acting always employed between spouses, without any circumlocutions and secrets. As a rule it is to be counseled: Neither spouse should conceal anything from the other spouse in his or her private life (the matter is otherwise with professional life, as they say, or with a secret entrusted to one).[373]

[372] German *Eifersucht*, French *jalousie*, English *jealousy*.

[373] Cf. Rive, *Die Ehe*, 364.

689. 3. The good of the sacrament is both the sacramental grace of Christian matrimony and especially the indissoluble bond, which indeed is stricter in Christian matrimony than in the matrimony of pagans. For if Christian matrimony signifies the conjunction of Christ with the Church, which is indelible, since Christ will never separate Himself from the Church, it is also necessary that the bond of conjunction between Christian spouses can never be broken. But so that this holy society may more easily be preserved without complaint, the duties of the husband and wife described by St. Paul[374] and by the prince of the apostles, St. Peter,[375] are to be kept before one's eyes:

Duties of the husband. The office of the husband is to treat his wife generously and honorably. In this matter it is necessary to remember that Eve was called a companion by Adam, who said: "The woman whom thou gavest me to be my companion."[376] For this reason certain Fathers teach that Eve was formed not from the feet, but from the side of the man; just as she was also not fashioned from the head of Adam, so that she might understand that she was not the mistress of the man, but rather subject to him. Moreover, it becomes the man always to be occupied in the pursuit of some honorable matter, both that he may supply those things which are necessary for sustaining the family and that he may not languish in inactive idleness, from which almost all vices take their beginning; and then rightly to order the family, to correct the morals of all his subjects, and to keep each one in his duty.

The duties of the wife are clearly enumerated by the prince of the apostles, who says: "Let wives be subject to their husbands: that if any believe not the word, they may be won without the word by the conversation of the wives, considering your chaste conversation with fear. Whose adorning let it not be the outward plaiting of the hair, or the wearing of gold, or the putting on of apparel; but the hidden man of the heart in the incorruptibility of a quiet and modest spirit, which is rich in the sight of God. For after this manner heretofore the holy women also, who trusted in God, adorned themselves, being in subjection to their own husbands. As Sara obeyed Abraham, calling him lord: whose daughters you are, doing well, and not fearing any disturbance."[377] Let their principal endeavor also be to educate the children in the worship of religion and the exercise of good morals and diligently to care for domestic affairs. Let them willingly keep themselves at home unless necessity compels them to go out, and let them never dare to do this without at least the implicit permission of the husband. Then, in that in which the marital conjunction principally consists, let them always remember that after God no one is to be loved more than the husband, and no one is to be esteemed more highly than he, to whom it is also necessary to accommodate themselves and submit with the greatest alacrity of spirit in all matters which are not opposed to Christian piety.[378]

The good of the sacrament not only prohibits the dissolution of matrimony as regards the bond, but also separation as regards bed and dwelling, unless, however, there are causes enumerated above, n. 679 ff.

[374] Eph. 5:22; Col. 3:18; 1 Tim. 5:14.

[375] 1 Pet. 3:1 ff.

[376] Gen. 3:12.

[377] 1 Pet. 3:1 ff.

[378] Roman Catechism, P. 1, c. 8, q. 23.

Chapter V. On The Obligations Of Matrimony

Preliminary Note. All the obligations of matrimony flow as corollaries from the three goods of matrimony, and consequently they have already been treated generally in the preceding chapter. Nevertheless, there remains one obligation which pertains to the good of fidelity and which must be treated specially, because it is of such great moment and because from it so many and such great difficulties can arise both for the spouses themselves and for the confessor. This obligation is called the conjugal debt. It indeed pains me, to use the words of St. Alphonsus,[379] to have a longer discussion of this matter; but since it occurs so frequently in the hearing of confessions, the confessor must know it thoroughly, so that he can instruct spouses and render a correct judgment concerning sins perhaps committed. I forewarn, however, that the confessor ought not afflict married penitents with inopportune questions; indeed, in investigating this matter it is necessary rather to fall short than to abound. For it is better to leave spouses in good faith and permit material sins than, through imprudent questions, to make formal sins out of material sins and moreover to deter spouses from the sacrament of penance. - We divide this whole chapter into three articles: 1. on the liceity of the conjugal act; 2. on its obligation; 3. on the sins of spouses in this matter.

[379] *Theol. mor.*, l. 6, n. 900.

Article I. On The Liceity Of The Conjugal Act

690. Principle. The conjugal act is licit, and indeed meritorious, whenever it accords with the good of offspring and the good of fidelity.

The individual parts of this very fruitful principle are to be explained and demonstrated. Certain ancient heretics denied the liceity of the conjugal act (for example, Saturninus, Marcion, the Manichaeans, and the Encratites), but several texts of Sacred Scripture manifestly prove not only its liceity, but also its obligation. Thus St. Paul writes: "Let the husband render the debt to his wife; and the wife also in like manner to the husband. The wife hath not power of her own body, but the husband; and in like manner the husband also hath not power of his own body, but the wife."[380] - In the Old Testament, after their creation, God commanded the first parents: "Increase and multiply."[381] But according to the present order of things, the conjugal act is the sole means of propagating the human race. Therefore, if God wills the propagation of the human race, He also wills the conjugal act, which consequently is licit in itself. Nor is it required that each and every conjugal act serve directly and immediately for the propagation of the human race; for the whole economy of human propagation greatly excels the propagation of brute animals. Indeed, animals of the female sex are not accustomed to have the instinct, or even the power, of generating except during a brief and determinate time of each year; among them conception is very often completed by a single intercourse; and after that intercourse has been effected, the animals abhor another carnal union. It is altogether otherwise in the human race. Human physiology demonstrates that human conception can occur at any time of the year and commonly is not completed except by repeated conjugal acts. These things clearly demonstrate that the Creator permits spouses carnal intercourse even if human conception cannot follow here and now, for example, during pregnancy. Moreover, the unions of animals are transient, mutable, promiscuous, and produce no spiritual good; on the contrary, the marital union of human beings is stable; there is no promiscuity; spouses are not separated except by death.

But the principal end both of the whole conjugal life in general and of the conjugal act in particular is the spiritual good of the spouses.

Since these things are so, a general rule can be established: **The conjugal act is licit when it serves the spiritual good of the spouses, even though conception or generation is neither directly and immediately had nor even intended.** Not only supernatural virtues, but also marital love and affection conduce to the spiritual good of the spouses. For if spouses are united by true and constant love, their whole life also becomes happy; each willingly bears the burdens of the other, and almost all the praises which St. Paul attributes to charity can be proclaimed of such marital love, when he says: "Charity is patient, is kind; charity envieth not, dealeth not perversely, is not puffed up, is not ambitious, seeketh not her own, is not provoked to anger, thinketh no evil ... beareth all things, believeth all things, hopeth all things, endureth all things."[382]

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[380] 1 Cor. 7:3 f.

[381] Gen. 1:28.

[382] 1 Cor. 13:4 ff.

691. Practical conclusions immediately follow from the rule established above:

1. The conjugal act is licit during the time of nursing, both because the danger of infecting the milk and thus harming the child already born is not present (according to the common opinion of modern physicians), and because no law prohibits it. During the time of nursing a new conception is rather rare; but if it nevertheless occurs, then the mother's milk is customarily much diminished, so that the child already born must be nourished in an artificial manner; this is indeed some inconvenience, since such artificial nourishment is not as good as mother's milk. Nevertheless, this inconvenience is not so great that spouses are bound to observe complete continence throughout the whole time of nursing.[383]

2. The conjugal act is licit during pregnancy, provided that no grave danger is thereby brought upon the conceived fetus or the mother. For although a new conception is then impossible, nevertheless intercourse can serve to foster honorable marital love and to allay the impulses of the flesh. For it would be a most grave burden if spouses were bound to observe continence throughout the whole time of pregnancy. *Per accidens*, intercourse had at this time can be illicit, namely, if grave danger of abortion or illness arises from it.[384]

3. The conjugal act is licit between sterile spouses; with a wife whose ovaries have been excised, or even whose uterus has been removed;[385] with a husband who was castrated after matrimony.[386] The reason is the same. Certainly, the proximate end of intercourse in all these cases not only is not attained, but is even impossible; nevertheless, because the carnal act is completed in the ordinary manner and is frustrated of its proximate end only because of a physical impediment which does not depend upon the will of the spouses, it is licit.

4. The conjugal act is licit on Sundays and feast days or on the day of Communion, if it is performed for a reasonable cause. Certainly, it is most fitting that spouses not come together on days of Communion and during the short interval between confession and Communion, especially if they do not approach the sacraments of penance and the Eucharist so often. For such abstinence, being so rare and of such brief duration, cannot be hard; and therefore let the wife ask the husband to be willing then to abstain from the conjugal act. Nevertheless, if the husband bears this with difficulty, let the woman acquiesce in the desire of the husband. Especially let pious women who are accustomed to approach the sacred Synaxis several times each week show themselves ready to please the husband, lest he become indignant at such frequent reception of the sacraments.

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[383] Cf. Scavini, *Theol. mor. univ.*, IV, n. 573.

[384] Cf. St. Alphonsus (*Theol. mor.*, l. 6, n. 924), who favors the opinion that intercourse with a pregnant woman cannot be excused from venial fault unless there is danger of incontinence or another honorable cause. This honorable cause, however, is easily present. Certain Holy Fathers spoke more severely about intercourse during pregnancy, for example, St. Augustine and St. Jerome. Cf. Eschbach, *Disp. physiol.-theol.*, 2nd ed., 110.

[385] Holy Office, February 3, 1887, and July 30, 1890. Cf. also Noldin, *De sexto praec.*, n. 61.

[386] Cf. Sanchez, *De matrim. sacr.*, l. 7, disp. 102, n. 7.

692. 5. The conjugal act is illicit because of pleasure alone, such that pleasure is its sole and ultimate end. Hence Innocent XI condemned proposition 9: "The act of matrimony exercised because of pleasure alone is entirely free from every fault and venial defect."[387] Ballerini,[388] however, deservedly notes that the words "because of pleasure alone" are to be understood **with the exclusion of another honorable end;** for it is certainly lawful to seek ordered pleasure, since God Himself joined pleasure to the conjugal act so that this act, so necessary for the conservation of the human race, might be made more desirable; but it is not lawful to seek pleasure as one's proper end. The older authors disputed at length concerning the liceity of conjugal intercourse exercised because of pleasure alone, or for preserving one's own health, or for avoiding temptations of fornication. All these disputes are of little practical utility. For in practice spouses are not to be disturbed if they exercise the conjugal act in an ordinary and honorable manner without actually thinking about some particular end. The reason is that the conjugal act performed in a natural manner fosters marital love, while marital love redounds to the good of offspring; and all teach that the conjugal act is licit because of the good of offspring. St. Thomas also seems to be understood in this sense when he teaches: "In only two ways do spouses come together without any sin, namely, for the sake of procreating offspring and of rendering the debt; otherwise there is always at least venial sin there."[389]

6. The conjugal act is illicit if one's own health, or that of the other spouse or the offspring, is thereby gravely and proximately endangered. Therefore spouses are not permitted to come together, for example, if one of them suffers from a grave contagious disease and especially from venereal disease,[390] or if danger of abortion threatens the conceived offspring from intercourse. Small injuries to health or light bodily inconveniences, however, neither render the conjugal act illicit nor dispense from rendering the conjugal debt. - Authors customarily ask here whether the conjugal act is licit during menstruation and puerperal cleansing, because in these circumstances intercourse not rarely becomes harmful. The only true response to this question is this: Particular cases are to be considered; if grave harm truly arises for certain spouses in these circumstances, either for themselves or for offspring to be born, intercourse is illicit; otherwise it is not.

During menstruation it certainly is not fitting to exercise intercourse, but the opinion of the ancient authors who thought that during menstruation none were conceived except "those damaged in their members, the blind, the lame, and lepers" is not true.[391] The ceremonial or judicial law of the Old Testament prohibited intercourse during menstruation under penalty of death,[392] but this law no longer binds. In the Old Testament this law was wise both for fostering chastity, for avoiding superstition, and for guarding against grave diseases which, because of special circumstances among the Jews of that time, could easily arise from such intercourse.[393]

Modern physicians are accustomed to judge more severely concerning intercourse had during puerperal cleansing. Thus, for example, Capellmann[394] says: "I consider intercourse in the first two weeks after childbirth altogether prohibited, since it is most apt to bring the gravest harm upon the woman. Indeed, during the following four weeks I do not think it licit without doubt. But since the danger at this time is no longer so

great, let theologians determine what causes suffice to compensate for this danger of grave harm which may be brought upon the woman."

7. The conjugal act is illicit when it is completed in an onanistic manner. This is evident, because it is directly contrary to the good of offspring, whose generation is impeded; it is also contrary to the good of fidelity, according to which one spouse gives the other a right over his or her body, but only in order to generation. The discussion will return to the onanism of spouses below, n. 699.

8. The conjugal act is illicit if it does not occur in a secret manner and place. The reason is that scandal and most grave temptations are then caused to others. Hence parents sin gravely who come together immodestly, so that the children can perceive something.

9. The conjugal act is illicit if during it a spouse thinks as though he or she were joined with another person. For such a thought is spiritual adultery. The Angelic Doctor[395] writes aptly concerning this matter: "If pleasure is sought beyond the honorableness of matrimony, so that someone does not attend in the spouse to the fact that she is a spouse, but only that she is a woman, being prepared to do the same thing with her if she were not his spouse, it is a mortal sin; and therefore such a one is called a too ardent lover of his wife, because that ardor is carried outside the goods of matrimony."

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[387] Denz., n. 1159.

[388] In the notes to Gury, II, 908.

[389] *Suppl.*, q. 49, a. 5. William Peraldus, O.P., a contemporary of St. Thomas, writes concerning this matter: "The [carnal] act can be exercised without any fault and even meritoriously in three cases: 1. when it is for the sake of receiving offspring and educating it for the worship of God.... 2. when the debt is rendered to one asking.... 3. when someone demands that act so that he may guard his spouse lest the spouse fall into the sin [of incontinence]" (*Summa virtut. et vitior.*, I, *De temperantia*, c. 17, Venice ed. 1571, p. 569).

[390] Cf. above, n. 692. What is taught "concerning the matrimony of lepers" (cc. 1, 2, X 4, 8) does not oppose this doctrine, because the ancients thought that proximate danger of contagion did not arise from intercourse with a leper. Cf. St. Thomas, *Suppl.*, q. 64, a. 1, ad 4; Billuart, *De matr.*, diss. 4, a. 4, § 1.

[391] Thus thought, for example, St. Jerome (*In Is.*, c. 65).

[392] "He that shall copulate with a woman in her menstrual flow, and shall uncover her nakedness, and she shall open the fountain of her blood, both shall be put to death out of the midst of their people" (Lev. 20:18).

[393] D. Haller explains well the reason for the Mosaic law (in Eschbach, *Disp. physiol.-theol.*, 2nd ed., 106, disp. 1, c. 8, a. 1).

[394] *Pastoralmedizin*, 18th ed., p. 316. The same physician says: "In my eyes, intercourse, at least in the first weeks, appears as true brutality toward the puerperal woman."

[395] *Suppl.*, q. 49, a. 6.

693. Corollary. On acts accessory to marital intercourse. Not only is the conjugal act itself licit, but so also are all accessory acts, whether mutual or solitary, which are either necessary or useful for completing the conjugal act. The reason is obvious; for if the end is licit, all honorable means not prohibited from another source are also licit, so that this end may be obtained. Certainly spouses are to be exhorted to exercise the conjugal act with great modesty, and especially the woman is with all her strength to take care for her modesty and honor; but a mortal sin is never committed by spouses in this matter unless there occurs either pollution of either party, foreseen and culpably willed, or at least the proximate danger of pollution. Absolutely all other lustful acts had between spouses are at most venial sins and often lack every fault. Hence the confessor acts badly if he torments spouses concerning this matter with inopportune questions and

renders confession hateful to them. It is much better to leave spouses in good faith or to admonish them only generally to preserve modesty.

Article II. On The Obligation Of The Conjugal Act

694. Principle 1. Whenever either spouse reasonably and seriously requests the conjugal debt, the other is bound in justice to render it, and indeed under grave sin.

Explanation. St. Paul expressly says: "Let the husband render the debt to his wife; and the wife also in like manner to the husband."[396] The reason for this obligation is the matrimonial contract, in which one spouse gives the other a right to the conjugal act. This right, however, induces an obligation of justice, and a grave one, since there is question of a matter of great moment. For all theologians teach that marital intercourse is a matter of great moment, since it is necessary for obtaining the primary end of matrimony. Hence a spouse sins gravely who obstinately denies the conjugal debt to the other spouse who seriously and reasonably requests it. Likewise, a spouse sins gravely who by fraud forestalls the other spouse so that the latter cannot request the debt; against such a spouse St. Paul argues: "Defraud not one another."[397] Great harms are accustomed to arise from the unjust denial of the conjugal debt, namely, danger of incontinence in the other spouse, quarrels, diminution of love, divorce, and so forth. Hence women especially are to be admonished not to show themselves difficult and morose when husbands reasonably request from them intercourse or other things which are lawful to spouses; likewise, they are to be admonished to strive to please their husbands, according to that saying of the Apostle: "But she that is married [the woman] thinketh ... how she may please her husband."[398]

Smallness of matter. The obligation of rendering the debt, although of itself grave, nevertheless admits smallness of matter. Hence if a woman once or twice denies the conjugal debt to the husband, deferring it to another time more convenient for herself, it is not a mortal sin, at least if the husband is not in proximate danger of incontinence or great anger is not thereby kindled in him.

The principle thus explained must be restricted in three ways.

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[396] 1 Cor. 7:3.

[397] 1 Cor. 7:5.

[398] 1 Cor. 7:34.

695. Exceptions: 1. A spouse is not bound to render the debt to an adulterous spouse. This is evident from those things said above concerning divorce. For if it is lawful because of the adultery of the other spouse to effect divorce as regards dwelling, *a fortiori* it is lawful to deny the conjugal debt. But if the adultery committed has once been condoned, it is no longer lawful either to effect divorce or to deny the conjugal debt, as was already said above, n. 679.

2. The innocent spouse is not bound to render the conjugal debt to the other spouse if perpetual divorce has been duly pronounced by the sentence of a judge; on the contrary, just as the guilty party can be recalled to conjugal society, so also can that party be obliged to the conjugal debt. The sole exception is the case in which, with the explicit or implicit consent of the innocent party, the other party has emitted a vow of chastity or entered religion. For then every right to intercourse has been extinguished.

3. A spouse is not strictly bound to render the conjugal debt if the other spouse requests it either not seriously or not reasonably. If a spouse does not seriously request the debt, but rather expresses a

desire or velleity, that spouse is not judged to urge his or her right; therefore neither is there a strict obligation of rendering the debt, nor does the other spouse sin by not acquiescing in the desire. Nevertheless, such a refusal is not to be employed often, unless the other spouse requests the debt unreasonably. For if the request is certainly unreasonable, the obligation of rendering the debt does not exist. Sometimes it happens, for example, in drunkenness, that the husband requests the debt from the wife altogether unreasonably, and indeed in an inhuman manner, intending nothing other than the truly bestial satisfaction of his own lust. Then the woman can certainly licitly deny the debt; for in the matrimonial contract she did not oblige herself to be a slave of lust, but a companion of life for the husband, and indeed one having the same rights concerning the use of matrimony as the husband has. For in other matters the wife ought to be subject to the husband, but in the use of matrimony she is altogether equal to the husband, as is evident from the text of St. Paul: "And in like manner the husband also hath not power of his own body, but the wife."[399] Therefore a woman who suffers grave extrinsic troubles from the conjugal act does not sin if she denies the debt once or twice, provided that she does not always refuse. For example, a woman does not sin by denying the debt to a husband requesting it every day, or while he is drunk, or during a grave illness, especially a contagious one (cf. above, n. 682), or during menstruation or cleansing. Theologians also commonly teach that a woman is not bound to render the debt if she has learned by experience that she cannot give birth without proximate danger of death. The reason is that the husband cannot demand from the wife something which she is unable to perform without proximate danger of death. The husband also requests the debt unreasonably if he wills to abuse matrimony through onanistic intercourse; for most certainly the woman could not oblige herself in the matrimonial contract to an abuse of matrimony, nor even to cooperating (although materially) in the sins of the husband. Whether, however, in this case the woman can render the debt by conducting herself passively will be said in the following article. - Intrinsic inconveniences necessarily connected with matrimony, however, according to that saying of the Apostle, "Nevertheless, such shall have tribulation of the flesh,"[400] do not excuse from rendering the debt, because they could and ought to have been foreseen from the beginning of matrimony. Hence the following do not excuse: the ordinary burdens of pregnancy, childbirth, and education; nor even numerous offspring already had; nor even fear that the offspring may be born infirm, may die in childbirth, or that abortion may occur.[401]

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[399] Cf. St. Thomas, *Suppl.*, q. 54, a. 5.

[400] 1 Cor. 7:28.

[401] There are authors, for example, Noldin (*De sexto praec.*, n. 92), who probably excuse a spouse from rendering the debt, with danger of incontinence excluded, if numerous offspring are already present and the spouses are so poor that they are unable to support further offspring. This opinion indeed seems to be admitted if, through the fault of either spouse, the offspring cannot be supported. For if a spouse does not furnish sufficient assistance for supporting the offspring already born, neither does that spouse have the right to generate new offspring. But if the poverty is inculpable, the spouses are to be exhorted to use matrimony moderately, committing themselves to divine Providence, which will certainly assist them.

696. Principle 2. No obligation of requesting the conjugal debt exists *per se*; *per accidens*, however, such an obligation sometimes arises from charity.

Explanation. Each spouse indeed has a strict right of requesting the debt, but is not bound to use such a right. For just as each person freely enters matrimony, so each freely requests the consummation of matrimony through carnal intercourse. *Per accidens*, however, an obligation of requesting the debt can be present if otherwise notable harm should arise for the other spouse. Thus, for example, a spouse is bound at least from charity to request the debt if he or she perceives that the other spouse is in danger of incontinence and does not request it because of modesty; or if the use of matrimony is necessary for fostering marital love.

697. Principle 3. By mutual free consent spouses can licitly abstain from the conjugal act either for a time or even perpetually.

Explanation. This third principle is a corollary of the second. For if neither spouse is bound to request the debt, both spouses can also by mutual and free consent abstain from requesting the debt. Such mutual consent existed in the most holy matrimony between the Blessed Virgin and St. Joseph. Temporary abstinence is sometimes very useful for both the bodily and spiritual good of the spouses; but perpetual abstinence from conjugal intercourse is rarely expedient, because without this intimate conjunction of the spouses marital affection is accustomed to grow cold and grave dangers of infidelity are easily present. Therefore spouses capable of intercourse and of generating and educating offspring should not without a most special reason perpetually abstain from the use of matrimony. St. Paul also seems to intimate this, saying: "Defraud not one another, except, perhaps, by consent, for a time, that you may give yourselves to prayer; and return together again, lest Satan tempt you for your incontinency."[402]

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[402] 1 Cor. 7:5.

Article III. On The Sins Of Spouses

698. It is scarcely necessary to note that here there is discussion only of the sins of spouses against chastity.

Principle. a) A grave sin of spouses against chastity is whatever directly and gravely conflicts with the good of offspring and the good of fidelity; b) a venial sin is whatever is done from pleasure alone, without directly conflicting with the good of offspring and fidelity; c) no sin is that which is useful or necessary for performing the conjugal act well and fostering marital love.

Explanation. The second and third parts of this principle are sufficiently evident from what was said above, nn. 690 and 692, concerning the conjugal act performed from pleasure alone and concerning the accessories of this act. - Nearly all mortal sins of spouses can be reduced to three classes: 1. sins of lust perpetrated with other persons, whether by deed or by desire; 2. sodomy and onanistic intercourse; 3. solitary pollution. - There can be no special difficulty concerning the judgment of sins of the first and third classes. The same holds concerning those sins as must be said if they were perpetrated by an unmarried person. A new species, however, is added, namely, the violation of justice. For a spouse perpetrating these sins violates not only chastity but also justice, since he or she no longer has power over his or her own body, but the consort has it, who by divine institution cannot renounce this right. Hence a spouse who has committed, for example, pollution[403] or sins with other persons must declare his or her conjugal state in confession. Nevertheless, in practice, because those who are untrained in moral matters do not apprehend the twofold malice in solitary pollution, the confessor can sometimes omit questions, unless he hopes that the penitent, warned of the greater gravity of the sin, will thereby be more effectively deterred from committing new sins.[404] - Nor are many things to be said here concerning sodomy. For if sodomy is committed with another person, then the same holds as was just said concerning sins of lust committed outside matrimony. But if there is question of imperfect sodomy committed between the spouses themselves, then this must be accused altogether in confession. For it is a detestable abuse of matrimony.[405]

It remains to speak of conjugal onanism, and indeed: 1. of the notion and malice of conjugal onanism; 2. of cooperation in conjugal onanism; 3. of the means of guarding against conjugal onanism; 4. of the manner of treating spouses practicing onanism.

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[403] Some authors, such as Marc (*Instit. mor.* I, n. 793) and Noldin (*De sexto praec.*, n. 31), call pollution perpetrated by one spouse adultery.

[404] Cf. Noldin, ibid., n. 19.

[405] What perfect and imperfect sodomy are, see above in the treatise on the virtue of chastity, II, n. 706. - Moralists ask here whether venereal pleasure had through touches and looks upon one's own body without danger of pollution is a mortal sin for spouses. Some respond that in all these things spouses are to be judged like unmarried persons; others, however, probably teach that for spouses in the matter of chastity a mortal sin is present only when pollution or its proximate danger arises. But all other things are not gravely sinful, because they can have some relation to conjugal intercourse. It is self-evident that spouses sin not more lightly but more gravely than unmarried persons in venereal pleasure which is referred to an extraneous person. Cf. Berardi, *Praxis confess.* I, n. 962.

§ 1. On The Notion And Malice Of Conjugal Onanism

699. Notion. Onanism is distinguished as twofold: solitary and conjugal. **Solitary onanism** (so called chiefly by modern physicians) is nothing other than *mollities*, or pollution.[406] We do not treat of it here. **Conjugal onanism,** however (so called from the sin of Onan described in Genesis 38:9), is customarily perpetrated in two ways: a) **by interruption of intercourse or complete withdrawal before ejaculation,** so that the semen is poured out outside its due place;[407] it is called interrupted or preventive intercourse; b) **by diverse instruments and means invented by human malice,** which are employed either on the part of the man or on the part of the woman for the purpose that the semen be prevented from reaching its due place;[408] it is called preservative intercourse. Onanism performed in the first manner is sometimes called onanism strictly so called; but that performed in the second manner is said to be onanism broadly so called. Each kind of onanism, however, is not rarely called "neomalthusianism."[409]

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[406] Cf. above, II, n. 705.

[407] To break off intercourse after it has begun, if semen is not emitted, is not onanism; and therefore, although spouses are to be exhorted to abstain from a thing of this kind because of the danger of pollution, if they nevertheless assert that pollution follows only rarely, it cannot be forbidden to them under pain of grave sin. Cf. Noldin, loc. cit., n. 67.

[408] Such instruments and means are diverse, for example, *pessarium* (pessary), *praeservativs* (preventives), condoms, *capote anglaise* ("English hood"), rubber goods, *Frauenschutz* ("women's protection"), *Fischblasen* ("fish bladders"), and so forth. Vaginal washings are also often employed by women after intercourse to guard more or less against conception. These washings indeed are not accustomed to render conception totally impossible, as do the instruments just indicated. For already in intercourse itself the male semen is accustomed sufficiently to enter the uterus, nor can it thereafter be washed out by a vaginal washing. Nevertheless, this manner of acting is evil if the sole end intended is the prevention of conception; the matter is otherwise if bodily cleanliness or some other honorable end is intended and the washing is not performed immediately after intercourse.

[409] In the work *Essay on the Principle of Population* (London, 1798), Malthus contended for the diminution of the human race (to be obtained by means lawful in themselves). The neomalthusians, however, advocate the limitation of generation even by illicit means.

700. Malice. Conjugal onanism, in whatever manner it is freely performed, is always a mortal sin.

Thus right reason teaches; thus the Church has declared. Right reason dictates that onanism is true pollution and directly conflicts both with the good of offspring and with the good of fidelity. For the Creator has prescribed a determinate use for each thing and for each human power. If man acts contrary to that prescribed manner, he acts contrary to the will of God and therefore sins more or less according to the greater or lesser gravity of the matter. Thus, for example, animals according to the intention of the Creator ought to serve man; if he abuses animals by unreasonably tormenting or torturing them, he commits a venial sin, since that abuse is not so grave. Food and drink ought to serve for the nourishment of man; if man abuses food and drink, for example, by trampling bread underfoot, he sins venially. Similarly, the generative faculty was given to man so

that he may use it according to the intention of the Creator, that is, for fitting generation. If man abuses this faculty, he sins, and indeed gravely, since that abuse is very grave. The Angelic Doctor writes to the point:[410] "It is evident that every emission of semen in such a manner that generation cannot follow is against the good of man; and if this is done from intention, it must be a sin. I say, however, a manner from which generation cannot follow of itself, as every emission of semen without the natural commingling of male and female: for which reason sins of this kind are said to be against nature. But if generation cannot follow from the emission of semen accidentally, it is not on this account against nature or a sin, as if it should happen that a woman is sterile.... Nor, nevertheless, ought it to be reckoned a venial sin if someone procures the emission of semen outside the due end of generation and education, on account of the fact that it is either a venial sin or no sin if someone uses some part of his body for another use than that to which it is ordered according to nature, as if someone, for example, walks upon his hands or works with his feet at something to be worked with the hands; because through disordered uses of this kind the good of man is not much impeded. But the disordered emission of semen conflicts with the good of nature, which is the conservation of the species. Hence, after the sin of homicide, by which human nature already existing in act is destroyed, this kind of sin seems to hold the second place, by which the generation of human nature is impeded."

The malice of onanism can moreover be perceived from its evil **effects.** For the bodily health of each spouse is accustomed to be gravely harmed by it, offspring is not generated, families and states are depopulated, and the reins are loosened to lust of every kind.[411]

Finally, the malice of onanism is evident from declarations of the Church. Thus, on May 21, 1851, the Holy Office declared the proposition, "For honorable reasons spouses may lawfully use matrimony in the manner in which Onan used it," to be "scandalous, erroneous, and contrary to the natural right of matrimony." - To the question, however, "Whether the imperfect use of matrimony, whether performed onanistically or condomistically, as in the case, is licit?" it responded on April 19, 1853: "Negatively, for it is intrinsically evil." - The Sacred Penitentiary responded on November 13, 1901: "A penitent who is unwilling to abstain from a manner of acting of this kind, which is onanism pure and simple, cannot be absolved."

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[410] St. Thomas, *Contra Gent.*, l. 3, c. 122.

[411] Georges Surbled writes in the very well-known book *La morale dans ses rapports avec la médecine et l'hygiène* (I, 182): "Unfortunately no one can deny the extreme frequency of onanism, which makes it a veritable social scourge, the mark of the shameful blight of modern marriage. This sad habit is known among all ranks of society in the cities and is already beginning to spread in the most remote countryside.... The dire balance sheet of onanism from the purely medical point of view has not yet been entirely established, but one day it will be known: it is formidable." - All physicians agree with Surbled. Thus, for example, Löwenfeld writes (*Die psych. Zwangserscheinungen*, 467): "According to Freud, interrupted intercourse figures chiefly among the causes of anxiety neuroses." Cf. also Familler, *Pastorale Psychiatrie*, p. 37.

§ 2. On Cooperation In Conjugal Onanism

701. Principles: 1. A spouse is not bound to render the conjugal debt to an onanistic consort.

The reason is that spouses indeed grant one another a right over the body, but only in order to generation. Now the onanistic spouse not only does not intend generation, but entirely excludes it. Therefore that spouse's right is in no way violated if the use of matrimony, or rather its abuse, is denied by the other party. Thus holds the more common opinion.[412]

2. Formal cooperation in onanism is never licit.

For it is never lawful to cooperate formally in the sin of another. Hence a wife sins gravely not only if by common consent with her husband she perpetrates onanism, but also if by continual complaints about the state of pregnancy, the pains of childbirth, numerous offspring, and so forth, she gives occasion for the husband to complete intercourse in an onanistic manner.

3. Material cooperation in onanism is licit, provided that a proportionately grave cause is present.

Thus holds the opinion today common and true, confirmed by a Response of the Sacred Penitentiary of April 3, 1916.[413] The reason, however, is that the action performed by the spouse cooperating materially is not intrinsically evil, but honorable or at least indifferent. For by virtue of matrimony a spouse can licitly effect the union of members with the consort. Such an action is honorable. But that the consort abuses this union is *per accidens* and is imputed to that consort alone. Just as, by parity, an innkeeper has the right to serve wine, even though he certainly foresees the abuse of the wine for causing drunkenness; just as it is lawful to rent a house to a prostitute, even though someone certainly knows that the prostitute will abuse the house for fornications;[414] so a spouse can cooperate materially in onanistic intercourse, provided that a proportionately grave cause is present. Proportionately grave and sufficient causes for a spouse to be able to cooperate materially in onanistic intercourse are, for example, a well-founded fear of quarrels, fights, adultery otherwise to be committed by the husband, and so forth.[415]

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[412] Cf. Noldin, loc. cit., n. 90; Göpfert, *Moraltheol.* III, 287. St. Alphonsus (*Theol. mor.*, l. 6, n. 947) thinks the opposite opinion more probable.

[413] In Marc-Raus, *Inst. mor.*[10] II, 2117.

[414] Cf. above, II, n. 619 ff.

[415] Cf. Noldin, loc. cit., n. 68.

702. When a spouse uses the instruments enumerated above for preventing conception, theologians most commonly teach that the other spouse is bound according to his or her powers to resist this manner of acting as intrinsically evil and evil from the beginning, and indeed on every occasion, and that merely passive resistance does not suffice.[416]

In order that material cooperation in onanism (strictly so called) may be free from fault, not only is 1. a proportionately grave cause required, but in addition it is necessary 2. that the spouse conduct himself or herself passively, 3. that the spouse endeavor to turn the consort away from the latter's most evil manner of acting, and 4. that interior complacency in the sinful act be restrained. Hence sometimes (although not on every occasion) a spouse is bound to admonish the consort to abstain from the conjugal act, or, if the consort is unwilling to do this, to complete it in the natural manner.

Since from a proportionate cause it is lawful to cooperate materially in onanistic intercourse, the innocent spouse can not only render but also **request** the conjugal debt. For a prolonged privation of the right of requesting the debt, which is accustomed to induce danger of incontinence, is a proportionately grave cause. Thus holds the common opinion.[417]

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[416] Cf. Response of the Sacred Penitentiary of June 3, 1916, in Marc-Raus, *Inst. mor.*[10] II, 2117: "1. Whether a woman, in the case in which the man wishes to use an instrument for practicing onanism, is bound to positive resistance? 2. Whether, so that this entire matter may be expounded and taught upon a safer path, a man using such instruments ought truly to be equated with an oppressor, to whom therefore the woman ought to oppose that resistance which a virgin ought to oppose to an oppressor? R. Affirmatively to both." This response, however, has not yet been authentically published.

[417] Cf. St. Alphonsus, loc. cit., l. 6, n. 947; Marc, loc. cit., n. 2116.

§ 3. On The Means Of Guarding Against Conjugal Onanism

703. The only truly efficacious means against onanism are either virtuous continence or firm confidence in God. Certainly it happens that the generation of offspring is morally almost impossible for spouses, for example, if numerous offspring are already present and sufficient means are lacking; if the health of either spouse is weak, or indeed is seriously endangered by a new generation. In these or similar cases, spouses, relying upon divine assistance, ought either to preserve continence by mutual consent or to give themselves to the conjugal act, placing their hope in God, who will certainly give sufficient graces for bearing all the burdens of the conjugal state.

Many **physical means** for preventing conception are circulated, but all are either illicit or not certainly efficacious.

The physician Capellmann recommends a certain means which indeed **is not entirely efficacious,** but sometimes produces good effects. Namely, spouses ought to abstain from intercourse during the first fifteen days after menstruation and again during the four days before a new menstruation. At another time, which is called the time of agenesis, they can complete intercourse without there being a great probability of conception. The Sacred Penitentiary declared concerning this matter on June 16, 1880: "Spouses using matrimony in the aforesaid manner are not to be disturbed, and a confessor can cautiously suggest this opinion to those spouses whom he has tried in vain by another means to draw away from the detestable crime of onanism."

§ 4. How The Confessor Ought To Act With Spouses Practicing Onanism Or Otherwise Sinning Against Chastity

704. Conjugal onanism has become so widespread in our times and can be eradicated with such difficulty that it has become both a true cross for confessors and an imminent danger to the common good of the republic. On March 10, 1886, the Sacred Penitentiary established that a confessor who learns, whether from a spontaneous confession or from prudent questioning, that a penitent practices onanism is bound to admonish the penitent concerning the gravity of this sin just as concerning that of other mortal sins, to reprove the penitent with paternal charity, and to impart absolution only when it is established by sufficient signs that the penitent is sorry for the past and has a purpose of no longer acting onanistically. Therefore confessors act badly who never question spouses concerning the sin of onanism. For good faith concerning the liceity of onanism persevering for a long time can be admitted only with difficulty.

The confessor ought to act more severely **with an onanistic husband,** because the husband can almost always avoid onanism. For wives are accustomed rather willingly to consent to total or partial continence; and therefore, if the husband were willing to preserve the same continence, onanism would cease by that very fact.

The confessor can sometimes be more indulgent **with a wife cooperating in onanism,** but he is also bound to admonish her not to furnish consent in any manner to the husband's sin. The **executing cause** of onanism is indeed almost always the husband; but the **impelling cause** is not rarely the wife, who by night and by day raises complaints concerning the troubles of pregnancy, childbirth, education, and so forth, and thus induces the husband to onanistic intercourse. Hence let the confessor not always believe women who say that they contributed nothing toward the perpetration of onanism. On the other hand, women who accuse themselves of complacency perceived in onanistic intercourse are not immediately to be charged with mortal sin. For not

rarely women by no means rejoice in the evil act, but in the good effects thence following, namely, in the pleasure of intercourse, in preservation from the troubles of pregnancy, and so forth. Now such joy is not something intrinsically evil, although it is dangerous. - Conscientious physicians can also furnish the best assistance in the struggle against onanism if they do not exaggerate the dangers of childbirth to spouses and instead openly explain the harms which onanism causes to the health of the spouses.

Note. In the entire matter of the chastity of spouses, let the confessor always keep before his eyes the principle stated above: Nothing is a mortal sin of lust between spouses unless it gravely injures one of the two goods of matrimony, namely, either the good of fidelity or the good of offspring. Ballerini writes most excellently concerning this matter:[418] "Among these or those authors you will find now these acts, now others, denounced as gravely culpable; but indeed in these you have merely certain particular opinions, and those deduced almost not from solid and certain principles, but rather from fanciful apprehensions. They resort, namely, to the reason of indecency and turpitude and, conducting the matter almost by exclamations, proclaim the thing horrible, unspeakable, most shameful, and so forth; as though either the character of sin in general or the gravity of fault were to be sought from the character of indecency in that kind of matter in which even those things which are most licit, indeed commanded, by the leading of nature itself ought to be committed in secret and darkness by reason of indecency. Others resort to the character of unbridled lust; as though lust does not show itself most unbridled in that in which the end of matrimony is consummated; or as though matrimony had not also been instituted so that it might be a remedy for unbridled lust; or as though matrimony could be a remedy for lust in any other way than that the appetite for vehement pleasure is satisfied, with only that law ultimately placed upon it, which St. Thomas also intimates, that it neither run forth outside legitimate matrimony nor oppose the end of nature! - And certainly, unless sin is committed against one or the other of these, nowhere does there clearly appear a solid reason on account of which some other disorder can certainly be charged with grave sin; with this principle established, as is fitting, a most ready method is available to the confessor, both that he may provide for the sanctity of the sacrament and that he may provide for the salvation of penitents."

[418] In the notes to Gury II, 919.

Chapter VI. On Preparation For Matrimony, That Is, On Betrothals, The Examination Of The Parties, And The Banns

705. Preliminary note. It belongs to every good pastor of souls often and insistently to admonish young persons of each sex not rashly and precipitously to embrace the matrimonial state, but to prepare themselves for an office of such great moment with unceasing labor and fervent prayer, mindful of Sacred Scripture saying: "House and riches are given by parents; but a prudent wife is properly from the Lord."[419] Nor should young persons think that those marriages are always fortunate in which bodily beauty, honors, and riches abound; but happiness, both earthly and heavenly, will be possessed by spouses only when, led by the best intention, they strive exactly to fulfill all the obligations which spring from the three goods of matrimony. - Three things are accustomed to precede the celebration of matrimony, namely, betrothals, the examination of the parties, and banns; these three we comprise in two articles: 1. on betrothals; 2. on the examination of the parties and on the banns or proclamations of matrimony.

[419] Prov. 19:14; cf. Code of Canon Law, c. 1018.

Article I. On Betrothals

We divide this article into five paragraphs: 1. on the essence of betrothals; 2. on the conditions required for valid betrothals; 3. on the celebration of betrothals; 4. on their effects; 5. on their dissolution.

§ 1. On The Essence Of Betrothals

706. Definition. Betrothals are a mutual promise of future nuptials, legitimately entered into between capable persons and set down in writing.[420]

Explanation. Before the Decree *Ne temere*, issued by the Sacred Congregation of the Council on August 2, 1907, and in force from April 19, 1908, throughout the whole Christian world, private betrothals were valid and licit; but now "only those betrothals are held valid which have been contracted through a writing signed by the parties and either by the pastor or the local Ordinary or by at least two witnesses. If either or both parties do not know how, or are unable, to write, this is to be noted in the writing itself and another witness is to be added, who together with the pastor or the local Ordinary or with the two witnesses mentioned in § 1 is to sign the writing." Thus the Code of Canon Law, c. 1017. - The reason for this law is the evils and dangers which were accustomed to arise from private betrothals. For very often it was difficult, not to say impossible, to determine whether betrothals truly existed, because the intention of the one promising did not clearly appear; betrothals were often contracted rashly and precipitously and then dissolved with equal rashness. Hence many disputes and enmities had their origin. Not rarely also did girls allow themselves to be seduced because of fictitiously contracted betrothals and the hope of a future marriage. All these inconveniences are avoided if the faithful clearly know that all betrothals are altogether invalid both in the external forum and in the internal forum unless they were contracted according to the norms of the new law.

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[420] The ancient canonists distinguished between *sponsalia de praesenti*, which are ratified matrimony, and *sponsalia de futuro*. Here there is discussion only of *sponsalia de futuro*. - St. Thomas beautifully calls betrothals "certain sacramentals of matrimony, as exorcism is of baptism" (4, dist. 27, q. 2, a. 1, ad 6).

707. No obligation arises from informal betrothals either in the external forum or in the internal forum; and the same holds concerning a unilateral promise of matrimony, as the Code of Canon Law[421] expressly establishes: "A promise of matrimony, whether unilateral or bilateral, that is, betrothal, is invalid in each forum unless it has been made through a writing signed by the parties and either by the pastor or the local Ordinary or by at least two witnesses." Nevertheless, if from betrothals fraudulently entered into without the prescribed form and afterward dissolved, notable material damages have arisen for the other party, then there certainly arises a natural obligation of making indemnification; for an unjust causing of damage is present.

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[421] C. 1017, § 1. Sometimes civil codes grant indemnification to a betrothed party unjustly abandoned. Cf. German Civil Code, § 1298; Austrian Civil Code, §§ 45-46; Swiss Civil Code, art. 92 ff.; Spanish Civil Code, art. 44.

§ 2. On The Conditions Required For Valid Betrothals

In order that a betrothal promise may be valid, the following conditions are required:

708. 1. A free promise and therefore one immune both from substantial error and from fear and coercion.

a) **Substantial error** (or even accidental error which redounds upon the person) renders matrimony itself invalid, as will be said below. Therefore *a fortiori* it renders betrothals contracted with such an error invalid. A

notable **accidental error** renders betrothals rescindable, because it is a notable change now known, on account of which it is lawful to dissolve the betrothals, as will be explained below, n. 718.

b) **Grave fear inflicted by a natural cause or even by a free cause justly does not invalidate betrothals or render them rescindable.**[422]

It is disputed whether grave fear **unjustly inflicted** renders betrothals invalid or only rescindable. All teach that betrothals can be rescinded on account of grave fear unjustly inflicted, because marriages ought to be especially free. But St. Alphonsus,[423] Feije,[424] Gasparri,[425] Cappello,[426] and others teach that betrothals entered into in this manner are in addition **invalid.** Billuart,[426a] Santi,[427] Scherer,[428] Wernz-Vidal,[429] Vogt,[430] Noldin-Schmitt,[431] and others think that they are only rescindable. This latter opinion is truer, because no certain argument for the first opinion can be brought forward either from positive law or from natural law. For by natural law every contract entered into between capable persons with sufficient deliberation is valid, even if it was completed under fear. Positive law, however, has declared only a few contracts made under grave fear invalid, for example, matrimony and religious profession, but not betrothals.[432]

Slight fear unjustly inflicted renders betrothals rescindable, at least if it gave cause to the betrothal contract, but not if it is merely concomitant.[433]

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[422] Cf. above, II, n. 258.

[423] *Theol. mor.*, l. 6, n. 844.

[424] *De imped. et dispens. matr.*, n. 390.

[425] *De matrim.* I, n. 21.

[426] *De sacr.* III, n. 98.

[426a] *De contract.*, diss. 1, a. 4.

[427] *Prael. iur. can.*, l. 1, tit. 40, n. 4.

[428] *Kirchenr.*, § 110, n. 10.

[429] *Ius can.* V, n. 85.

[430] *Das kirchl. Eherecht*, § 8.

[431] *De sacr.*, n. 528.

[432] Cf. Code of Canon Law, c. 103, § 2.

[433] Cf. St. Alphonsus, *Theol. mor.*, l. 6, n. 844; Gasparri, *De matr.*, n. 21.

709. Since marriages ought therefore to be free, the ancient canon law[434] prohibited the stipulation of any **conventional penalty** to be paid by that party who withdraws from the betrothals. All indeed teach that a conventional penalty of this kind is illicit and invalid if it were imposed even upon one withdrawing justly; but if it is stipulated only against one withdrawing **unjustly,** several authors think it valid notwithstanding the cited chapter of canon law. In practice **the condition of the possessor is better.** That is, if the penalty has already been paid, the recipient can retain it; if it has not yet been paid, it cannot be exacted.[435]

From this conventional penalty are to be distinguished **earnests** (*arrhae*), which are things given, not promised, between the betrothed as a sign of the betrothals entered into and as a pledge of the matrimony to be contracted. These earnests, if the matrimony is contracted, can be reclaimed and ought to be restored; but if the matrimony has not followed, the party unjustly withdrawing loses his or her earnest, and if that party has received any, he or she ought not only to return it but also to return double. The party injured through the

unjust dissolution of the betrothals can retain the earnest given by the other party.[436] Earnests are licit in themselves, but in our regions they are no longer in use.

From an earnest, again, are to be distinguished **betrothal gifts** (betrothal largess, or even *iocalia*),[436a] which are gifts or presents handed over between the betrothed as a **sign of love,** but not as a strict **pledge of future matrimony.** Gifts of this kind, if they are of small value (with regard had to the state of the betrothed), are considered to have been given absolutely, and therefore no obligation **of justice** to restore them is present, even when the betrothals have been dissolved. But if they are of great value, the things given are presumed to have been given in view of the future matrimony, or rather as earnests, and therefore are to be restored if the matrimony does not follow. In practice it is preferable to restore all betrothal gifts if the matrimony does not follow, and all the more if they are demanded back. The reason is that gifts of this kind not rarely recall painful and even dangerous matters to memory.

Note. Those things taught by the older authors concerning a conventional penalty, earnests, and betrothal gifts according to Roman law cannot always be reduced to practice today, because that law in many regions neither exists nor binds in conscience.[437]

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[434] C. 29, X 4, 1.

[435] Cf. Aertnys, *Theol. mor.*, l. 6, n. 430; Cuniliati, O.Pr., *De matrim.*, § 1, 8-15.

[436] Thus from ancient Roman law, L. 5, C. V, 1. Whether these statutes are valid also in our days is very doubtful.

[436a] French *joyau*, German *Juwel* ("jewel").

[437] Cf. Reiffenstuel, *Ius can.*, l. 4, tit. 1, n. 176 ff.

710. 2. A deliberate promise.

For there is question of a matter of great moment, which cannot be treated without serious deliberation. The deliberation required and sufficient, however, is that which is necessary for constituting a mortal sin. Since today betrothals ought to be set down in writing, sufficient deliberation is almost always presumed to be present.

3. A mutual promise.

A unilateral promise of matrimony can indeed exist, but a true betrothal promise ought to be bilateral; for betrothals are a mutual and indeed an onerous contract. Hence for their validity a promise of matrimony given by one party and accepted by the other party does not suffice, but a reciprocal and explicit promise is required. In betrothals entered into according to the new law, this reciprocal promise is always presumed and is present.

711. 4. A promise between capable persons. There is a twofold incapacity: one natural, the other legal.

All those who lack sufficient use of reason for entering into an onerous contract of great moment labor under **natural incapacity.** Hence the insane, the perfectly intoxicated, the hypnotized, and so forth, are incapable. Infants before the completion of the first seven years are presumed to lack sufficient use of reason, and therefore their betrothals are invalid.[438] If betrothals were entered into after the completion of seven years and sufficient use of reason was certainly not yet present, they are invalid; otherwise, however, they are presumed valid. Concerning betrothals contracted after the age of seven but before legal puberty, the following was established in the ancient law: They cannot be rescinded before the years of puberty; but after puberty has been attained, the faculty of rescinding the betrothals immediately, that is, within three days, is granted to

each betrothed party,[439] unless, however, carnal intercourse occurred between the betrothed,[440] or the betrothals were confirmed by an oath.[441] These three days probably are not to be computed physically after legal puberty has been attained, but after knowledge of the privilege.[442] But one who, existing in puberty, enters into betrothals with a prepubescent person (for example, a young man eighteen years old and a girl eleven years old) cannot withdraw from the betrothal contract. The prepubescent person, however, can rescind these betrothals after attaining puberty. The reason is that canon law granted the faculty of dissolving only in favor of the prepubescent person. - Moreover (at least in our times and in our regions), betrothals of prepubescent persons are exceedingly rare, and the Code of Canon Law is silent concerning them; therefore they seem to be treated like other betrothals.

Those labor under **legal incapacity:** a) who do not observe the form prescribed by ecclesiastical law; b) who are bound by some prohibitive or diriment impediment of matrimony. This indeed is certain if that impediment is indispensable, or at least if a dispensation is not customarily granted. For betrothals in this case are a promise of an impossible or illicit thing and therefore are invalid by natural law. But if this impediment is easily dispensable, or if it ceases of itself with the passage of time, it is not so certain whether the betrothals are invalid if they are contracted conditionally, that is, for the time when the impediment shall have ceased. The older authors dispute at great length concerning betrothals thus entered into under condition. This dispute today has lost almost all practical utility, because among Catholics no betrothals other than public betrothals are now valid. But public betrothals are not customarily contracted under condition. If young persons approach the pastor to contract betrothals, it must first be investigated whether a diriment or prohibitive impediment stands in the way of the future matrimony. If this is so, the pastor will take care that a dispensation be obtained, and only then should he assist at the betrothals.

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[438] Cf. c. 4 § 13, X 4, 5; Code of Canon Law, c. 88, § 3; St. Thomas, *Suppl.*, q. 42, a. 2.

[439] Cc. 8 and 11, X 4, 2.

[440] C. 8, ibid.

[441] C. 10, ibid.

[442] St. Alphonsus, *Theol. mor.*, l. 6, n. 855.

712. A special difficulty is whether betrothals are valid **if the contracting parties are of mixed religion.** The following seems to be the true doctrine: If these betrothals were contracted **after the due dispensation had been obtained,** they are valid. For this dispensation is not granted unless the clauses which render such a matrimony licit have been promised. But if such a matrimony is licit, then the preceding betrothals are considered valid. Moreover, if betrothals of this kind were said to be invalid, then the pastor would have to avoid them according to his powers, even if perhaps he could no longer prevent the matrimony itself; for it is not lawful to concur in an invalid act of such great moment unless great necessity demands it. But such an obligation is not to be imposed upon pastors. - But if there is question of mixed betrothals contracted **without the previous dispensation of the Church,** they seem to be null, even if the legal form was observed. For such betrothals are almost always illicit.[443] This holds *a fortiori* everywhere in the world concerning private mixed betrothals, as is self-evident. An Instruction of the Holy Office of December 12, 1888,[444] expresses this entire doctrine in these words: "Betrothals between one Catholic party and another schismatic or heretical party are illicit and consequently invalid unless they are celebrated after a previous legitimate dispensation."

5. A promise legitimately manifested. This is treated immediately in the following paragraph.

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[443] Cf. Lehmkuhl, *Theol. mor.* II, n. 852; Noldin-Schmitt, *De sacr.*[18] n. 534; Linneborn, *Eherecht*, § 6.

[444] *Collect. de Prop. Fide*, n. 1696 (9).

§ 3. On The Celebration Of Betrothals

713. Before the Decree *Ne temere*, betrothals could be sufficiently celebrated and manifested by any clear words and signs; but now, for all validly baptized persons of the Latin rite, even non-Catholics, several things are required for validity by positive law, namely:

1. They must altogether be made in writing, with the day, month, and year set down.[445] The place (city, town) in which the betrothals are entered into is also fittingly designated, in order to avoid any doubts.[446] It is indeed free to employ any language and form, provided that the mutual promise of future matrimony is clearly expressed; but it is preferable that forms approved in each diocese or parish be employed.

2. These forms (whether written or printed) ought to be signed **by hand** (and not by some machine), either a) by the two contracting parties and the pastor or Ordinary, or b) by the two contracting parties and two witnesses. If either or both of the contracting parties cannot write (whether from lack of skill or from bodily infirmity), for validity this is to be expressly noted in the document, and then in place of the contracting party (or parties) another new witness ought to sign. Therefore, in the case, the signatures either of three witnesses or of the pastor and one witness are required. - Concerning the quality of the witnesses nothing determinate has been established.[447] Hence any human being capable of reason, worthy of faith, endowed with the senses of sight and hearing, and able to write can be a witness. Nevertheless, it is expedient that non-Catholics and notorious sinners be excluded insofar as this is morally possible.

3. The betrothal contract ought to be signed by the contracting parties and the witnesses gathered together at the same time.[448] Therefore it does not suffice that the contract signed by one party before the witnesses be transmitted to the other party, so that the latter may also sign it before witnesses. The reason is that otherwise frauds and deceptions could easily occur, especially if the other party does not know how to write and read.[449] - More probably, betrothals contracted through a proxy are invalid, because it is necessary that the contracting parties themselves sign while gathered together; the contrary, however, is taught by some, for example, Noldin[450] and Vlaming.[451]

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[445] Sacred Congregation of the Council, July 27, 1908. The Code of Canon Law seems to have changed nothing in this matter.

[446] The special law in force before the Decree *Ne temere* in Spain and Latin America, by force of which a writing signed by a notary was required for the validity of betrothals, was abrogated (Sacred Congregation of the Sacraments, March 12, 1910, ad 7, in *Acta Ap. Sed.* II, 195).

[447] Sacred Congregation of the Sacraments, March 12, 1910, ad 4.

[448] Sacred Congregation of the Council, July 27, 1908, ad 1.

[449] Cf. *Analecta eccl.* XVI (1908), 333.

[450] *De sacr.*, n. 536.

[451] *Prael. iur. matr.*[3] I, 100.

714. 4. Under the name of pastor are understood not only pastors properly so called, but also quasi-pastors (in mission places) **and those parochial vicars who are endowed with full parochial power,**[452] such as administrator, actual, and substitute vicars, but not assistant vicars. In order that betrothals may be validly and licitly celebrated before the pastor or Ordinary, it is not required (as for the celebration of

matrimony) that the contracting parties have already dwelt in the parish for a month or at least have acquired a quasi-domicile, but the pastor or Ordinary can licitly assist[453] in his own territory at the betrothals of all who come to him, and this with the same liberty with which he can hear the confessions of any betrothed persons coming to him. On the contrary, a pastor cannot as pastor, but only as a witness, assist at the betrothals of his own parishioners outside his own territory; this seems to follow from the same response of the Sacred Congregation of the Council. Moreover, all things suggest that the tendency is for the laws concerning the assistance of the pastor both at betrothals and at matrimony to be territorial.[454] - But those pastors who do not have a separate territory, as is commonly the case with military chaplains, chaplains of hospitals and prisons, and so forth, validly and licitly assist everywhere at the betrothals of their subjects, just as other pastors do in their own territory.[455]

The pastor or Ordinary cannot delegate another to assist at the celebration of betrothals.[456] Moreover, this faculty of delegation is not necessary, since betrothals can equally well be celebrated before two other witnesses. Hence, if the pastor is absent, his assistant vicar cannot validly assist at betrothals to be entered into unless he assumes another witness, who signs together with him and the two contracting parties. Under the name of the local Ordinary comes not only the bishop of the place, but also his vicar general, and, when the see is vacant, the vicar capitular. Prelates *nullius* are considered Ordinaries in their exempt territory.

Note. Nowhere in the law is it prescribed that betrothals ought absolutely to precede matrimony; if, therefore, those about to marry have entered into only private betrothals, which according to the discipline now in force are altogether invalid, nevertheless the pastor can make the proclamations and assist at the matrimony. In practice, however, it seems advisable that those about to marry who approach the pastor for the making of the proclamations first contract betrothals before him.

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[452] Code of Canon Law, c. 451, § 2.

[453] Sacred Congregation of the Council, March 28, 1908, ad 7.

[454] Cf. below, n. 752.

[455] Sacred Congregation of the Council, February 1, 1908, ad 8.

[456] Sacred Congregation of the Council, March 28, 1908, ad 6.

§ 4. On The Effects Of Betrothals

Two effects of betrothals are principally enumerated, namely: 1. the grave obligation of entering matrimony at a suitable and legitimate time; 2. an impediment, not indeed canonical but natural, prohibiting all other nuptials.

The impediment of public honesty no longer arises from betrothals, as the Council of Trent established, sess. 24, c. 3, *de reform. matr.*

715. 1. The grave obligation of entering matrimony at the due time arises from the very nature of betrothals, since they certainly are nothing other than an onerous contract gravely obliging the parties to contract the promised matrimony at the due time. Hence a betrothed man who without sufficient cause withdraws from a valid betrothal contract, or unduly defers the matrimony to be contracted against the will of the betrothed woman, sins gravely against justice; indeed, he is also bound to restitution if material damage has arisen for the betrothed woman from this manner of acting. But from a valid betrothal contract there is no action before a tribunal to seek the celebration of the matrimony; there is, however, an action for the

reparation of damages, if any have arisen.[456a] This action indeed can be brought before the civil or ecclesiastical forum; but it does not suspend the celebration of the matrimony.[457]

The betrothed are to be exhorted most strongly not to defer contracting matrimony unless a most urgent reason is present, because betrothals prolonged for a long time are accustomed to be a proximate danger of sinning. But what delay is gravely illicit cannot be determined by a general rule, since this depends upon many fortuitous circumstances.

[456a] Code of Canon Law, c. 1017, § 3.

[457] Pontifical Commission, June 2, 1918 (*Acta Ap. Sed.* X, 345).

716. 2. An impediment prohibiting nuptials with a third person. This impediment indeed now arises not from canon law but from the very nature of the betrothal promise. Therefore another matrimony contracted, unless the prior betrothals have first been duly dissolved, is gravely illicit; but other betrothals contracted are not only illicit but altogether invalid, since they are contracted concerning an illicit thing. Hence, for example, if a betrothed man sins with another girl and renders her pregnant under a promise of matrimony, nevertheless he is bound to marry the first betrothed woman, because the strict right of the first betrothed woman has remained intact. Not rarely, however, it is expedient that the betrothed woman then freely renounce her right.

§ 5. On The Dissolution Of Betrothals

Many causes are assigned on account of which betrothals can be licitly dissolved. They are reduced to the following, which are the principal ones.

717. 1. Mutual consent.[458]

The reason is that betrothals are a voluntary contract, which unlike the matrimonial contract was not instituted directly by God and which *a fortiori* is not a sacrament. But every voluntary contract can be dissolved by the free consent of the contracting parties. This dissolution or consent, however, ought truly to be free, and therefore not extorted by fraud, force, or fear. - Even if the betrothals were confirmed by an oath, nevertheless they can be licitly dissolved by mutual consent. For that oath is considered something accessory to the betrothals. But the accessory dies with the principal.

[458] C. 2, X 4, 1.

718. 2. A notable change supervening upon the betrothals.

It matters little whether this change has its origin after the betrothals or is then first discovered by one of the contracting parties. That change is considered notable which would have deterred one from entering into the betrothals if it had been known beforehand.[459] A change of this kind can occur:

a) **in goods of the body,** for example, if either contracting party falls into a grave disease whose cure cannot be foreseen, or if that party becomes blind, mute, deaf, and so forth;[460]

b) **in goods of fortune,** for example, if either party has lost a great part of his or her fortune. It is disputed whether betrothals can also be licitly dissolved if great riches supervene to the other party, or if a much richer marriage is offered. All teach that dissolution for this reason is almost always unbecoming, but St. Alphonsus,[461] Lehmkuhl,[462] Tanquerey,[463] and several others think that the obligation of the betrothals is not to be urged. The reason is twofold, namely: a) if the other contracting party had foreseen this change, he or

she would never have contracted the betrothals; b) if that party were now compelled unwillingly to enter matrimony, a bad outcome would be feared.

c) **in goods of the soul,** for example, if the betrothed man becomes a heretic, if he is discovered to be a drunkard, a spendthrift, contaminated by evil morals, and so forth;

d) **in external circumstances,** for example, if one party has committed a crime which now becomes public, if that party is cast into prison, or if great enmities have arisen between the families of the betrothed man and woman. The disagreement of the parents can be reduced to this cause. The reverence owed to parents requires that children seek their counsel and consent before they embrace some state of life. If the petition was reasonable, the parents cannot licitly deny consent, because children are free in the choice of a state. When children have contracted betrothals without the knowledge of their parents, and the latter, now knowing the truth of the matter, show themselves gravely unwilling, for example, because the matrimony would tend to the disgrace of the family, all the circumstances are to be diligently considered. If, after all the circumstances have been weighed, the parents are reasonably unwilling, the betrothals can certainly be rescinded, because the rule already adduced above then holds: if the betrothed man or woman had foreseen such disagreement, he or she would not have contracted the betrothals. But if the parents are unreasonably unwilling, it is not lawful by one's own authority to rescind the betrothals when the consort resists; it is lawful, however, to seek a dispensation if grave inconveniences are feared from the subsequent matrimony.

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[459] Cf. Reiffenstuel, *Ius can.*, tit. 1, l. 4, n. 255 ff.

[460] C. 3, X 4, 8.

[461] *Theol. mor.*, l. 6, n. 876.

[462] *Theol. mor.* II, n. 888.

[463] *De sacr.*, n. 841.

719. 3. Violation of betrothal fidelity.

a) **Through fornication and other gravely immodest acts committed with another person.** The reason is that by these acts either betrothed party is rendered notably less worthy and has gravely violated betrothal fidelity. But if the betrothed woman was oppressed by force, fault is indeed absent, but she has truly been rendered less worthy in body, and therefore several theologians do not oblige the betrothed man under grave sin to marry the deflowered woman, although they admonish him not to add affliction to the afflicted woman.[464] But if each betrothed party has fornicated, the mutual obligation of the betrothals remains, at least speaking *per se*; for there is a mutual compensation of the offense. In practice, however, it is almost always expedient that such betrothals be dissolved, since a matrimony between unfaithful betrothed persons of this kind will scarcely be happy; indeed, quarrels and adulteries are likely to follow.

b) **Through matrimony with another person.** Although a matrimony which someone has contracted with another person notwithstanding prior legitimate betrothals is valid, nevertheless it is gravely illicit, as is self-evident. The betrothed man or woman who has been abandoned immediately acquires liberty according to the old adage: "Let faith be broken in return with one who breaks faith." Some writers indeed teach that through the subsequent valid matrimony the **unfaithful party** does not acquire liberty, and therefore, if that matrimony is dissolved by dispensation or the death of the consort, is bound again by the prior betrothals.[465] And in truth it cannot be proved from either positive or natural law that valid betrothals are dissolved through a subsequent other matrimony illicitly contracted. Hence, at least **theoretically,** it is truer that through the

subsequent matrimony the prior betrothals are indeed suspended, but revive when the obstructing matrimony has been dissolved. In practice, however, the obligation of reassuming the prior betrothals is not to be urged excessively, since several probably teach that betrothals through a subsequent matrimony are not only suspended but also extinguished.[466] - With all writers consenting, the matter is otherwise if one party, having left the other, begins a courtship, attempts other betrothals, or attempts only a civil matrimony. For this infidelity does not dissolve the betrothals on the part of the one leaving, but only on the part of the one abandoned, who therefore can either freely withdraw or induce the unfaithful party to return.

c) **Through an undue delay of matrimony or through the departure of one betrothed party to distant lands without sufficient reason.** For in the betrothal contract there is understood the condition of celebrating matrimony at a time not so remote. But if an urgent cause for deferring the celebration of matrimony or migrating to distant regions is present, it is not lawful on this account to dissolve the betrothals. It is expedient, however, that then by mutual consent either the matrimony be deferred or the betrothals be dissolved.

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[464] St. Alphonsus, *Theol. mor.*, l. 6, n. 862.

[465] St. Alphonsus, loc. cit., n. 875; Aertnys, *Theol. mor.*, l. 6, n. 437.

[466] Thus Lehmkuhl, loc. cit., n. 853, and especially Ballerini in the notes to Gury II, n. 733.

720. 4. The choice of a more perfect state.

A state more perfect than matrimony is certainly the religious state, and indeed not only religious life in the strict sense, that is, with solemn vows, but also that of any religious congregation (provided, however, that it is legitimately approved). It is certain that betrothals are dissolved by solemn profession; for since by this profession even ratified matrimony itself is dissolved, as was proved above from the Council of Trent, *a fortiori* betrothals are dissolved. Theologians most commonly teach that betrothals are also dissolved by vows emitted in other legitimately approved congregations, because in the betrothal contract there is understood the tacit condition: "unless I choose a more perfect state."[467] Now the state in these congregations is also more perfect than the matrimonial state. Likewise, the clerical state is more perfect. Therefore betrothals are also dissolved through the reception of orders, or even through entrance into a seminary with the sincere will of receiving clerical orders.

There are writers who teach that even the **state of virginity** confirmed by a private vow of perpetual chastity dissolves betrothals entered into. St. Thomas[468] is cited for this opinion, saying: "On account of a simple vow, betrothals are to be broken"; but the mind of the Angelic Doctor is not so clearly known from this text, since certain commentators think (and indeed not without foundation) that he speaks only of a vow which preceded the betrothals. - For the opposite opinion, St. Alphonsus[469] cites St. Antoninus, Laymann, Holzmann, Sanchez, Sporer, and others. But St. Alphonsus himself calls each opinion probable. Billuart[470] says hesitantly: "Although I incline somewhat to the second [that is, that betrothals are licitly dissolved through a simple vow], I would not wish to define which is true." In practice several circumstances are to be attended to, namely, what is the primary intention of the one vowing, how great are the damages arising for the other party from the dissolution of the betrothals, whether these damages can be sufficiently compensated, and so forth.

It is to be noted that the party who is left, as soon as the other party enters a religious order or seminary, obtains liberty and therefore can enter into other betrothals; on the contrary, the party leaving remains bound until he or she has truly emitted profession or received orders. Hence more probably that party's obligation

will revive if he or she has again left the religious order or seminary, at least if the more perfect state was embraced fraudulently for the purpose of freeing himself or herself from the obligation of betrothal. But if that party has been legitimately and without fraud dispensed from a more perfect state seriously undertaken, the obligation probably does not revive.[471] - Moreover, if from the dissolution of betrothals for the sake of embracing a more perfect state notable damage arises for the abandoned party, natural law itself requires that this damage be repaired.

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[467] Cf. Billuart, *De matrim.*, diss. 2, a. 5; Tanquerey, *De sacr.*, n. 840.

[468] *Suppl.*, q. 53, a. 1, ad 1.

[469] *Theol. mor.*, l. 6, n. 873.

[470] Loc. cit., at the end.

[471] Tanquerey, loc. cit.; Cappello, *De sacram.*, n. 118.

721. 5. Pontifical dispensation.

Authors commonly teach that the Supreme Pontiff, but not a bishop (unless he has special delegated faculties), can for a grave cause dissolve valid betrothals, even when either betrothed party is unwilling.[472] In fact, the Holy See has sometimes exercised this faculty.[473] The reason is: a) because the Supreme Pontiff can dispense in ratified matrimony, as was said above, n. 681. Therefore *a fortiori* he can dispense in betrothals, which do not cause so firm a bond as ratified matrimony; b) because, although from betrothals there arises for each betrothed party a natural right that the other not withdraw from the promise made, nevertheless, on the other hand, the worst effects are accustomed to flow from coerced marriages, both for the contracting parties themselves and for the Church herself. But the Pope has the right of preventing harms to the Church, and therefore by force of the **high dominion** which he has over all Christians, he can limit the right of some individual person. For example, Peter contracted valid betrothals with Bertha, whom he abandoned. Under a promise of matrimony he renders Caia pregnant, whom he now wishes to marry and with whom he has already contracted a civil matrimony. Bertha opposes this matrimony with all her strength; but Peter with all his strength refuses to leave Caia and marry Bertha. If the Church in this case did not dispense in the prior betrothals and did not permit matrimony between Peter and Caia, concubinage would be present with great scandal of the people and the spiritual ruin of Peter and Caia, without Bertha's cause being changed thereby even in the least for the better. - Sometimes the Church, in dissolving valid betrothals, imposes an indemnification to be paid by the party withdrawing unjustly;[474] but sometimes it leaves the judgment concerning the payment of this indemnification to the civil tribunal. For an action for the reparation of damages which arise from the dissolution of betrothals belongs to the mixed forum.[475]

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[472] Cf. Aertnys, *Theol. mor.*, l. 6, n. 442; Tanquerey, loc. cit., n. 844.

[473] Cf. Sacred Congregation of the Council, July 25, 1896 (*Analecta eccl.* IV [1896], 294).

[474] *Caus. Ravennat.*, December 15, 1900 (*Analecta eccl.* IX [1901], 102).

[475] Thus the Sacred Congregation of the Council, July 25, 1896; cf. Pontifical Commission, June 2-3, 1918, dub. IV.

722. Scholion. On the private or authoritative dissolution of betrothals. Since according to ecclesiastical law betrothals are no longer valid unless they are public, that is, confirmed by witnesses and set down in writing, hence the dissolution of betrothals will hereafter be more difficult and much rarer, since the betrothal contract can no longer be entered into so precipitously and rashly as formerly not rarely happened. But whether the dissolution of betrothals can be made by one's own authority, or whether an authentic dissolution

is required, is not so certain. Nothing concerning this matter has thus far been determined by the Roman Curia. Knecht[476] confidently affirms that a private dissolution suffices and calls this opinion certain. Whatever may be said of this opinion, an authentic dissolution seems to be required at least in the following cases, namely: a) if it has thus been established by the particular law of some diocese; b) if the existence and sufficiency of the cause of dissolution is seriously doubted, for it is not lawful by private authority to violate the certain right of another with a doubtfully sufficient motive; c) if scandal arises from the private dissolution of the betrothals. - Even in the case of a private dissolution of betrothals, the dissolution is to be announced to the witnesses before whom they were contracted.

[476] *Die neuen eherechtl. Dekrete*, § 53. Cappello, *De sacram.*, n. 136, speaks in almost the same manner.

Article II. On the Examination of the Betrothed and on Banns or Matrimonial Proclamations

723. 1. The examination of the betrothed must be conducted beforehand by the parish priest,[477] before the proclamations are publicly announced. If those about to marry belong to different parishes, that parish priest who will assist at the celebration of the matrimony will ordinarily conduct the examination of the betrothed. By particular law the form of this examination is often determined. The object of the examination is twofold, namely: 1. **an investigation concerning impediments that may exist** (it is called the general or juridical examination); 2. **instruction concerning the obligations of spouses** (the special or private examination). Before all else the parish priest must (under grave obligation) require from each of those about to marry a certificate of baptism received, if it was conferred upon them in another parish.[478] This also holds if either of the contracting parties is a heretic,[479] because otherwise the impediment of disparity of worship could be present. A certificate of confirmation received is not required, but the Code of Canon Law, can. 1021, § 2, establishes: "Catholics who have not yet received the sacrament of confirmation are to receive it before they are admitted to matrimony, if they can do so without grave inconvenience." Then proof of free status is to be required according to the Instruction of the Holy Office of August 22, 1890,[480] or according to the statutes in force in each diocese.[481] Then it is to be investigated whether perhaps an impediment stands in the way of contracting matrimony. Then, if there is any doubt, the parish priest is to inquire whether those about to marry know at least the rudiments of the Catholic faith;[482] he is diligently to instruct those who are ignorant; but if they refuse to be instructed, there is no ground for rejecting them from matrimony.[483] Finally, with great prudence, modesty, and paternal severity, the parish priest is to instruct those about to marry concerning those things that are lawful between spouses and those that are not lawful, yet without descending too much into particulars.[484] - Even if this examination of the betrothed is not so necessary when neither an impediment of matrimony nor a defect of sufficient knowledge in the betrothed is present, nevertheless the parish priest is not to omit giving salutary admonitions to the newlyweds. Wherefore the Code of Canon Law, can. 1033, establishes: "The parish priest is not to omit, according to the diverse condition of the persons, teaching the betrothed the sanctity of the sacrament of matrimony, the mutual obligations of the spouses, and the obligations of parents toward offspring; and he is vehemently to exhort them diligently to confess their sins and devoutly to receive the Most Holy Eucharist before the celebration of matrimony."

[477] It is the parish priest who has the right of assisting at the matrimony (Code of Canon Law, can. 1020).

[478] Sacred Congregation of the Sacraments, March 6, 1911, and July 4, 1921; Code of Canon Law, can. 1021.

[479] Holy Office, May 25, 1897.

[480] *Collect. de Prop. Fide*, n. 1740.

[481] Thus, for example, for the City the Decree of the Cardinal Vicar given April 5, 1902, is to be observed. A special difficulty is accustomed to arise if there is question of the matrimony of vagrants. Sometimes an oath concerning free status is required from them. If either or both of those about to marry were previously bound by matrimony, certain testimony concerning the death of the prior spouse is required. In more difficult cases recourse must be had to the bishop of the place.

[482] *Rit. Rom.*, tit. 8, c. 1, n. 1; Benedict XIV, *De syn. dioec.*, l. 8, c. 14, n. 5.

[483] Pontifical Commission, June 2, 1918 (*Acta Ap. Sed.* X, 345).

[484] Cf. Krick, *Der kirchl. Brautunterricht*; Nist, *Brautunterricht* (1920).

2. Matrimonial Proclamations

724. Notion. Proclamations (*banns, matrimonial edict, announcement*) are public announcements which must precede the celebration of matrimony for this purpose, that impediments perhaps standing in the way of matrimony may be detected more securely and easily. Already from ancient times the custom prevailed of publicly announcing the celebration of matrimony in church. The Fourth Lateran Council (1215)[485] prescribed one proclamation. But the Council of Trent[486] established that three proclamations be made at determined places and times. The Code of Canon Law, can. 1024, establishes the same. - In several regions civil proclamations are also prescribed.

[485] It is found in c. 3, X 4, 3.

[486] Sess. 24, c. 1, *de reform. matrim.*

725. Obligation. The ecclesiastical law of proclamations binds under grave obligation.

Such is the common opinion. The gravity of this obligation may be perceived: a) **from the grave end of this law**; for the end of the proclamations is: to avoid clandestine marriages, to detect impediments of matrimony, and to foster the spirit of unity in parishes; b) **from the gravity of the penalties** that were inflicted upon transgressors in the old law, namely, a parish priest rashly omitting the proclamations incurred suspension from office for three years. The spouses themselves who entered matrimony without preceding proclamations obtained dispensation much more difficultly from an impediment that perhaps stood in the way of their matrimony. Moreover, their matrimony, which was null because of an occult impediment, was not considered as a putative matrimony, and therefore the children born were held to be illegitimate.[486a] - From these things it is evident that the law concerning the making of proclamations binds *per se* under grave obligation. Therefore all teach that the omission of three proclamations made without grave necessity is a mortal sin.[487] St. Alphonsus,[488] and with him several other theologians, teaches that the omission of two proclamations is likewise a grave sin. But the common opinion teaches that the omission of one proclamation is a venial sin.[489] **For mixed marriages proclamations ought not, indeed cannot, be made,**[490] unless by particular law they are sometimes tolerated or prescribed.[491] Mention of the religion of the contracting parties is then to be omitted.[492]

If, after the proclamations have been completed, the matrimony is deferred beyond **six months**, the proclamations are to be repeated, unless it seems otherwise to the local Ordinary.[493]

[486a] Council of Trent, sess. 24, c. 5, *de reform. matrim.*, and c. 3, X 4, 3.

[487] Lehmkuhl, *Theol. mor.* II, n. 861.

[488] *Theol. mor.*, l. 6, n. 990.

[489] Tanquerey, *De sacr.*, n. 856.

[490] Rescript of Pius VI to the Archbishop of Mechelen, May 31, 1783.

[491] For example, in the Archdiocese of Cologne; cf. Vogt, *Das kirchl. Eherecht*, § 13.

[492] Code of Canon Law, can. 1026.

[493] Ibid., can. 1030.

726. The time of the proclamations. The Code of Canon Law, can. 1024, prescribes: "The proclamations are to be made on three successive Sundays and other holy days of obligation in church during the solemnities of the Masses, or during other divine offices which the people attend in large numbers." It is therefore required that the proclamations be made:

1. **on three Sundays or feast days** on which, by universal or particular precept, the obligation of hearing Mass is imposed upon the faithful.

Moreover, in almost every diocese there are special statutes concerning the days on which it is lawful to make the proclamations. Without a special faculty it is not lawful to make the proclamations on suppressed feast days. Nevertheless, the bishop can, at least in a particular case, grant this permission for a reasonable cause.

2. **successively**, that is, with no feast day omitted between them.

Authors commonly teach with St. Alphonsus that it would not be a grave sin if the parish priest omitted one intervening day; indeed, it would be no sin if a sufficient reason existed. In several dioceses it is forbidden that the proclamations be made on three immediately successive days, for example, on Easter Sunday and the second and third days after Easter.

3. **in church during the solemnities of the Masses or during other offices.** The proclamations can therefore be made not only at the principal Mass, but also at Vespers, at the Evening Salutation, and at other divine offices, provided that the people are accustomed to attend in large numbers.

When the proclamations have been completed, three days are to be awaited before the matrimony is celebrated (unless a reasonable cause calls for otherwise).[494] Wherefore, if the final proclamation was made on Sunday, the matrimony cannot be entered until Thursday. The reason for this law is easily perceived; for sufficient time is thus granted so that those who perhaps heard the proclamations for the first time on this occasion can reveal the impediments standing in the way.

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[494] Ibid., can. 1030, § 1.

727. The form of the proclamations is given as follows in the Roman Ritual:[495] "Let it be known to all here present that N., son of N., of the family N., of the parish N., and N., daughter of the family N., of the parish N., intend to contract matrimony with one another. Therefore we admonish each and all that, if anyone knows there to be between them any impediment of consanguinity or affinity or spiritual relationship, or any other impediment whatsoever which prevents them from contracting matrimony with one another, he ought to reveal it as soon as possible to the parish priest or the local Ordinary; and we admonish this for the first time (if it is the first), or for the second time (if it is the second), or for the third time (if it is the third proclamation)."

In some dioceses a shorter formula is accustomed to be prescribed; for the formula of the Ritual does not have preceptive but directive force. Care must always be taken that nothing injurious to reputation is published in

the proclamations; for example, if the bride is an illegitimate daughter or has already been corrupted, this must in no way be announced in the proclamations. The proclamation is to be made in a loud and intelligible voice, since otherwise the end of the law is not obtained. But because in large parishes numerous proclamations must be made, which are accustomed to be without any fruit, with weariness to hearers who by no means know the persons about to marry, with great expenditure of time, and with deprivation of religious instruction, hence "the local Ordinary can, for his territory, substitute for the proclamations the public posting of the names of the contracting parties upon the doors of the parish church or another church for a space of at least eight days, yet in such a way that within this space two holy days of obligation are included."[496]

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[495] Tit. 7, c. 1, n. 8.

[496] Code of Canon Law, can. 1025.

728. The place where the proclamations are to be made is regularly the parish church, or another church designated for this purpose by the bishop, in the place of the domicile or quasi-domicile of those about to marry.

Gasparri[497] rightly writes: "But if the parish priest were to publish the matrimony in another church of the parish, with a large number of the faithful present, it does not seem that he should be disturbed, because on the one hand the end of the law is preserved and on the other the letter does not stand in the way, since the Council of Trent does not expressly say that the matrimony is to be published in the parish church. Indeed, if in the parish church there were no gathering of the faithful on that day and in another church there were a large one, it would be more expedient that the proclamations be made in the latter than in the former.... Indeed, several Doctors cited by St. Alphonsus[498] teach that the proclamations can be made even outside a church at the time of a great sacred gathering, for example, on account of a procession, a sermon, ... because the end of the law is obtained. And this is probable, at least without mortal sin, and, if some cause is present, without any fault. But the parish priest, if there is time, is to consult the Ordinary, who, if he can dispense from the banns, can *a fortiori* permit this."

The matrimonial proclamations must be made both in the parish of the bridegroom and in the parish of the bride. Therefore, if the bridegroom and bride are of the same parish, it suffices that the proclamations be made in this parish alone; but if they have a domicile or even a quasi-domicile in different parishes, the proclamations must be made in all these parishes. If a party has resided in another place for six months after attaining puberty, the parish priest is to explain the matter to the Ordinary, who according to his prudence either requires that the proclamations be made there, or prescribes that other proofs or conjectures concerning free status be gathered.[499] But because this not rarely causes excessive difficulties, for example, if a maidservant about to marry has had such residence in ten different places, bishops are accustomed to give easier general norms according to which the place of the proclamations is determined.

The marriages of **vagrants**, that is, of those who nowhere have a proper parish priest or Ordinary by reason of domicile or one month's residence,[500] are proclaimed (with the bishop's permission previously obtained) in the place where they now reside or intend to contract matrimony.[501] Moreover, an **oath of canonical freedom** concerning their free status is required from them. By particular law proclamations are sometimes also prescribed in the place of their origin.[502]

Diocesan statutes are also accustomed to determine, according to can. 1507, the fee, if any, to be paid for conducting the proclamations.[503]

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[497] *De matrim.* I, n. 169.

[498] *Theol. mor.*, l. 6, n. 991.

[499] Code of Canon Law, can. 1023, § 2.

[500] Thus the Sacred Congregation of the Sacraments, March 12, 1910, ad 5 (*Acta Ap. Sed.* II, 195).

[501] Vogt, *Das kirchl. Eherecht*, § 14.

[502] Gasparri, *De matrim.* I, n. 133.

[503] Vogt, loc. cit., § 13.

729. A dispensation from the banns can be granted not only by the Supreme Pontiff, but also by a bishop, a vicar general, and (when the see is vacant) a capitular vicar, and by a prelate "Nullius" for his subjects. If there are several proper Ordinaries, the one in whose diocese the matrimony is celebrated has the right of dispensing; but if the matrimony is entered outside the proper dioceses, any proper Ordinary can dispense.[504] The dispensation is to be granted gratuitously, except for a modest payment under the title of chancery expenses.[505]

The bishop cannot dispense from the banns unless a legitimate cause exists. But what cause is legitimate is not otherwise determined in the law, except for a malicious obstruction of the matrimony. Theologians and canonists assign as sufficient causes: the defamation of spouses who live in occult concubinage having before men the appearance of matrimony; a matrimony to be contracted at the point of death; a founded suspicion that the betrothed, in contempt of Christian matrimony, may contract only a civil matrimony; and so forth.

By common law **a parish priest** cannot dispense from the banns; nevertheless, by delegation of the bishop he not rarely has the faculty of remitting one proclamation when a just cause is present.[506] In a case of necessity, namely, if the celebration of the matrimony is urgent, the parish priest can omit the banns, since no ecclesiastical law binds with grave inconvenience. - In the matrimony of **supreme princes** the banns are customarily omitted, as authors commonly teach.

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[504] Code of Canon Law, can. 1028, § 2.

[505] Ibid., can. 1056.

[506] Parish priests in North America have such a faculty. Cf. Tanquerey, *De sacr.*, n. 864.

730. The obligation of revealing known impediments. The principal end of the proclamations is that impediments of matrimony, if there are any, be detected. Hence it follows that all who know that some prohibitory or diriment impediment stands in the way are bound (*per se* under grave obligation) to reveal this impediment.[507] For the proclamations would be vain unless on the part of those hearing them there arose an obligation to reveal those things which the Church desires to know. Moreover, if there is question of the existence of some diriment impediment, its concealment would render the matrimony invalid, so that the betrothed would live in concubinage (at least material) and would lack many graces. Therefore fraternal charity itself also demands that diriment impediments be denounced. The manner of denouncing impediments is not determined by ecclesiastical law; but the order of charity demands that those about to marry themselves first be admonished, if the revelation of the impediment would bring some infamy. But if the admonition is useless, the matter is to be disclosed to the parish priest, who with great discretion will provide for the reputation of the betrothed.

The causes excusing from this denunciation are principally the following:

a) **grave harm to oneself or another.**

b) **the uselessness of the denunciation.**

For example, if the impediment has already been denounced by another or by those about to marry themselves.

c) **a sacramental or professional secret.**

Hence a confessor, physician, midwife, and so forth, cannot reveal those things which they know by reason of their office; but they are bound (insofar as is possible) to admonish those about to marry to reveal the impediment themselves. A natural or promised secret alone does not excuse from the obligation of revealing impediments, because such a secret must be violated in order to prevent grave harm, as happens in the case.

The denunciation of an impediment is to be made **as soon as possible**; and if the parish priest has proved it worthy of belief, he must as quickly as possible seek a dispensation from the detected impediment, provided, however, that dispensation is possible. Otherwise he cannot assist at the matrimony. When a doubt has arisen concerning the existence of some impediment, the parish priest is to investigate the matter more accurately by questioning: a) under oath at least two trustworthy witnesses, provided that there is not question of an impediment from knowledge of which infamy would arise for the parties; and b) if necessary, the parties themselves as well. But he is not to assist at the matrimony without consulting the Ordinary if the doubt still remains. Thus the Code of Canon Law, can. 1031, § 1.

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[507] Code of Canon Law, can. 1027.

731. Scholion. On the perplexing case. Theologians call a case perplexing when some impediment is detected immediately before the celebration of the matrimony, and the matrimony cannot be deferred without most grave inconvenience, nor is there time to obtain a dispensation (even by telegraph or telephone). The following norms can be employed for resolving a perplexing case:

a) If the detected impediment is truly **public**, such that it can be proved in the external forum and has in fact already come to the knowledge of others (for example, consanguinity or affinity), then, outside an urgent danger of death, the matrimony is to be suspended until the dispensation has been obtained. The reason is that in this case no infamy arises; but other harms that may arise are to be esteemed as less than a conditional or null matrimony. Nothing, however, prevents the celebration of the matrimony from being feigned before those present if grave causes are present. But the true matrimony must then be celebrated afterward, once the dispensation has been obtained. Moreover, this case is scarcely possible, since the dispensation can be sought (by telegraph or telephone) from the local Ordinary, who according to the new law can dispense in these straits from all impediments of ecclesiastical law except two: those arising from the sacred order of priesthood and from affinity in the direct line.[508] But in urgent danger of death a dispensation can be made in another and easier manner even from public impediments, except for the two just enumerated.[509]

b) If the impediment is **occult** (whether by law or in fact), a distinction is to be made. For it is either: a) an impediment in which the Pope is not accustomed to dispense, for example, the impediment of crime committed by both parties. Then ordinarily one must desist from the celebration of the matrimony, because it is not expedient to exhort the contracting parties to live as brother and sister, nor to leave them in good faith, in which perhaps they still are; for this good faith can easily cease afterward, upon which the greatest inconveniences could arise. Or it is: b) an impediment in which the Pope is accustomed to grant a dispensation. Then, if the bishop cannot be approached, or not without danger of violating the secret, any

confessor can dispense, but for the internal forum in the act of sacramental confession alone.[510] If knowledge of such an occult impediment is had outside confession, the parish priest also, or a priest delegated to assist at the matrimony, can dispense, and indeed outside confession; but he must inform the Ordinary of the granted dispensation, and the granted dispensation is to be recorded in the marriage register.[511]

From what has been said it is evident that according to modern law a perplexing case is no longer truly perplexing, or does not cause grave difficulties.

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[508] Code of Canon Law, can. 1045, § 1.

[509] Ibid., can. 1044.

[510] Ibid., can. 1045, § 3.

[511] Ibid., can. 1046.

Chapter VII. On Matrimonial Consent

We divide this chapter into two articles: 1. On matrimonial consent and its qualities. 2. On defects of matrimonial consent.

Article I. On Matrimonial Consent and Its Qualities

"Matrimony is effected by the consent of the parties, legitimately manifested between persons capable according to law; this consent cannot be supplied by any human power."

Thus the Code of Canon Law, can. 1081, § 1. As is evident from what was said above, n. 654, consent is at once the matter, form, and efficient cause of the sacrament of matrimony, although under a diverse respect.

§ 1. On the Qualities of Matrimonial Consent

Matrimonial consent must be:

1. true, that is, not fictitious or simulated or jocular.

732. For each contracting party must have the true and sincere intention of handing over to the other a right over his or her own body in relation to generation. For this reason a union between a man and a woman made for other ends, for example, for mutual solace and protection alone, for obtaining only the wealth of the other party, and so forth, is not a true matrimony. - A fiction or simulation of matrimonial consent is present when one contracting party externally indeed seriously and duly pronounces the words or other signs expressing consent, but interiorly has an entirely different intention. The intention of such a simulator can be threefold: 1. of not contracting at all; 2. of contracting indeed, but not binding oneself; 3. of contracting and binding oneself indeed, but not fulfilling the obligations that arise. This third simulation is indeed gravely sinful, because it is a notable unjust deception of the other party, but it does not invalidate the matrimony contracted, because the essence of matrimony consists in sincere consent to contract. But the first and second simulation invalidate matrimony, because true matrimonial consent is then not present.

Since the internal consent of the mind is always presumed to conform to the words or signs employed in celebrating the matrimony,[512] in the external forum such fictions are not acknowledged except after clear proof, which indeed is quite difficult. For even the sworn affirmation of one or both spouses does not suffice,

but other witnesses or indications so certain that no reasonable doubt concerning the existing fiction remains are required.

You will ask: a) **Whether one who consents fictitiously in a Christian matrimony is guilty of sacrilege properly so called.** Some affirm it, for example, Pirhing,[513] Schmalzgrueber,[514] and Marc,[515] because he simulates the sacrament of matrimony, which is true sacrilege, from which not even grave fear excuses, as is evident from proposition 29 condemned by Innocent XI: "Urgent grave fear is a just cause for simulating the administration of the sacraments."[516] - Other authors more probably deny it, for example, St. Alphonsus,[517] D'Annibale,[518] Gasparri,[519] and so forth. The reason is that the simulation of a sacrament, which is sacrilege, is present only when someone indeed posits the matter and form of the sacrament, but withholds the internal intention of administering a true sacrament, such that the entire rite is vain and null. But one who fictitiously consents in matrimony posits no matter and form of the sacrament of matrimony, because he destroys the matrimonial contract itself, which is the matter and form of this sacrament, and therefore he does not properly simulate the sacrament of matrimony. This reason acquires still greater force from what is soon to be said.

b) **Is it ever lawful to give fictitious matrimonial consent?** Affirmatively, provided that a grave cause is present. Such is the common opinion.[520] Hence, for example, it is lawful to give fictitious consent if someone is compelled by grave unjust fear to enter matrimony, or if someone discovers that he is bound by some diriment but dispensable impediment when all things are already prepared for the nuptials and the matrimony can neither be deferred nor a dispensation obtained here and now. But if in these cases it is lawful to give fictitious consent, it is evident of itself that not every fictitious matrimonial consent is true sacrilege, because it is never lawful to commit sacrilege.

c) **To what is one bound who has consented fictitiously with grave fault?** First, he cannot seek or render the conjugal debt. This is evident, because such an act would be foul fornication. Then he is bound to repair the unjust harm that he inflicted upon the other party by deceiving that party. Unless great harms are feared from convalidating the matrimony, he is bound to give true consent as soon as possible, so that the matrimony becomes legitimate. The reason is that when two freely contract, with one party proceeding sincerely, the other party is likewise bound to proceed sincerely.[521]

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[512] Code of Canon Law, can. 1086, § 1.

[513] *In 4*, tit. 1, n. 97.

[514] *In 4*, tit. 1, n. 230.

[515] *Instit. mor.*, n. 1978.

[516] Denz., n. 1179.

[517] *Theol. mor.*, l. 6, n. 62.

[518] *Summula Theol. mor.* III, § 295.

[519] *De matrim.* II, n. 795.

[520] Cf. St. Alphonsus, *Theol. mor.*, l. 6, nn. 62 and 887; Marc, loc. cit. Milante seems to be almost the only one who denies this.

[521] Cf. Billuart, *De matrim.*, n. 2.

733. 2. free and deliberate.

That matrimonial consent must be free is evident from the ancient Corpus of Law:[522] "Matrimony is contracted by consent alone, and when inquiry is made concerning that consent, the one whose mind is to be investigated

ought to enjoy full security, lest through fear that person say that what he hates is pleasing to him, and the outcome which is accustomed to proceed from unwilling nuptials follow." - St. Thomas[523] offers two reasons on account of which matrimonial consent ought to enjoy full liberty: a) because matrimony signifies the union of the Church with Christ. But this union is a free union of love. Therefore likewise in every matrimony there ought to be a free union of love. b) The bond of matrimony is perpetual. Hence that which is repugnant to perpetuity takes away matrimony. But fear which befalls a constant man takes away the perpetuity of a contract, because *restitutio in integrum* can be sought. And therefore this coercion of fear which befalls a constant man takes away matrimony. - The matrimonial yoke, although willingly assumed, is already hard; but it becomes cruel servitude when it is coerced.

Since the matrimonial contract is a most grave matter, previous serious deliberation with perfect knowledge is moreover required. Wherefore if someone is insane or drunk or hypnotized, he does not have sufficient deliberation for giving valid matrimonial consent, and a matrimony perhaps entered in this way is null.

Force, fear, and error are opposed to the necessary liberty and deliberation; these will be treated more fully below.

3. concerning the present.

As was said above, the essence of matrimony consists in consent given concerning the present; therefore consent concerning the future does not suffice.

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[522] c. 14, X 4, 1.

[523] *Suppl.*, q. 47, a. 3.

734. 4. mutual and simultaneous.

Matrimony is a bilateral contract, for which it is altogether required that both contracting parties give mutual consent. Therefore it does not suffice that one alone give consent, but it is required that both contracting parties give and accept consent. Then it is necessary that the handing over and acceptance of the consents be simultaneous. Nevertheless, a moral union suffices. Hence, for example, if Caius says to Sempronia: I take you in matrimony, and Sempronia here and now responds nothing, but deliberates and after an hour says to Caius, who is waiting: I too take you in matrimony, such consent is sufficiently simultaneous. In practice, according to the discipline now in force, a question concerning the simultaneity of consent can rarely arise. But in ancient times, when marriages were not rarely contracted through a proxy, this question was of greater importance.

735. 5. externally and legitimately manifested.

The Council of Florence declared in the Decree for the Armenians: "The efficient cause of matrimony regularly is mutual consent expressed by words concerning the present."[524] - This word "regularly" does not pertain to mutual consent, which must be present not only regularly but always, but to "expressed by words concerning the present." For although in extraordinary cases matrimonial consent can be expressed by any intelligible external sign, for example, by writings, nods, or a proxy, nevertheless regularly it must be expressed through clearly pronounced words. Hence the parish priest assisting at the matrimony is to require from those about to marry that they express consent not only by nods or tears but also by clear words, because otherwise many inconveniences can arise, as experience testifies. Innocent III[525] said: "Matrimony is truly contracted through the legitimate consent of the man and woman, but as far as the Church is concerned words expressing consent concerning the present are necessary; for the deaf and mute can contract

matrimony through mutual consent without words." From this some deduce that words expressing consent are prescribed by the Church under grave obligation. More probably, however, this ecclesiastical precept binds only under light obligation. Thus St. Alphonsus,[526] who adds: "But modesty or another reasonable cause would well excuse from such a fault." In our times, indeed, modesty alone does not seem to be a sufficient cause for abstaining from words expressing matrimonial consent. For the Code of Canon Law, can. 1088, simply establishes: "The betrothed are to express matrimonial consent by words; nor is it lawful for them to employ equivalent signs if they can speak."[527] - Moreover, the parish priest himself is commanded, in receiving the consent of those about to marry, to employ that formula of words which is prescribed in the statutes of each diocese. For the Council of Trent[528] established: "The parish priest, having questioned the man and woman and understood their mutual consent, is either to say: 'I join you together in matrimony, in the name of the Father and of the Son and of the Holy Spirit,' or is to employ other words according to the received rite of each province." - Matrimonial consent is **legitimately manifested** when all those things prescribed by ecclesiastical law, both as regards liceity and as regards validity, are observed. All these things will be treated below, when there is discussion of the celebration of matrimony.

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[524] Denz., n. 702.

[525] c. 25, X 4, 1.

[526] *Theol. mor.*, l. 6, n. 888.

[527] Can. 1088, § 2.

[528] Sess. 24, c. 1, *de reform.*

736. Scholion. On the manifestation of consent through a proxy.[529] A few things are to be said concerning this matter, since in present times it is not so practical, because it rarely happens.

For the **validity** of such a matrimony it is required:

1. that there be a **special mandate** for contracting with a determinate person. This mandate must be signed: a) by the mandating party himself; but if he does not know how to write, this is to be noted in the mandate and another witness is to be added who signs the document; b) or by the parish priest or Ordinary of the place in which the mandate is made, or by a priest delegated by either one, or by two witnesses.
2. that, before the proxy contracts in the name of the mandating party, the mandating party has not revoked the mandate or fallen into insanity.
3. that the proxy exercise his office personally and not through another subdelegated person.

Moreover, it is prescribed: a) that diocesan statutes perhaps enacted concerning this matter be observed; b) that a just cause be present; c) that the permission of the Ordinary be had if time permits.

Matrimony can also be contracted through an interpreter, but not also through letters, since the Code of Canon Law[530] generally establishes: "For contracting matrimony validly, it is necessary that the contracting parties be present either personally or through a proxy." But if matrimony is contracted through letters, the contracting parties are not present.

6. absolute and not conditional.

Authors warn that the matrimonial contract cannot licitly be entered under a condition unless the bishop has expressly permitted this for most grave reasons. In our times such permission is scarcely ever found.[531] But it happens not so rarely that those about to marry on their own authority place conditions in contracting matrimony; by this unhappy manner of acting the very validity of the matrimony is placed in danger. Hence certain brief rules drawn from the Code of Canon Law, can. 1092, are indicated here for discerning whether a matrimony entered conditionally is valid or not. But we omit several cases adduced by older authors which today have scarcely any practical utility. For suspensive, resolutory, and interpretative conditions are customarily distinguished.[532]

[529] Cf. Code of Canon Law, can. 1089-1091.

[530] Can. 1088, § 1.

[531] Cf. Austrian Instruction, § 55.

[532] Cf. above, II, n. 261.

§ 2. On Conditional Consent

737. A suspensive condition is one which suspends the validity of a contract until it has been fulfilled; for example: I contract matrimony with you if your maternal uncle will give you a dowry.

A **resolutory condition** is called one which, when it supervenes, dissolves the contract entered; for example: I sell you this house until the death of my father. After the death of the father the contract of sale is dissolved by that very fact. Because of the indissolubility of matrimony a resolutory condition is impossible in the matrimonial contract.

An **interpretative condition** is called one which is indeed judged to have been implicitly present, but was not explicitly placed; for example, if the bridegroom had known the poverty of the bride, he would never have married her. These interpretative conditions produce no effect, unless, however, they constitute substantial error or error redounding upon the person, as will be said below concerning the impediment of error.[533]

Rule I. A matrimony entered under a condition concerning the present or the past is valid or invalid according as the condition is or is not fulfilled. Thus the Code of Canon Law, can. 1092, n. 4.

For example, Caius contracted matrimony with Tullia under the express condition that Tullia had preserved her virginity inviolate. If the matter is so, the matrimony is valid; otherwise it is null.[534]

[533] N. 788.

[534] Cf. *Causa Versaliens.*, *Acta Ap. Sed.* X (1918), 388 ff.

738. Rule II. A matrimony contracted under an honorable contingent condition concerning the future is suspended until the condition has been fulfilled; but when the condition has been fulfilled the matrimony becomes valid by that very fact, nor is a renewal of consent (*per se*) necessary.

Such is the common opinion of authors, which rests upon c. 5, X 4, 5;[535] for example, Caius contracts matrimony with Laetitia under the condition that her father is to give consent. This matrimony is suspended until the father actually gives consent; when this has been given, the matrimony becomes valid without a renewal of consent. Moreover, those things which hold concerning the fulfillment of a condition hold likewise concerning the renunciation of a condition placed. If Caius in the example adduced were to say to Laetitia: I renounce the condition placed, the matrimony would immediately become valid, provided that the

matrimonial consent previously given had persevered. Indeed, an express renunciation is not required, but an implicit renunciation suffices, such as can be had through carnal intercourse freely exercised between the contracting parties. Hence some authors teach that in this case there is still in our days the so-called presumed matrimony, which was otherwise abolished by Leo XIII in the Constitution *Consensus mutuus* (1892).[536] - If a matrimony was contracted under the condition: "if the Pope shall have dispensed," then, once the pontifical dispensation has been obtained, consent is to be renewed in the form prescribed by the laws. Thus from positive law and, more probably, also from natural law.[537] The reason is that before the pontifical dispensation was obtained the contracting parties were incapable of giving efficacious consent. - Moreover, in practice it is much better that a renewal of consent always be required when there is question of a matrimony previously contracted under a condition which, once the condition has been fulfilled, has become absolute. If a matrimony has been contracted under a condition, before the fulfillment of the condition either contracting party can indeed validly withdraw from the contract entered; nevertheless, that party is accustomed to act illicitly unless the other party freely consents to the dissolution of the contract. This is evident of itself, because one who thus withdraws breaks the faith given.

[535] Cf. Gasparri, loc. cit., n. 849; De Smet, loc. cit., n. 87.

[536] Cf. De Smet, *De sponsal. et matrim.*, n. 87; Vogt, *Das kirchliche Eherecht*, § 31.

[537] Cf. Gasparri, loc. cit. II, 994; Feije, *De imped. et dispens. matrim.*, n. 648; De Smet, loc. cit., 994. Cappello, *De matr.*, n. 640, asserts that from natural law there is no obligation of renewing consent.

739. Rule III. A matrimony contracted under a condition concerning a future dishonorable, necessary, or impossible contingency, which nevertheless is not contrary to the substance of matrimony, is valid.

For such conditions are judged as not added.[538] Hence, for example, a matrimony is valid which was contracted under the condition that the woman must steal a large sum of money from her father. Another and indeed celebrated example of such a dishonorable condition is a stipulation concerning the education of offspring in heresy or infidelity. Although some authors[539] wish this condition to be placed as directly **contrary to the substance of matrimony** (at least if it has been reduced to a pact), since it is contrary to the spiritual good of the offspring, nevertheless the more common and truer opinion teaches that those who make a pact in this manner indeed sin most gravely, but contract validly unless another diriment impediment stands in the way. The reason is that this condition is commonly held not as a condition *sine qua non*, but as a pure mode added to the matrimonial contract. Then, even if the education of the offspring in heresy has been truly and expressly stipulated, this condition indeed most gravely violates the spiritual good of the offspring, but not its natural good. But only conditions destroying the natural good of the offspring seem to invalidate the matrimony to be contracted.[540] This opinion indeed is confirmed from the constant practice of the Church, which has always indeed reproved these pacts concerning the total or partial education of the offspring in heresy or infidelity, but nowhere has established that marriages thereby become invalid.

[538] "Conditions placed in matrimony, if they are dishonorable or impossible, must on account of its favor be held as not added" (c. 7, X 4, 5). Thus also the Code of Canon Law, can. 1092, n. 1.

[539] Weber, *Ehehindernisse*, § 3; Lehmkuhl, *Theol. mor.* II, 880 note; Haine, *Elem. Theol. mor.* IV, q. 46.

[540] Cf. Wernz-Vidal, *Ius can.* V, n. 518; Noldin-Schmitt, *De sacr.*[19], n. 631.

740. Rule IV. A matrimony contracted with a condition which is contrary to the substance of matrimony is null.[541]

The reason is that consent of this kind involves a contradiction. For such a contracting party indeed wills matrimony, but by the condition placed immediately destroys it. But the substance of matrimony consists in three goods, namely, offspring, fidelity, and sacrament, concerning which there was discussion above.[542] Hence, for example, marriages which are contracted under a condition of avoiding generation, or of not begetting more than two children and thereafter abusing matrimony, or of obtaining a divorce if one pleases, are invalid. Certainly it must be established that such a truly suspensive condition was **explicitly** placed before the matrimony is declared null on account of this defect. For as long as any doubt remains, one must stand for the validity of the matrimony, since it enjoys the favor of law.[543] In the external forum a matrimony is not accustomed to be declared invalid on account of these conditions placed unless it is established that they were expressly reduced to a pact. Hence the marriages of heretics who think divorce lawful are nevertheless judged valid, because a condition of divorce is not accustomed to be expressly reduced to a pact. On October 2, 1680, to the question, "Whether a matrimony contracted between a Catholic woman and a schismatic heretic, with a condition of violating or dissolving the matrimony, is valid?" the Holy Office responded: "If these things have been reduced to a pact, ... the marriages are null; but otherwise, they are valid."

Authors are also accustomed here to raise the question **whether a matrimony entered under a condition of observing continence, or even with a vow of chastity, is valid.** The more probable opinion teaches that such marriages are valid, provided that the right to intercourse is not excluded. The reason is that in marriages of this kind the contracting parties grant to one another the full **right** to the use of matrimony; but the essence of matrimony consists in such consent. But that which they then promise to one another, that they will never use the right granted, is accidental and does not take away the essence of matrimony. If both contracting parties promise one another from the beginning that they will never use the matrimonial right, and *a fortiori* if they emit a perfect vow of chastity, they are said to enter a **Josephine marriage**,[544] because such a matrimony is judged to have existed between St. Joseph and the Blessed Virgin.[545] But such spouses, if they used the matrimony, would indeed sin against the vow, but not against chastity.

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[541] Thus c. 7, X 4, 5, and Code of Canon Law, can. 1092, n. 2.

[542] N. 684 ff.

[543] Code of Canon Law, can. 1014. Pius VI wrote excellently concerning this matter in letters given July 11, 1789, to the Archbishop of Prague.

[544] *Josephsehe.*

[545] Cf. P. Rett, *Die Josephsehe in ihrem Original und ihrer Nachahmung* (*Innsbrucker Zeitschrift f. kathol. Theol.*, 1909, 590 ff.); Wernz, loc. cit., n. 302, note 41; De Smet, loc. cit., n. 89.

Article II. On Defects of Matrimonial Consent

The defects of matrimonial consent are customarily said to be: 1. error; 2. force and fear.

§ 1. On the Defect of Consent Through Error

741. Preliminary note. Error and the servile condition were enumerated by ancient authors as two distinct matrimonial impediments; but in reality they are only one impediment having a twofold material object. For error can concern the very person of the other party or a quality redounding upon the person, and then there is the impediment of error simply so called; or error concerns the servile condition of the other party, and then there is the impediment of servile condition. But since error is no longer enumerated in the Code of Canon

Law among the impediments, but among those things which vitiate matrimonial consent, we too follow this method.

Notion. Error is a false judgment by which the will is moved. Error is indeed distinguished from ignorance, which is the lack of knowledge in a capable subject; "nevertheless, as regards that which is to impede the voluntary, it does not differ whether it is called ignorance or error, ... whence, if ignorance is present there, error must be present there. And therefore error is also posited as the proximate cause."[546]

[546] St. Thomas, *Suppl.*, q. 51, a. 1, ad 1.

742. Divisions. Error which can occur in matrimonial consent is customarily divided in several ways:

1. Vincible and invincible error.

The first can be overcome or expelled easily; the second, with difficulty or in no way.

2. Theoretical and practical error.

The first, which is also called concomitant or incidental, is indeed a false judgment concerning the nature of matrimony, but it does not so influence the will of the contracting party that, if it had been detected, it would have prevented the matrimony. Protestants, for example, are accustomed to labor under such an error, who think that matrimony is neither a sacrament nor indissoluble, but who nevertheless will to contract a true matrimony, as other good Christians do. - The second, which is also called antecedent, gives cause to the matrimonial contract and, if it had been detected before the matrimony, would have entirely avoided the contract.

3. Error of law and error of fact.

The first concerns the very nature of matrimony and the obligations flowing from this nature; or it can also be said: error of law concerns the three goods of matrimony, for example, the good of offspring, when either contracting party firmly thinks and wills that the generation of offspring is to be avoided; or the good of fidelity, when either contracting party firmly thinks and intends to enjoy so-called "free love"; or the good of the sacrament, when matrimony is contracted under an express intention of divorce. - The second error concerns some fact, either essential or accidental. An essential fact is again twofold: **the very person of the other party** and **a quality of that person which redounds upon the person himself or herself.** An example of essential error in the person of the other party is found in the matrimony of Jacob with Leah.[547] For Jacob willed to contract matrimony with Rachel, for whom Leah was substituted by Laban. A quality redounding upon the person himself or herself is judged to be one which belongs to only one individual person; for example, someone expressly intends to contract with the firstborn daughter of a certain count, and in place of the firstborn daughter the second-born is handed over to him. This distinction of a quality redounding upon the person was first offered in express words by St. Thomas.[548] - An **accidental fact**, or accidental error, concerns some quality of the other party which perhaps is of the greatest importance but nevertheless can belong to several persons, for example, nobility, virginity, wealth, and so forth.

4. Substantial and accidental error.

The first concerns either the essential obligations of matrimony (error of law), or the very person of the other party, or a quality redounding upon the person, and it is always practical error. The second is either merely theoretical or concerns accidental qualities of the other party. - This distinction is of great importance in the present matter.

[547] Cf. Gen. 29:24.

[548] *Suppl.*, q. 51, a. 2, ad 5.

743. Principle 1. From natural law itself, substantial error alone invalidates every matrimony.

The reason is that substantial error takes away consent and therefore matrimony itself, which is caused by the consent of the contracting parties alone, as was proved above. St. Thomas[549] writes to the point: "Whatever impedes a cause by its own nature similarly impedes the effect. But consent is the cause of matrimony, and therefore that which nullifies consent nullifies matrimony. But the consent of the will is an act which presupposes an act of the intellect. When the first is lacking, a defect must occur in the second. And therefore when error impedes knowledge, a defect also follows in consent itself, and consequently in matrimony. And thus error has it from natural law that it nullifies matrimony."[550]

Substantial error can concern three objects:

a) **The three goods of matrimony.** Error of this kind (which is error of law) invalidates matrimony only if it is truly antecedent and practical, but not if it is merely concomitant and theoretical.

Hence, if a virgin contracting matrimony knows nothing concerning the conjugal act, the matrimony is not yet invalid, unless, once the truth of the matter is known, she immediately declares that she would never have consented to this act. The reason is that such a virgin is judged to have contracted matrimony as other women are accustomed to do, and therefore this error is held as concomitant or merely incidental. Wherefore in practice nothing remains to be done except that the virgin now consent to the conjugal act, or seek a dispensation from ratified and non-consummated matrimony. This doctrine, which canonists and theologians very commonly hold,[551] is confirmed from the practice of the Sacred Congregation of the Council. Thus, for example, the following case was resolved: Antonius, twenty-five years of age, married Rosa, nineteen years of age, who was entirely ignorant of the matrimonial office. Rosa obstinately denies the conjugal debt to her husband for three years, saying that she would never have contracted matrimony if she had known herself to be obliged to so foul a thing. On December 18, 1869, the Sacred Congregation of the Council responded to the question: "Whether the Most Holy One is to be advised in favor of a dispensation from ratified and non-consummated matrimony in the case? - Affirmatively, with the woman forbidden to pass to other nuptials without consulting the Sacred Congregation." In other similar cases the Sacred Congregation was unwilling to dissolve the matrimony.[552] Observe that the matrimony was not declared null, but dispensed. The same holds of the matrimony of Protestants, which is judged valid even if the contracting parties think divorce as regards the bond to be lawful. Hence the Code of Canon Law, can. 1084, establishes: "Simple error concerning the unity or indissolubility of matrimony or its sacramental dignity, even if it gives cause to the contract, does not vitiate matrimonial consent";[553] and can. 1085: "Knowledge or opinion of the nullity of the matrimony does not necessarily exclude matrimonial consent."

b) **The very person of the other party.**

For a contract between certain and entirely determinate persons pertains to the essence of matrimony. Such error of person can scarcely arise in our regions, since those about to marry have perfect mutual knowledge before the matrimony. It is otherwise among Mohammedans or pagans, who sometimes buy a bride whom they have never before seen, or if matrimony is contracted through a proxy.

c) **A quality redounding upon the person.**

In the external forum an error of this kind is never acknowledged as a diriment impediment of matrimony unless this quality was expressly stipulated, and indeed as a condition *sine qua non*. Hence those things said

above, n. 737 ff., concerning conditional matrimony are to be applied. Certainly, theoretically speaking, every antecedent error giving cause to the matrimonial contract destroys true consent and therefore matrimony itself; but the Church does not acknowledge such error unless it is clearly proved in the external forum, which can scarcely be done unless the quality in question was expressly reduced to a pact. But in the internal forum the matter is otherwise, because true consent is lacking. Therefore, if someone led by antecedent error contracted matrimony, he must either give true consent or abstain from the conjugal act. - Behold a practical case of error concerning a quality which redounds upon the person: "The family of Count A. employs domestic statutes by which it is provided that the hereditary count take to himself a wife of equal condition. Count A., therefore, seeks a wife for himself with this open intention. At length he hears that the most noble family of Count B. exists at Florence and that Count B. has an only daughter. Hence Count A. sends to Florence letters by which he seeks the same daughter as wife for himself. Nevertheless, the chambermaid of this daughter, having fraudulently suppressed the letters, writes to Count A. and, upon receiving a response, sets out for Germany. Under the false name of Countess B. she contracts matrimony with Count A. Once the matrimony has already been consummated, she reveals the fraud. It is asked whether that matrimony is invalid on account of an error of quality redounding upon the person. We respond that there is no doubt that in this case the error of quality redounds upon the person."[554] - On the contrary, in the following case the Sacred Congregation of the Council was unwilling to acknowledge an error redounding upon the person: Cassandra, thinking Vincentius to be wealthy and noble, married him after she had been confirmed in her error because Vincentius very cunningly assumed a fictitious name. When the error was discovered, Cassandra sought the dissolution of the matrimony on account of the impediment of error, but the Sacred Congregation of the Council refused on May 27, 1820. Likewise in this sad case: Jacob Teichert expressly said to his betrothed, Elisabeth: I shall never marry a girl who has already had carnal intercourse with another. After the matrimony had been contracted, Elisabeth disclosed that she not only had had carnal intercourse, but also was pregnant by another man. Although a most grave error was present, nevertheless the Sacred Roman Rota on January 2, 1913, responded that the nullity of the matrimony was not established.[554a] The reason seems to be that there was indeed a very great error of quality, but this quality was not expressly stipulated.[555]

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[549] *Suppl.*, q. 51, a. 1.

[550] Freisen (*Gesch. d. kan. Eherechtes*, 302 ff.), adopting the division of error into proper and improper (*echter und unechter Irrtum*), first introduced by Savigny, does not admit that error even in the person invalidates matrimony by natural law, but only by ecclesiastical law. This singular opinion is deservedly rejected very commonly.

[551] Gasparri, *De matr.* II, n. 791; Wernz-Vidal, *Ius can.* V, n. 492; Lehmkuhl, *Theol. mor.* II, 934; Leitner, *Lehrb. d. kirchl. Eherechtes*, 106.

[552] Cf. Sacred Congregation of the Council, March 15, 1850.

[553] "Whether a matrimony contracted between a Catholic and a heretic with the intention of violating or dissolving the matrimony is valid? - If these things have been reduced to a pact, or if the marriages have been contracted with this condition, they are null; but otherwise they are valid." Thus the Holy Office, October 2, 1680. The reason is that these spouses, as knowing Christ's doctrine concerning matrimony, are presumed principally to have intended a true Christian matrimony. The matter is otherwise if there is question of marriages of infidels, as is evident from the response of the Holy Office of May 19, 1892: "It is the custom of the Indians of this region [Sioux Falls] to contract marriages for the sake of testing the character and qualities of their wives, namely, whether they are good and prudent or not; and with the intention of dismissing them if they are foolish and wicked. Hence it is asked: Can faith be given to them if they affirm under oath that they never contracted matrimony with preceding wives by an indissoluble bond; and can they be permitted to join to themselves, according to the laws of holy Mother Church, the woman whom they now have? - Affirmatively, if there is question of infidels, after a diligent examination of all the circumstances concerning their

credibility has been instituted, and no doubt or only a slight doubt remains concerning the truth of the assertion. Negatively, if there is question of the faithful, but legitimate proof is required" (*Collect. de Prop. Fide*, nn. 221 and 1796).

[554] Cf. Gasparri, *De matr.* II, n. 787.

[554a] *Acta Ap. Sed.* V, 45 f.

[555] Gasparri, loc. cit., n. 790, adduces several other cases in which the Sacred Congregation of the Council was unwilling to acknowledge an error redounding upon the person.

744. Principle 2. By ecclesiastical law, error concerning servile condition is a diriment impediment of matrimony.[556]

Servile condition or servitude has three degrees. The first is when a slave is considered as a mere thing, over which the master has most perfect dominion and which he can therefore even destroy. Such servitude is contrary to natural law and once existed only in paganism, where a master could even kill his slaves. The second is when a slave must serve a master throughout his whole life without receiving any other recompense except food and clothing; but the master has no authority over the life of the slave, whom he is also bound to treat in a humane manner. Such servitude existed even among Christians and is still servitude properly so called. Here there is question of servitude in both degrees. The third degree is when a man is indeed bound to render some services to a master, but in other matters is entirely free. - The impediment of servile condition is present only when a freeborn or free person marries another party whom he falsely thinks to be free and not a slave. Therefore a matrimony is not invalid: a) which is contracted between two slaves; b) if a free person knowingly marries a slave; c) when a slave marries a female slave whom he falsely thinks to be free.[557] - The impediment of servitude was fittingly introduced by the Church because a party restricted by servitude can neither freely render the conjugal debt nor suitably educate the offspring born; for that party always remains under the dominion of the master, who can impose burdens incompatible with conjugal obligations.[558] But since unrecognized servitude is an impediment of matrimony by ecclesiastical law alone, it does not bind pagans. And since in present times servitude has been abolished almost everywhere in the Christian world, this impediment can scarcely occur any longer. Hence these things briefly said suffice. Whoever desires more should approach St. Thomas, who treats this matter throughout question 52 of the Supplement.

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[556] Innocent III already so established in c. 4, X 4, 9; this the Code of Canon Law, can. 1083, § 2, n. 2, confirmed: "Error concerning a quality of the person renders matrimony invalid if a free person contracts matrimony with a person whom he thinks to be free, when on the contrary that person is a slave, with servitude properly so called."

[557] Code of Canon Law, loc. cit.; St. Alphonsus, *Theol. mor.*, l. 6, n. 1918.

[558] St. Thomas, *Suppl.*, q. 52, a. 1.

745. A dispensation from the defect of substantial error, since it invalidates matrimony by natural law itself, cannot be granted by the Supreme Pontiff. Therefore a matrimony null because of substantial error cannot be convalidated except through the express or interpretative consent of the erring party (for example, through marital intercourse). But if the error was publicly known, the convalidation must be made before the parish priest and two witnesses according to the legal form, unless, however, the Supreme Pontiff has permitted another giving of consent. Cf. below, n. 875 f., concerning the convalidation of matrimony because of a defect of consent.

§ 2. On the Defect of Consent Through Force and Fear

746. Notions. Force can be defined: "the (external) onset of a greater force which cannot be repelled," or also: "a motion whose principle is outside, while the one who suffers the force strives to the contrary."[559] Fear,

however, is defined: "trepidation of mind on account of an imminent or future danger."

If force or fear is so grave that the use of reason is disturbed, it is evident of itself that a matrimony thus entered is then invalid by natural law itself, since consent, which is the essential cause of matrimony, is entirely lacking. - Force taken in the strict sense is something physical which entirely takes away consent and therefore also annuls matrimony. This likewise by natural law.

The diverse divisions of fear were already given above, I, n. 68. The Instruction of the Holy Office of June 20, 1883, nn. 35 f., indicates these norms for discerning the gravity of fear: "The gravity of fear arises from the nature of the threats, from the quality both of those from whom they proceed and of those who are said to have suffered them." Hence fear will more easily be grave: a) if the superior inflicting the fear is prone to anger and violence, and of so hard and obstinate a mind that he suffers himself to be contradicted by no one; b) if the person suffering the fear is timid and depends totally upon the will of the superior; and so forth.

Reverential fear is judged light *per se*, unless, however, it is qualified, that is, unless beatings, threats, or importunate or unjust entreaties are joined to it by the superior,[560] which render it grave.

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[559] L. 1, 2, Dig. IV, 2.

[560] Cf. *Acta Ap. Sed.* IV (1912), 647, 671, 709; XI (1919), 195.

747. Principle. A matrimony entered on account of force or fear is invalid when the fear is: a) grave (absolutely or relatively); b) unjustly inflicted by a free extrinsic cause; c) deliberate, that is, inflicted in order to extort matrimony; and persevering at the time of the celebration of the matrimony. Thus by ecclesiastical law,[561] and more probably also by natural law. But no other fear, even if it gives cause to the contract, carries with it the nullity of the matrimony.

Explanation. What grave, unjust fear inflicted from without is was already said in I, n. 68.

Deliberate fear, or fear inflicted in order to extort matrimonial consent, is present when the fear is inflicted for the precise end that matrimony be contracted with a determinate person, or at least with a person to be chosen; or, as the Code of Canon Law, can. 1087, § 1, says, it is fear "from which, in order that someone free himself, he is compelled to choose matrimony." This condition seems necessary for invalidating matrimony; for if fear was inflicted for another reason, for example, to obtain money, to satisfy lust, and so forth, and matrimony afterward follows accidentally, the impediment is not present. Such is the far more common and truer opinion, and the opinion more conformable to the decisions of the Sacred Congregation.[562]

No other fear (for example, just fear, or fear inflicted from within) carries with it the nullity of matrimony (can. 1087, § 2).

The following solutions more fully explain the proposed principle concerning unjust fear:

a) A man living in concubinage who is in danger of death, for example, because of grave illness, an impending shipwreck, and so forth, contracts matrimony with his concubine because he gravely fears hell after death. - The matrimony is valid because the grave fear was not inflicted by a free extrinsic cause.

b) A father finds a young man acting shamefully with his daughter and threatens him with accusation before a tribunal unless he marries her. - The matrimony is valid because the fear was indeed inflicted by an extrinsic cause, but justly. For in these circumstances the father has the right of accusing. The matter is otherwise if the father threatens the young ravisher with death; for no private man can (except in legitimate defense) justly threaten or inflict death upon another. In this case the matrimony is null.[563]

c) Peter is oppressed by very great debts contracted with a wealthy Jew. The Jew demands the money lent. Peter, seeing no other escape from his straits, at length proposes to take the Jew's daughter as wife; this is done and the debts are extinguished. The matrimony is valid because the fear was not deliberate, that is, inflicted in order that matrimony be contracted.

Proof. From ecclesiastical law, that fear furnished with the conditions adduced invalidates matrimony is evident both from the texts of the law and from the constant practice of the Church.[564] Thus Alexander III already says: "Since consent has no place where fear or coercion intervenes, it is necessary that where the assent of anyone is required, the occasion of coercion be repelled. But matrimony is contracted by consent alone, and when inquiry is made concerning that consent, the one whose mind is to be investigated ought to enjoy full security, lest through fear he say that what he hates is pleasing to him, and the outcome which is accustomed to proceed from unwilling nuptials follow."[565] The Code of Canon Law, can. 1087, establishes the same. - Just as consent given without the form prescribed by law cannot produce true matrimony between Christians, so likewise the Church establishes that no consent, however true, given under grave and unjust fear can cause true Christian matrimony.

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[561] Cf. Code of Canon Law, can. 1087.

[562] Feije, *De imped. et dispens. matrim.*, n. 134; Gasparri, *De matrim.* II, n. 821; Aichner, *Comp. iur. eccl.*, § 168; Wernz-Vidal, *Ius can.* V, n. 501; De Smet, loc. cit., n. 537; and many others hold this opinion. The Sacred Congregation of the Council on May 10, 1890, favors this opinion so openly that the opposite opinion of Lugo, Schmalzgrueber, and others has now become little probable.

[563] Cf. the *causa Benvenuti-Tazioli*, resolved by the Sacred Roman Rota on January 28, 1918 (*Acta Ap. Sed.* XI, 22 ff.).

[564] cc. 13, 14, 15, 28, X 4, 1; Code of Canon Law, can. 1087; Sacred Congregation of the Inquisition, February 15, 1901; Sacred Roman Rota, July 10, 1910, and innumerable Roman decisions.

[565] c. 14, X 4, 1.

748. The more common and truer opinion teaches that fear invalidates matrimony also by natural law. Thus, for example, St. Raymond of Penafort[566] says: "Concerning the impediment of violence or fear it is to be noted that by its own nature, even without a constitution of the Church, it excludes matrimonial consent; for where fear or coercion intervenes, consent can have no place, and consequently neither can matrimony, which is contracted by consent alone." The authority of St. Raymond, who by command of Gregory IX collected and arranged the books of the Decretals, is certainly very great, since he knew the mind of the legislator thoroughly. St. Thomas,[567] Reiffenstuel,[568] Ballerini,[569] Aichner,[570] Scherer,[571] Wernz-Vidal,[572] Linneborn,[573] and very many others agree with St. Raymond. Sanchez, Lugo, Billuart, van de Burgt-Schaepman,[574] Gasparri,[575] and especially Feije[576] hold the contrary.

This controversy is not merely theoretical, but can have practical utility. For if grave fear invalidates matrimony by natural law, it also affects the marriages of pagans, which are not rarely entered under fear, and which therefore would all be invalid. But if it is only of ecclesiastical law, the marriages of two pagans are not touched by it.

The principal argument for the opinion teaching that fear invalidates matrimony by ecclesiastical law alone is proposed in this manner: If it were by natural law, nullity would arise either: a) from a defect of consent; b) from a defect of liberty in the consent; or c) from the injury inflicted. But first, natural law does not establish nullity in that case on account of a defect of consent, **because fear does not take away consent but only diminishes it.** Fear justly and unjustly inflicted equally produces this diminution of consent. Nevertheless, as all admit, fear justly inflicted or produced by a necessary cause does not invalidate matrimony. Therefore no

fear by natural law itself invalidates consent and consequently matrimony. - Nor does natural law establish nullity on account of a **defect of liberty** in the consent; for liberty is not taken away but diminished through fear; therefore, if that were the reason, fear inflicted by a necessary cause or from within, or by a free cause but justly, would suffice, which nevertheless the adversaries deny. - Nor, finally, is nullity established by natural law **on account of injury**; otherwise all onerous contracts entered under the influence of grave fear unjustly inflicted ought by that very fact to be null, which nevertheless is not commonly admitted.

To this argument it is responded that matrimony is not to be judged like any other arbitrary contract. For matrimony is a contract *sui generis*, entirely singular and indissoluble. Therefore the rules concerning other arbitrary contracts cannot be applied indiscriminately to the matrimonial contract. For from the very nature of the matrimonial contract there follows the most intimate and indissoluble union of minds and bodies, which certainly requires complete freedom from all fear, at least fear extrinsically and unjustly inflicted. - The Angelic Doctor writes to the point: "The bond of matrimony is perpetual. Hence that which is repugnant to perpetuity takes away matrimony. But fear which befalls a constant man takes away the perpetuity of a contract, because *restitutio in integrum* can be sought. And therefore this coercion of fear which befalls a constant man takes away matrimony, and not another [namely, light fear]."[577] - The opinion of St. Raymond and St. Thomas and of other grave authors is confirmed from the practice of the Roman Curia, which never dispenses from the impediment of grave fear unjustly inflicted from without in order that matrimony be contracted. The Congregation of the Holy Office, sending on February 15, 1901, an Instruction to the bishops of Albania concerning the impediment of abduction, teaches: "For the most part, a twofold impediment is to be distinguished in violent abductions of women of this kind: the one, namely, by reason of force and fear, which in fact affects consent and which therefore has its foundation in natural law itself; the other from the positive Tridentine law, or abduction simply, which invalidates matrimony both from the presumption of non-consent and in hatred of so great a crime."[578]

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[566] *Summa*, l. 4, tit. 10.

[567] *Suppl.*, q. 47, a. 3.

[568] *In tit. 40*, n. 47 ff.

[569] In notes to Gury II, 832.

[570] *Comp. iur. eccl.*, § 168.

[571] *Kirchenr.* II, 174, note 45.

[572] *Ius can.* V, n. 502.

[573] *Grundriss d. Eherechtes*, § 39 (IV).

[574] *Tract. de matrim.*, n. 101.

[575] *De matrim.* II, n. 811.

[576] *De imped. et dispens. matrim.*, n. 138.

[577] *Suppl.*, q. 47, a. 3.

[578] *Collect. de Prop. Fide* II, n. 2101.

749. Note. A matrimony which was contracted under grave unjust fear remains invalid as long as the fear endures and the spouse who suffered the fear has not given free consent in the due form. Hence the right of seeking a declaration of the nullity of this matrimony is never lost by the party upon whom the injury was inflicted; that party can therefore vindicate his or her right even after several years and after

offspring have been generated,[579] provided that through trustworthy witnesses[580] or certain documents the party can prove that at the time of the celebration of the matrimony he or she truly suffered grave, unjust fear directed toward contracting the matrimony. But if the grave fear was inflicted not by the other party but by a third person, for example, by the parents, not only the party who suffered the fear, but also the other party can protest against the matrimony entered.[581] A petition for nullity of matrimony on account of fear inflicted is to be directed to the proper diocesan bishop of the petitioner.

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[579] See several cases decided by the Sacred Congregation of the Council or by the Sacred Roman Rota in *Analect. eccl.* IV (1896), 114; V (1897), 242; VII (1899), 16; VIII (1900), 55, 379, 383; and in *Acta Ap. Sed.* II (1910), 886 ff.; IV (1912), 474; VIII (1916), 45 ff., 109 ff., 184 ff., 487 ff. - St. Raymond of Penafort (*Summa*, l. 4, § 4) writes: "Likewise it is to be noted that whatever the fear or violence may be in contracting matrimony, if the woman who alleges fear has remained with her husband for a year and a half, or has consented to carnal intercourse, she ought not afterward to be heard if she alleges fear or violence." - These things are drawn from c. 21, X 4, 1, which chapter indeed is explained in diverse ways by canonists; but it is certain that, according to modern discipline, the right of seeking the nullity of a matrimony contracted because of grave fear is **never lost**, unless, however, it is established that the true and free consent of the injured party afterward supervened, and indeed in the due form, that is, ordinarily before the parish priest and two witnesses. Hence, on June 2, 1911, the Sacred Roman Rota dissolved, because of the impediment of fear, a matrimony (*Andrassy-Szechenyi*) which had endured for twenty years and in which several children had been generated. Cf. *Acta Ap. Sed.* IV, 108 ff.

[580] Concerning the deposition of witnesses, the following rule is to be noted: "More faith is to be given to two witnesses testifying concerning fear than to a thousand denying it or asserting spontaneous will; ... for those testifying concerning spontaneous will, so to speak, testify concerning a mental and invisible act which is known to God alone; but the others, testifying concerning fear, attest to threats and torments and similar things which are perceived by bodily sense" (*Acta Ap. Sed.* IV, 117, and VIII, 205).

[581] Cf. Wernz-Vidal, *Ius can.* V, n. 505.

750. Cessation of force and fear. Although the Supreme Pontiff perhaps can dispense, nevertheless in fact he never dispenses, since this impediment is more probably of natural law and since great harms arise from marriages coercively entered and continuing under fear.

If the matrimony was duly entered according to the statutes of ecclesiastical law and the fear remained **occult**, that is, when its existence cannot be proved at least by two witnesses, then it is required and suffices that the party who suffered the fear freely but secretly give matrimonial consent by some external sign, while in the meantime the consent of the other party perseveres at least virtually. This giving of consent can be made either by express words or by conclusive signs, for example, by carnal intercourse had with matrimonial affection.

But if the fear was **public**, so that it can easily be proved in the external forum, then the party who suffered the fear, once liberty has been obtained, must give consent before the parish priest and two witnesses.[582]

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[582] Cf. Feije, *De imped. et dispensa. matrim.*, n. 762 f. Benedict XIV (*Inst. eccl.* 87, n. 62) writes: "If the matrimony was publicly entered before the parish priest and two witnesses and the impediment [of fear] also became publicly known, the same matrimony cannot duly be confirmed unless consent is given again before the parish priest and two witnesses."

751. You will resolve. From what has thus far been said follows the solution of the following difficult case:

A woman is compelled by grave fear to matrimony, and therefore her matrimony is null. How ought the confessor whose counsel is sought to conduct himself? It is responded:

a) If the woman is **in good faith**, thinking that in these circumstances she can permit carnal intercourse, she is to be left in this good faith until the matrimony is convalidated or dissolved. The reason is that it is better to permit material sins than to place someone in the proximate danger of committing formal sins. Nevertheless,

since material sins too are to be avoided insofar as possible, the woman must prudently be induced to abstain from carnal intercourse insofar as is possible; and this all the more because children could easily be born from carnal intercourse who, in the case of the dissolution of the matrimony, would lack a father directing their education.

b) If the woman **knows her matrimony to be null**, she cannot consent to carnal intercourse before the matrimony is duly convalidated. The reason is that intercourse of this kind is fornication and intrinsically evil. Therefore the woman must conduct herself like a virgin oppressed by force, that is, resist with all her strength. Nevertheless, if the fear is **occult** and no other impediment stands in the way of the validity of the matrimony, the woman could first give matrimonial consent and, with the matrimony thus convalidated, consummate carnal intercourse. But if the fear is **public**, the woman can no longer convalidate the matrimony by her own matrimonial consent privately given, as was said above, but convalidation in the public forum is required.

In practice, however, one can proceed in this manner: When a matrimony was contracted from grave fear before the parish priest and two witnesses, or in another legitimate manner, then (whether the fear is public or occult) this matrimony is not only presumed true, but is also probably licit until its nullity is authentically and juridically established. But in a matrimony probably true and licit, carnal intercourse can be permitted for a most grave cause, because this intercourse is not certainly fornication. Therefore the woman is not to be disturbed if for most grave reasons she permits intercourse until the Church has rendered a judgment concerning the validity of the matrimony. Certainly it is better if intercourse is avoided.[583]

[583] Cf. Lehmkuhl, *Cas. consc.* II, n. 937 ff.

752. The penalties against violators of matrimonial liberty enacted by the Council of Trent[584] have been abrogated, since no mention of them is made in the Code of Canon Law.[585] But by particular law penalties of this kind could be established.

[584] Sess. 24, c. 9, *de reform. matrim.*

[585] Code of Canon Law, can. 6, n. 5.

Chapter VIII. On the Form of the Celebration of Matrimony

Preliminary note. After a brief historical survey has been presented, we divide this chapter into three articles: 1. on the subject of this law, or who are bound to it; 2. on the object of the new law, or what things are required for the **valid** and licit celebration of matrimony; 3. what things are to be done **after** the matrimony has been celebrated.

753. Historical survey. Matrimony, whether it is considered as a contract or as a sacrament, essentially consists in the consent of the contracting parties alone, sufficiently manifested. But among almost all peoples of all times, this manifestation of nuptial consent is adorned with certain solemnities.[1] Until the Council of Trent the Catholic Church considered all these solemnities as accidental, and therefore held marriages entered even without them to be ratified and valid. Nevertheless, because of the great dangers which are connected with marriages entered in a private manner, "holy Mother Church for most just causes has always detested and prohibited them [clandestine marriages]."[2] Hence St. Ignatius[3] already admonishes: "It is fitting that bridegrooms and brides make their marriage with the judgment of the bishop." Tertullian[4] testifies: "Among us even occult unions, that is, those not previously professed before the Church, risk being judged akin to adultery and fornication." Until the Council of Trent there was no constant and uniform manner of

manifesting matrimonial consent and celebrating matrimony in the diverse parts of the Church.[5] But the Council of Trent, in its most celebrated Decree *Tametsi*,[6] established that thenceforth all marriages would be invalid unless they had been contracted before the proper parish priest and at least two witnesses. This Decree had to exercise its force on the thirtieth day elapsed after its promulgation in each parish.

The Church most certainly could in this manner invalidate all clandestine marriages; for the matrimonial contract has been elevated to the dignity of a sacrament, as was proved above. Moreover, although the Church cannot change the form and matter of the sacraments, nevertheless she can determine under what conditions the matrimonial contract is to be held as legitimate and is to be apt matter of the sacrament. Just as the Church also cannot change the matter and form of the sacrament of penance, nevertheless she can prescribe the manner under which a confessor can validly administer this sacrament. Hence the Decree *Tametsi* was most just and most wise. But for diverse causes this Decree was not published in several parishes, and therefore clandestine marriages remained valid there. "But not even where the new law was in force was every difficulty removed. For often a grave doubt existed in determining the person of the parish priest in whose presence the matrimony was to be contracted. Canonical discipline indeed established that the proper parish priest ought to be understood as the one in whose parish either contracting party has a domicile or quasi-domicile; but because it is sometimes difficult to judge whether the quasi-domicile is certainly established, not a few marriages were exposed to the danger of being null; and many also, either through the ignorance of men or through fraud, were discovered to be entirely illegitimate and invalid.... Moved by these circumstances, ... Pius X, according to that solicitude for all the churches which he bears, desiring to employ some moderation for removing the aforementioned harms and dangers, committed the matter to the Sacred Congregation of the Council, that it should examine it and propose to him those things which it judged opportune." Hence the Decree *Ne temere* was issued, which from April 19, 1908, bound throughout the whole Christian world unless a prorogation or dispensation had been granted for some region. A prorogation was granted for the Chinese Empire, in which the Decree did not bind until April 11, 1909. But now all prorogations and exemptions, and indeed the Decree *Ne temere* itself, have ceased, and the law established in the Code of Canon Law has been in force since May 19, 1918.

Note. If at any time a doubt occurs concerning the validity of some matrimony entered before April 19, 1908, the ancient Tridentine law or particular law perhaps legitimately in force somewhere is to be applied.

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[1] Cf. Westermark, *History of Human Marriage*, c. 19.

[2] Council of Trent, sess. 24, c. 1, *de reform. matrim.*

[3] *Ep. ad Polyc.*, c. 5 (Migne, *Patr. graec.* 5, 867).

[4] *De pudicit.*, c. 4 (Migne, *Patr. lat.* 2, 987).

[5] Cf. the Sacramentaries of St. Leo, Gelasius, and St. Gregory.

[6] Loc. cit.

Article I. Who Are Bound to the Prescribed Form

Those bound to observe the prescribed form are:

754. 1. "all baptized in the Catholic Church and those converted to her from heresy or schism, although either the former or the latter afterward defected from her, whenever they enter matrimony with one another";

2. "the same persons, if they contract matrimony with non-Catholics, whether baptized or non-baptized";

3. "Orientals, if they contract with Latins bound to this form." -

"Non-Catholics, whether baptized or non-baptized, if they contract among themselves, are nowhere bound to observe the Catholic form of matrimony; likewise those born of non-Catholics, even if baptized in the Catholic Church, who from infancy grew up in heresy or schism or infidelity or without any religion, whenever they contract with a non-Catholic party."[7]

Explanation. To 1. It is not so clear how the words "baptized in the Catholic Church" are to be understood. Saving a better opinion, **all those who at the time of baptism were destined for Catholic worship by parents or guardians or others legitimately disposing of them are judged to have been baptized in the Catholic Church.**[8] Hence, for example, an infant of Catholic parents, baptized in necessity by a Jewish physician, is judged baptized in the Catholic Church. But if an infant of Protestant parents is baptized by the same physician, that infant is not judged baptized in the Catholic Church. If Catholic parents were to have an infant baptized by a Protestant minister and afterward educated in heresy, the infant is not judged baptized in the Catholic Church. But if parents who entered matrimony with a dispensation from the impediment of mixed religion or disparity of worship (but not Catholic parents) were to have an infant baptized in the Catholic Church but afterward educated in heresy, the infant is judged as a heretic.[9]

To 2. Mixed marriages, in which one party is Catholic but the other non-Catholic (whether baptized or non-baptized), must be celebrated in precisely the same essential form as purely Catholic marriages.

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[7] Code of Canon Law, can. 1099.

[8] Van den Acker, *Decr. "Ne temere"*[2], p. 101 f., thinks almost the same; Cappello, *De sacr.* III, n. 411; Wernz-Vidal, *Ius can.* V, n. 551.

[9] Cf. Holy Office, November 17, 1835, and April 6, 1859, and Pontifical Commission, July 20, 1929 (*Acta Ap. Sed.* XXI, 573); this declaration is not extensive but declarative (Pontifical Commission, July 25, 1931: *Acta Ap. Sed.* XXIII, 388).

756. To 3. Although the Code of Canon Law ordinarily does not bind Orientals, nevertheless it binds them here accidentally because of the Latin party. This follows from those things which we said above concerning the individuality of the matrimonial contract. For if there is an impediment on the part of one contracting party, the matrimony can no longer be validly contracted. But in these cases there is an impediment on the part of the Latin Catholic, who cannot contract unless the prescribed form is observed. Therefore such mixed marriages are invalid.[10]

Note. In former times there was much dispute concerning the validity of marriages celebrated by non-Catholics without the Tridentine form; today this controversy is ended, since the marriages of non-Catholics, if they contract **among themselves**, are valid, provided that no diriment impediment other than the defect of the required assistance of the parish priest stands in the way, for example, the impediment of bond, impotence, relationship, and so forth. Schismatics[11] are also held as non-Catholics, as are those born of non-Catholics (among whom are included those born of apostates and of those who are or were enrolled in an atheistic sect[11a]), even if baptized in the Catholic Church, who grew up outside the Catholic religion from infancy.

From what has been said it follows that the following are certainly **not bound** by the prescribed form, provided that they contract among themselves:

a) all born and educated in heresy or schism;

b) all Catholics of an Oriental rite.[12]

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[10] "Whether a matrimony contracted by a Catholic of the Latin rite with a Catholic of an Oriental rite is valid when the form established by the Decree *Ne temere* has not been observed? - Negatively." Thus the Sacred Congregation of the Council, March 28, 1908, ad 1.

[11] Sacred Congregation of the Council, March 28, 1908.

[11a] Pontifical Commission, February 17, 1930 (*Acta Ap. Sed.* XXII, 195), and July 30, 1934 (*Acta Ap. Sed.* XXVI, 494).

[12] "Whether Catholics of an Oriental rite are also bound by the Decree *Ne temere*? - Negatively." Thus the Sacred Congregation of the Council, February 1, 1908, ad 1. Sometimes, however, the Decree *Ne temere* was extended to the faithful of an Oriental rite. Thus, for example, by the Sacred Congregation for the Propagation of the Faith on May 5, 1911, this Decree was extended to the Ruthenian dioceses of the Province of Galicia.

Article II. What Is Required for the Valid and Licit External Celebration of Matrimony

Two cases must be distinguished: 1. the ordinary celebration of matrimony; 2. the extraordinary celebration of matrimony, and indeed a) when danger of death is imminent, or b) in places where a priest cannot be had.

§ 1. The Valid and Licit Ordinary Celebration of Matrimony

756. General rule. "Only those marriages are valid which are contracted before the parish priest or the local Ordinary or a priest delegated by either of them, and at least two witnesses." Thus the Code of Canon Law, can. 1094.

Therefore, in the ordinary celebration of matrimony, the assistance of one of the following is altogether required, together with two witnesses:

1. the parish priest of the place;
2. the local Ordinary;
3. a priest duly delegated.

We shall first speak generally of the requirements on the part of the parish priest of the place, etc., and then of those which are required on the part of the two witnesses.

757. a) By the name of parish priest are here understood 1. all parish priests properly so called, whether irremovable or removable; 2. all who are equivalent to parish priests, that is, those who by reason of their office must supply the place of the parish priest.

The following are equivalent to parish priests in this matter:

1. **Quasi-parish priests.** "In regions where parishes have not been canonically erected, even the priest to whom the care of souls in some definite territory has been legitimately committed is equivalent to a parish priest; and in missions where territories have not yet been perfectly divided, every priest universally deputed by the director of the mission to the care of souls in some station."[13]
2. **The one serving, or administrator of, a vacant parish**, who in the Code of Canon Law, can. 472, is called the *vicar economus* (*Pfarrverweser*). Likewise a substitute vicar, assistant vicar, or cooperator vicar, if he supplies the place of the parish priest in the whole parochial ministry.[14]
3. **A curate**, that is, one who exercises the full care of souls in a determinate territory which, however, has not been erected to the dignity of a true parish.[15] Such curates are called in some places *expositi* or local chaplains.

4. **The perpetual or temporary vicar of an incorporated parish.** Parishes are not rarely incorporated into the chapter of a cathedral church or into some monastery. Then the cathedral chapter or monastery must legitimately designate a perpetual or temporary vicar to exercise the parochial care of souls, who is now called the actual vicar.

5. **Chaplains or rectors of pious places of any kind exempt from parochial jurisdiction.** It is required, however, that they possess true parochial power and that they assist only at the marriages of their subjects, and this in the place of their jurisdiction.[16] Today pious places of this kind not rarely exist, for example, hospitals, in which some spiritual rector entirely exempt from parochial jurisdiction exercises the ministry of souls.

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[13] Thus the Decree *Ne temere*, II; cf. Code of Canon Law, can. 216, § 3.

[14] Cf. Pontifical Commission, May 20, 1923 (*Acta Ap. Sed.* XVI, 115).

[15] Thus the Sacred Congregation of the Council, March 10, 1908. In practice it must first be seen whether such curates, *expositi*, or local chaplains truly have full jurisdiction in the territory designated to them by the bishop or by legitimate custom, or whether they are rather mere vicars conceded to the parish priest.

[16] Sacred Congregation of the Council, February 1, 1908, ad 10.

758. 6. **All personal parish priests**, such as, for example, military chaplains and certain parish priests in the East Indies. Personal parish priests are those who exercise parochial jurisdiction not in a determinate territory but over determinate persons.

It is much disputed whether the jurisdiction of personal parish priests of this kind in assisting at matrimony is exclusive or rather cumulative with that of the territorial parish priest. With respect to the East Indies, the Sacred Congregation of the Sacraments on June 2, 1910,[17] decreed that, in view of the peculiar circumstances, personal parish priests alone, to the exclusion of territorial parish priests, can licitly and validly assist at the marriages of their subjects, so that the jurisdiction of personal parish priests in the Indies is exclusive and not cumulative. But with respect to other personal parish priests, and notably with respect to camp or military parish priests, authors do not agree. Hinschius,[18] Noldin,[19] Dr. Vollmar[20] (formerly chief chaplain of the Prussian army), the chief chaplain of the Austrian army,[21] and others teach that the jurisdiction of military chaplains is exclusive. On the contrary, Vogt,[22] Wernz-Vidal,[23] De Smet,[24] Scherer,[25] and others assert that this jurisdiction is cumulative with that of the territorial parish priest. The decree of the Sacred Congregation of the Sacraments cited above manifestly favors them, saying: "The resolution [concerning the rights of personal parish priests], as regards validity and liceity, does not seem to prejudice the rights of territorial parish priests; who therefore, according to the Decree *Ne temere*, appear always validly to assist in their own parish, and licitly also, after the month's residence of either contracting party has preceded, at the marriages even of exempt faithful." - Since this controversy is of great moment in practice (because the validity of the sacrament of matrimony is at issue), the legitimate customs prevailing in the diverse regions where military parish priests are present must be observed until the Holy See issues an authentic decree on this matter. Besides, no private author can establish a general rule concerning the jurisdiction of military chaplains, since the same agreements between the Holy See and governments do not prevail in diverse regions. Certainly it is contrary to the words and mind of the new law that soldiers cannot at least validly contract matrimony before the territorial parish priest as can other faithful; nevertheless, since the Sacred Congregation of the Council on February 1, 1908, ad 7, declared that "with respect to military chaplains ... nothing has been changed," and since civil or military authorities sometimes urge (even with grave penalties added) that the military chaplain

assist at the marriages of soldiers and other persons belonging to the military, it is much better that territorial parish priests abstain from assisting at marriages of this kind unless they have special permission.[26]

[17] *Acta Ap. Sed.* II, 449.

[18] *System d. kath. Kirchenr.* II, 340.

[19] *De sacram.*, n. 643.

[20] According to the Brief of Pope Pius IX of May 22, 1868, the chief chaplain of the [formerly] Prussian army possesses jurisdiction, separate from the other Ordinaries and in no way subject to them, over each and every one of the faithful who belong to the Prussian army according to the laws (*Acta S. Sed.* XLI, 91).

[21] *Archiv f. kath. Kirchenrecht* LXXXVIII (1908), 729 ff.; XC (1910), 142.

[22] *Das kirchl. Eherecht*, § 25.

[23] *Ius can.* V, n. 535.

[24] *De spons. et matr.*, n. 64.

[25] *Kirchenrecht* II, 199.

[26] Today there are military chaplains having jurisdiction independent of local Ordinaries in Spain (cf. Sacred Congregation of the Council, May 22, 1909 [*Acta Ap. Sed.* I, 554]), England (cf. Sacred Congregation for the Propagation of the Faith, May 15, 1906), and Chile (Motu proprio of Pius X, May 3, 1910 [*Acta Ap. Sed.* II, 502]). The faculties granted to military chaplains in diverse regions are not the same. Hence the particular statutes must be observed.

759. b) By the name of the local Ordinary are understood diocesan bishops (not titular bishops), apostolic administrators, vicars, and prefects, prelates or prefects having jurisdiction with a separate territory,[27] and their officials or vicars general in spiritual matters, and, when the see is vacant, the capitular vicar or legitimate administrator.[28] The chief military chaplain is the Ordinary for all persons belonging to the military according to law,[29] although he does not have territorial jurisdiction.

The Ordinary can validly assist (whether personally or through a delegated priest) at all marriages within the boundaries of his territory, even without the knowledge and against the will of the parish priests.

[27] For example, an abbot and prelate *nullius*.

[28] Cf. Code of Canon Law, can. 198, § 2.

[29] Nor is the legislation concerning persons belonging to the military uniform in diverse regions.

760. c) A legitimately delegated priest is one who has delegation from the parish priest or local Ordinary, or from those who are equivalent to a parish priest, concerning whom above, n. 757.

Delegation is fittingly distinguished from permission to assist, although this distinction is not expressly contained in the law itself. For **delegation** is a faculty granted to another priest by a parish priest (territorial or personal) to assist **validly** at some matrimony; but **permission** is a faculty granted to someone to assist **licitly**, who even without such permission would assist validly. From these things it follows that a personal parish priest never needs delegation to assist at the marriages of his subjects; but a territorial parish priest almost never needs delegation to assist at marriages celebrated in his territory. Certain marriages in the East Indies and perhaps the marriages of soldiers, concerning which above, are excepted. A territorial parish priest, however, needs the permission of another parish priest if he wishes to assist at the matrimony of persons about to marry who have not yet lived for a month in his parish, as will be said below. A parish priest and Ordinary within their own territory can delegate any priest (not publicly excommunicated or suspended) to

assist at matrimony. But a parish priest and Ordinary who have only personal jurisdiction can delegate another priest in any place whatsoever to assist at the marriages of their subjects.

Concerning this delegation, the following things must be noted:

761. 1. In no way can it be extended beyond the territory of the delegating person, because the delegating person himself does not validly assist at matrimony outside his own territory.

2. Under pain of nullity it is required that this delegation be **special**, that is, made to a determinate priest for a determinate matrimony or even for several marriages, provided that they are determinate. Therefore all general delegations are excluded, such as were not rarely in use formerly, for example, that matrimony could be celebrated before one of the priests living in some celebrated place of pilgrimage,[30] or before the priest who would be deputed by the religious superior to say Mass in the church.[31] Cooperator vicars alone can be habitually and generally delegated by the bishop or by the parish priest of the territory to assist at matrimony in the parish to which they are attached.[32]
3. The delegation must be **express or at least quasi-express, which is manifestly gathered from conclusive acts**.

The whole doctrine concerning express, tacit, and presumed delegation is thus briefly expressed in the cause *Balzan Adami*:[33] "In order that another priest besides the proper parish priest of either contracting party be constituted the qualified witness of the matrimony, there must precede a positive act of the will, externally expressed, of the proper parish priest or the proper Ordinary, by which permission to assist, concerning which the Decree speaks, is conceded to him. Therefore presumed or interpretative permission, which does not really exist but would exist only upon some given hypothesis, does not suffice to constitute an authorized witness of matrimony.... But by **tacit** permission, insofar as it is distinguished from presumed or interpretative permission, the positive will of the proper parish priest or Ordinary to delegate another priest to fulfill the office of authorized witness can be sufficiently expressed. Since, moreover, this general faculty of delegating is nowhere in law restricted to express delegation alone, it must be said that delegation is present where facts preceding the matrimony and truly conclusive show that this was the mind of the one to whom it belongs by law to delegate." - Hence, for example, a cooperator vicar who is sent into some parish to assist the parish priest in all things can validly assist at marriages, even if he does not have the express delegation of the parish priest who is silent and does not contradict. On the contrary, when the parish priest is absent, another priest cannot presume delegation. The matter of delegation in assisting at marriages is often determined by the particular statutes of dioceses. - Of itself, indeed, nothing prevents delegation from being given by telegraph or telephone; but, except in a case of urgent necessity, a transmission of this kind is not expedient, because doubts and ambiguities not rarely arise from it.

4. **One delegated for the universality of causes can subdelegate this delegation; on the contrary, one delegated for a particular case does not have this faculty of subdelegation unless it was expressly conceded to him.**[34]

Hence, for example, a cooperator vicar of a parish priest who has obtained general delegation to assist at all marriages to be celebrated in the parish can subdelegate another priest for a particular case; but the latter, subdelegated for this case, cannot again subdelegate another. Likewise, a parish priest or local Ordinary who delegated a determinate priest to assist at a determinate matrimony can also give him permission to subdelegate another determinate priest to assist at the same matrimony.

5. **Delegation ceases a) by revocation, b) when the time prefixed has elapsed.**

Delegation does not cease by the death of the delegating person or by the right of the delegating person being otherwise terminated,[35] although some have opined the contrary. If a parish priest suddenly dies, his cooperator vicar or even the nearest parish priest validly and licitly assists at the matrimony, as is customarily determined by particular statutes.[36]

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[30] Noldin-Schmitt, *De sacr.*[18], n. 642, asserts: "Nothing prevents several determinate priests from being delegated, whether they are named singly or all collectively: all the Servite Fathers in Weissenstein; the parochial clergy of church N." Since here there is question of the validity of the assistance and therefore of the matrimony itself, I think collective delegations of this kind are not sufficiently safe.

[31] Pontifical Commission, May 20, 1923 (*Acta Ap. Sed.* XVI, 115).

[32] Code of Canon Law, can. 1096, § 1.

[33] *Acta Ap. Sed.* II, 208; cf. also *Acta Ap. Sed.* XI, 154 ff., where it is judiciously observed that for greater security express delegation is to be sought in practice before the celebration of the matrimony, but tacit delegation suffices for the validity of the matrimony.

[34] Cf. Code of Canon Law, can. 199, § 5, and Pontifical Commission, December 28, 1927 (*Acta Ap. Sed.* XX, 62).

[35] Code of Canon Law, can. 207.

[36] Ibid., can. 472. Thus, for example, the following is contained in the Pastoral Instruction of Eichstätt, n. 488: "If it happens that, when all things have been prepared for the nuptials, the parish priest suddenly departs this life, for this unforeseen case we delegate, from ordinary power and solely for this occasion, any diocesan and approved priest perhaps staying in the place or to be summoned from the vicinity, so that the nuptials can validly be contracted before him if they cannot be further deferred without inconvenience."

762. I. Conditions required on the part of the parish priest and the Ordinary for valid assistance. There are three; namely, it is required:

1. **That he canonically possess his benefice or office and not have been excommunicated or interdicted or suspended from office by a sentence, or declared such.**[37]

The Sacred Congregation of the Council on March 2, 1908, responded: "By the name of possession here is understood that act which, whether it is called corporal institution, enthronement, installation, or otherwise, nevertheless always effects this: that the one instituted into the benefice thereby acquires the free exercise of the power annexed to his office." The manner of conferring this corporal institution is customarily determined by particular law or by custom.[38]

A bishop acquires the episcopal office when he has presented to the chapter the letters of institution given by the Supreme Pontiff, or, where no chapter exists, when those letters have been legitimately published in the diocese.[39]

The right of assisting at marriages is lost: a) **by removal from office or benefice**. This is evident of itself. b) **By excommunication or suspension or interdict from office**, provided, however, that these have been imposed by a condemnatory or declaratory sentence; which indeed is wont to happen quite rarely. An excommunication which a parish priest incurs, for example, by the absolution of an accomplice or by the public striking of a cleric, does not yet deprive him of the right of assisting at marriages unless a declaratory or condemnatory decree imposing the penalty of excommunication has been added.[40]

Note. Since in common error the Church supplies jurisdiction,[41] a matrimony celebrated before a putative parish priest is also valid.[42]

[37] Code of Canon Law, can. 1095, § 1.

[38] Ibid., can. 1444. Cf. De Smet, *De sponsal. et matrim.*, n. 64; Vogt, *Das kirchl. Eherecht*, § 25; Van den Acker, loc. cit., c. 1, a. 4.

[39] Code of Canon Law, can. 334, § 3.

[40] Before the Decree *Ne temere*, even a publicly excommunicated and suspended parish priest could validly assist at matrimony. Cf. Benedict XIV, *De syn. dioec.*, l. 12, c. 5, n. 2.

[41] Code of Canon Law, can. 209.

[42] Even a **putative parish priest**, who by common error is held to be the true parish priest but who, because of an occult defect, invalidly received the parochial office, validly assists at matrimony. It seems, however, to be required that such a parish priest be duly instituted by an ecclesiastical superior; for if he was instituted by the civil government alone, he is an intruded parish priest and lacks all jurisdiction. Wherefore Pius VI wrote to the bishops of France on September 26, 1791: "Since an intruder is in no way a legitimate parish priest and has no title, either true or colorable, a matrimony contracted before him is certainly of no force." (Cf. Van den Acker, *Decreti "Ne temere" interpret.*, c. 1, a. 2.) Besides, such intruders incur an excommunication most specially reserved to the Supreme Pontiff (Code of Canon Law, can. 2334), and if by a public decree they have been excommunicated by name or suspended from office, by that very fact they are incapable of assisting at matrimony.

763. 2. **That he assist at the matrimony within the boundaries of his territory.**[43]

Therefore, as regards the validity of the matrimony, it matters nothing whether those about to marry are his own parishioners or outsiders. From this statute it appears that the new law concerning the assistance of the parish priest has been made territorial, and thus the former law concerning the necessity of domicile or at least quasi-domicile, which not rarely caused most intricate questions, has been entirely changed. Churches of exempt religious situated within the territory of a parish are also held to be within it, and therefore the parish priest or local Ordinary validly assists at marriages there.[44] But if such a church has, as they say, **active** exemption, or if it is after the manner of an abbey *nullius* which has the privilege of extraterritoriality, then the faculty of assisting there does not seem to have been conceded to the parish priest or local Ordinary. On the other hand, no priest can validly assist at a matrimony in any church or chapel situated within the territory of the parish unless he has been delegated by the parish priest of the place. Hence, for example, in churches of religious or of the military, no one can validly assist at any matrimony, even of outsiders, unless he has been delegated by the parish priest or local Ordinary. Yet personal parish priests, so called, are excepted, who validly assist at the marriages of their subjects everywhere in the world. This has been expressly sanctioned for the personal parish priests of the East Indies;[45] thus it has been established for military chaplains, whose faculty held before has not been changed by the new law.[46] Wherefore a military chaplain validly and licitly assists at the marriages of persons belonging to the military according to the laws of each region, but he cannot (without due delegation) validly assist, even in his own church, at the marriages of other persons. For he does not have the rights of a territorial parish priest.[47]

[43] Code of Canon Law, can. 1095, § 1, n. 2.

[44] Sacred Congregation of the Sacraments, March 12, 1910.

[45] Sacred Congregation of the Sacraments, June 2, 1910 (*Acta Ap. Sed.* II, 449).

[46] Sacred Congregation of the Council, February 1, 1908, ad 7.

[47] We have written more broadly concerning this matter in *Linzer Theol.-prakt. Quartalschr.* 1913, 121-127.

764. 3. **That, constrained neither by force nor by grave fear, he ask for and receive the consent of the contracting parties.**[48]

Hence the parish priest or delegated priest must not only receive but also **ask for** the consent of those about to marry. By this most salutary law, coerced and surreptitious assistance, which formerly sufficed for validity, is excluded. Even in mixed marriages, the assisting parish priest or priest must ask for and receive the consent of the contracting parties,[49] at least if the due guarantees are furnished by the contracting parties. But if the contracting parties refuse to furnish those guarantees and cannot be turned away from entering a mixed marriage of this kind, then not even the passive assistance of the parish priest can be validly and licitly conceded. Thus in illicit mixed marriages, assistance so called passive is henceforth no longer valid unless a new and altogether special privilege is present.[50]

Every coerced assistance of the parish priest renders the matrimony entered invalid. Therefore it matters nothing whether grave fear is inflicted justly or unjustly. For the law simply requires for the validity of the assistance that the parish priest not be constrained by grave fear. Moreover, where the law does not distinguish, neither ought we to distinguish. Nevertheless, the assistance of the parish priest does not seem to be invalid if grave fear was induced by an intrinsic cause; for example, if the parish priest assists at the matrimony of a public sinner because otherwise he greatly fears the spiritual ruin both of the woman and of the offspring to be born from the concubinage. On the contrary, the assistance is invalid if the parish priest is compelled to assist at the illicit matrimony of a patron who otherwise threatens deprivation of the parochial office.

Those things thus far said concerning the valid assistance of the parish priest can be briefly comprehended thus: in order that a parish priest validly assist at matrimony, it is required:

1. that he actually possess the benefice or have assumed the office;
2. that he not have been excommunicated, interdicted, or suspended from office by a condemnatory or declaratory sentence;
3. that he assist within the boundaries of his territory (unless he is a personal parish priest);
4. that he be free and not constrained by grave fear to assist;
5. that he ask for and receive the consent of the contracting parties.

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[48] Code of Canon Law, can. 1095, § 1, n. 3.

[49] Sacred Congregation of the Council, July 27, 1908, ad 3.

[50] Pontifical Commission, March 10, 1928 (*Acta Ap. Sed.* XX, 120).

765. The two witnesses, whose presence is required for the valid ordinary celebration of matrimony, must be carefully distinguished from the parish priest or delegated priest, who is wont to be called the authorized or qualified witness of the matrimony. Positive law prescribes nothing concerning the qualities of those two witnesses; hence nothing else is required of them except that they truly testify to the celebration of the matrimony which they themselves saw and heard. It is, however, very fitting that adult witnesses endowed with good morals be employed. Concerning heretics, the Holy Office decreed on August 19, 1891, that "they are not to be employed; nevertheless they can be tolerated by the Ordinary for a grave cause, provided that scandal is absent." It is evident of itself that the insane, the completely intoxicated, and those who are at once deaf and blind cannot be employed as witnesses, because they cannot render certain testimony concerning the manifested consent of those about to marry. In practice care must be taken that the witnesses summoned truly

hear the manifestation of the consent of the contracting parties; nevertheless, it suffices for validity that, having seen all the circumstances, they be morally certain of the consent externally given.

II. Conditions required for licit assistance. There are five:

766. 1. **Moral certainty concerning the free state of the contracting parties**, as had already been established previously by law.[51]

The free state signifies immunity from all prohibitive and diriment impediments of matrimony, and especially from the impediment of bond. This moral certainty must be acquired: a) through the examination of the spouses,[52] b) through the proclamations prescribed by the Council of Trent,[53] and sometimes c) through an oath concerning their free state taken by the contracting parties.[54] A parish priest who were to assist at a matrimony without a previous investigation concerning the free state of the contracting parties would sin gravely, since without urgent necessity he would expose the sacrament to danger of nullity. Since, according to the Code of Canon Law, can. 1103, § 2, the parish priest who assisted at the matrimony must note the names of the spouses in the book of baptisms, or send them to the parish priest of the place where the spouses were baptized, it is most excellently prescribed[55] that before the nuptial blessing the parish priest **always require a testimonial of baptism received** (unless the baptism was conferred in his own territory). For thus the free state of the spouses as regards the impediment of bond is easily recognized; for if either spouse were already joined in matrimony, this would be found noted in the book of baptisms.

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[51] Moral certainty concerning the free state is no longer necessarily to be obtained according to the Clementine Instruction of August 21, 1670, in which it is prescribed that the episcopal curia institute a process concerning the free state. Hence the legitimate existing customs are to be observed. To the question: "Whether by the Decree *Ne temere* the law or custom prevailing in some dioceses has been abolished, by virtue of which acts establishing the free state of the contracting parties are to be performed by the episcopal curia, and permission is then given to parish priests to assist at marriages?" the Sacred Congregation of the Council responded on February 1, 1908, ad 11: "Let the accustomed practice be observed."

[52] Cf. above, n. 723.

[53] Cf. above, n. 725.

[54] Cf. above, n. 728.

[55] Code of Canon Law, can. 1021, § 1.

767. 2. **A domicile or quasi-domicile, or at least a month's residence, of either person about to marry in the place where the matrimony is celebrated.**[56]

a) A **domicile**, which is the place "where someone establishes his household and the sum of his affairs and fortunes; whence he would not again depart if nothing called him away; whence, when he has departed, he seems to be traveling; to which, if he has returned, he has now ceased traveling,"[57] is acquired as soon as someone begins to dwell in that place with the intention of remaining there perpetually, that is, for an indefinite time.[58] This intention must be proved in the external forum. It is proved in diverse ways, for example, by the transfer of a great part of one's goods, by the assumption of some office perpetual of itself or at least not limited to a fixed time, by ten years' residence, by taking an oath, and so forth. A **quasi-domicile** differs from a domicile in this alone: that it does not require the intention of remaining perpetually in some place. The intention of remaining there for the greater part of a year suffices, or at least a residence actually prolonged for the greater part of a year.[59] When domicile or quasi-domicile is lacking, a month's residence in the place where the matrimony is to be celebrated suffices. Since the proper parish priest of those also who have only a diocesan domicile or quasi-domicile is the parish priest of the place where they are actually

residing,[60] such a parish priest can validly and licitly assist at their matrimony. Therefore a diocesan domicile or quasi-domicile suffices, and a parochial one is no longer required. Thus at least if those about to marry do not have a parochial domicile or quasi-domicile elsewhere.

b) A **month's residence** requires nothing other than presence for thirty continuous days; nevertheless, those days are not to be computed mathematically. Hence if the contracting parties had been absent from the parish on one or another day during the month before the celebration of the matrimony, nevertheless they could enter matrimony before the parish priest of the place not only validly but also licitly. For a little is reckoned as nothing.

3. **Permission of the parish priest (or Ordinary) of the domicile or quasi-domicile or month's residence of either contracting party, unless a grave necessity intervenes which excuses from seeking permission.**[61]

The parish priest indeed always assists validly at marriages in his territory, but acts illicitly unless a) either contracting party has a domicile or quasi-domicile or month's residence there; or b) unless there is question of travelers actually journeying; or c) grave necessity intervenes. But if he nevertheless assists at the matrimony, he does not make the stole fees his own and is bound in justice to remit them to the proper parish priest of the contracting parties,[62] even before a declaratory sentence, and indeed to the proper parish priest of the bride, unless legitimate particular statutes decree otherwise. Stole fees are that tax which is owed according to diocesan law to the priest who assists at the matrimony; they do not, however, include the Mass stipend and other gifts perhaps offered.

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[56] Thus the Code of Canon Law, can. 1097, § 1, n. 2.

[57] Thus from Roman law, L. 7, C. X, 40 (39); cf. Voetius, *Ad Pandectas*, l. 5, tit. 1, n. 92. Canonists, for example, Reiffenstuel, *In tit. De foro competenti*, n. 16 ff., receive and explain this definition. Therefore for a domicile it is required that someone establish his household there, that is, the center of private and domestic life; and consequently he does not acquire a domicile in a place or places where he has workshops alone. Cf. the Paris case in *Act. Ap. Sed.* III, 326 ff.

[58] Cf. Benedict XIV, Instruction 33.

[59] Code of Canon Law, can. 92.

[60] Ibid., can. 94, § 3.

[61] Thus the Code of Canon Law, can. 1097, § 1, n. 3.

[62] Ibid., § 3.

768. 4. **The parish priest of the bride** (if she is Catholic), regularly speaking, **should assist at the matrimony to be celebrated**, unless some just cause excuses.[63]

But any reasonable cause, even if not so grave, suffices for the parish priest of the bridegroom (by reason of domicile, quasi-domicile, or month's residence) licitly to assist at the celebration of the matrimony. The reason is that the new law, treating valid and licit assistance with such breadth, cannot fittingly be so severe concerning an accidental point. Hence if the parish priest of the bridegroom assists at the matrimony, he is not bound to return the stole fees received to the parish priest of the bride,[64] unless particular law establishes otherwise. - If the bride has several proper parish priests, for example, by reason of domicile or quasi-domicile, she can choose from among them the one whom she prefers.

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[63] Ibid., § 2.

[64] Thus also Noldin-Schmitt, *De sacr.*[17], n. 639, and authors commonly.

769. 5. **The permission of the local Ordinary** (or his delegate) **where the matrimony is contracted must be sought if vagabonds desire matrimony.**[65]

By the name of vagabonds in this matter are understood all and only those who, at the time the matrimony is to be celebrated, nowhere have a proper parish priest or Ordinary by reason of domicile or quasi-domicile.[66] But those who have only a diocesan domicile or quasi-domicile are equivalent to vagabonds in relation to the parish priest.[67] Therefore travelers, or those who have lived for a month in some parish, are not vagabonds in this matter and must contract matrimony before the parish priest either of the domicile, of the quasi-domicile, or of the place of the month's residence.[68] - In a case of necessity, for example, if a merely civil matrimony is feared or if the vagabonds are actually journeying,[69] the parish priest can assist at the matrimony of vagabonds without the permission of the Ordinary. But authors do not agree whether this permission of the Ordinary is required if only one or the other party of the contracting parties is a vagabond. Vogt[70] and Noldin-Schmitt[71] affirm it; Leitner[72] denies it. The affirmative opinion seems more conformable to the mind of the law, because the same reason of law exists whether both or either one of the contracting parties is a vagabond.

You will resolve. From those things said thus far, the following case, which can frequently occur, is easily solved: Two persons about to marry, living in Fribourg, wish to contract matrimony in the church of the Friars Preachers in Düsseldorf before a Dominican religious who is the bride's natural brother. In order that this matrimony can be validly and licitly celebrated, it is required that the parish priest of Fribourg grant permission to assist to the parish priest in whose parish (or to the archbishop in whose diocese) the church of the Friars Preachers in Düsseldorf is situated. But that parish priest (or archbishop) can then delegate the Dominican religious. The parish priest of Fribourg cannot directly delegate the Dominican religious, because outside his territory not even he himself can assist at the matrimony of his own parishioner.

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[65] Thus the Decree *Ne temere*, V, § 4; Code of Canon Law, can. 1032.

[66] Sacred Congregation of the Sacraments, March 12 (13), 1910, ad 5 (*Acta Ap. Sed.* II, 195). The doctrine concerning the matrimony of vagabonds does not seem to have been changed in the Code of Canon Law, although canons 91, 1032, and 1097, § 1, nn. 2 and 3, cause some difficulty.

[67] Code of Canon Law, can. 94, § 3.

[68] Noldin-Schmitt, *De sacr.*[17], n. 641, teaches that a month's residence alone does not suffice for someone to cease being a vagabond (in this matter).

[69] Code of Canon Law, can. 1097, § 1, n. 3.

[70] *Das kirchl. Eherecht*, 65, note 3.

[71] Noldin-Schmitt, loc. cit., n. 641.

[72] *Lehrb. des kirchl. Eherechtes*, 296.

770. Scholion. On the sacred ceremonies to be observed in the celebration of matrimony. Although the priest is not the minister of the sacrament of matrimony, nevertheless it is always fitting that those about to marry seek the blessing of the priest. The Code of Canon Law, can. 1100, therefore establishes: "Outside a case of necessity, in the celebration of matrimony the rites prescribed in ritual books approved by the Church or received by praiseworthy customs are to be observed." Wherefore spouses who validly and licitly entered matrimony in places where a legitimately delegated priest could not be had for a month are also bound afterward, at an opportune time, to seek the nuptial blessing from a priest. This can fittingly be done when they cause their names to be inscribed in the parochial book of marriages.

771. The nuptial blessing is distinguished as twofold: one simple, which is contained in the Roman Ritual, "The Rite of Celebrating the Sacrament of Matrimony";[73] the other solemn, which is contained in the Missal.[74]

a) The **solemn blessing** consists in three prayers, of which two are said after the *Pater noster*, but the third after *Ite, missa est* or *Benedicamus Domino*. It is not lawful to give this solemn blessing outside Mass,[75] unless an altogether special privilege is possessed, such as was conceded to the Diocese of Eichstätt on September 1, 1838, and February 5, 1865. Concerning this blessing the Holy Office established on August 31, 1881:[76] "The nuptial blessing which the Roman Missal sets forth in the Mass for bridegroom and bride must always be imparted in the marriages of Catholics, but within the celebration of Mass according to the rubrics and outside the forbidden time, to all those spouses who did not obtain it when contracting matrimony for any cause whatsoever, even if they seek it after they have already lived long in matrimony, provided that the woman, if a widow, did not receive that blessing in other nuptials. Moreover, the same Catholic spouses who did not obtain the blessing of their matrimony are to be exhorted to seek it at the first opportunity." From these words (which agree with the statutes of the Code of Canon Law, cann. 1101, 1102, 1108, 1143), it follows that the solemn nuptial blessing cannot be given: a) if the woman already received it in another matrimony;[77] b) if the matrimony is celebrated during a closed time, unless permission of the Ordinary is present;[78] c) if the matrimony to be celebrated is mixed.[79] The celebration of a mixed matrimony will be treated specially below. - The spouses are also to be exhorted to communicate at the nuptial Mass.

b) The **simple blessing**, which is contained in either the Roman Ritual or a duly approved diocesan ritual, must be given in a church or in a public or semi-public oratory, but not in a private house, nor in churches or oratories of a seminary or of women religious, except with the permission of the bishop.[80] In many places, for reasonable causes, the simple blessing alone is imparted to those about to marry. It belongs to the bishop to judge whether the custom of omitting the solemn nuptial blessing is to be permitted. - The Roman Ritual[81] adds: "Moreover, if in any place other praiseworthy customs and ceremonies are employed in celebrating the sacrament of matrimony, it is fitting that they be retained." It must be noted, however, that only praiseworthy customs can be retained; hence customs redolent of paganism, superstition, or indecency have several times been reproved by the Roman Curia.

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[73] Tit. 7, c. 2.

[74] Mass for bridegroom and bride.

[75] Cf. Sacred Congregation of Rites, February 12, 1909 (*Acta Ap. Sed.* I, 255).

[76] *Collect. de Prop. Fide*, n. 1557.

[77] Code of Canon Law, can. 1143.

[78] Ibid., can. 1108, § 3.

[79] Ibid., can. 1102.

[80] Ibid., can. 1109.

[81] Tit. VII, c. 2, n. 6.

772. c) Matrimony itself (with the simple blessing and the proclamations previously made) can be contracted at any time of the year; but the solemn nuptial blessing is forbidden from the first Sunday of Advent through the day of the Nativity of the Lord inclusive, and from Ash Wednesday through Easter Sunday inclusive. Nevertheless, local Ordinaries, with the liturgical laws preserved, can permit it even in the aforesaid closed

times for a just cause, after admonishing the spouses to abstain from excessive external pomp, such as dances and great and sumptuous nuptial banquets.[82]

[82] Cf. Code of Canon Law, can. 1108, and, as regards the liturgical laws, Sacred Congregation of Rites, June 14, 1918 (*Acta Ap. Sed.* X, 332).

§ 2. The Valid and Licit Extraordinary Celebration of Matrimony

Such a valid and licit celebration can occur if the parish priest or local Ordinary is physically absent:[82a] 1. in danger of death; 2. if the absence will endure for a month.

[82a] Pontifical Commission, March 10, 1928 (*Acta Ap. Sed.* XX, 120), and July 25, 1931 (*Acta Ap. Sed.* XXIII, 388).

773. 1. **In danger of death, if the parish priest or local Ordinary or a priest delegated by either cannot be had or approached without grave inconvenience, matrimony can be contracted validly and licitly before only two witnesses.**[83]

Explanation. It is said 1: **in danger of death**, that is, of at least either contracting party. Death is imminent when sufficient time probably is not present for entering matrimony in the ordinary manner before the parish priest or the one supplying his place. Therefore, even when death is at hand, the parish priest or his substitute is to be summoned if this can morally be done. - It matters nothing whether death is imminent from grave illness or from another cause, for example, because of the danger of shipwreck, war, and so forth.[84] - It is said 2: **if the parish priest ... cannot be had without grave inconvenience.** Any grave impossibility of summoning the parish priest or of seeking due delegation suffices. It is said 3: **matrimony can be contracted validly and licitly.** Therefore a celebration of matrimony of this kind is not only valid but also licit; nevertheless, both the witnesses and the contracting parties themselves are bound jointly and severally to take care that the matrimony contracted is duly noted in the book of marriages and of baptisms.[85] - It is said 4: **before only two witnesses.** Therefore, for the validity of matrimony in danger of death, when the parish priest or Ordinary or duly delegated priest cannot be had, it is not required that another priest be summoned; for two lay witnesses suffice for validity. Nevertheless, if another priest who can be present is available, he must be summoned so that together with the witnesses he assist at the matrimony.[86] Such a priest can also dispense both from the form to be observed in the celebration of matrimony (that is, from the presence of the witnesses) and from all impediments of ecclesiastical law, except two.[87] It is evident of itself that a priest can never licitly assist at the celebration of any matrimony unless it is first established for him that the contracting parties are free. Therefore, if other proofs cannot be had, he should exact from the contracting parties a sworn affirmation that they are baptized and are held by no impediment.[88]

[83] Code of Canon Law, can. 1098.

[84] Therefore this indult extends more broadly than the Leonine indult of February 20, 1888, conceded for the sick alone.

[85] Decree *Ne temere*, IX, § 3.

[86] Code of Canon Law, can. 1098, n. 2.

[87] Ibid., can. 1044.

[88] Ibid., can. 1019, § 2.

774. 2. "**If the parish priest or Ordinary or delegated priest who would assist at matrimony cannot be had or approached without grave inconvenience ... a matrimony contracted before witnesses alone**

is valid and licit ..., provided that it is prudently foreseen that this condition of affairs will endure for a month."[89]

Explanation. As regards substance, this law is not new, but even previously matrimony could validly and licitly be entered before two witnesses if it was physically or even morally impossible to approach the parish priest or delegated priest.[90] The new law, however, establishes that matrimony can then be validly and licitly contracted before witnesses alone if it is morally certain that for a month a competent priest can neither be had nor approached without grave inconvenience.[91] A necessity of celebrating matrimony in this manner can occur, for example, in mission regions where there is a great scarcity of priests; in time of persecution, when priests must conceal themselves; or if Catholic spouses must live in remote places of infidels or non-Catholics, for example, in Russia.

If the parish priest indeed is present but is gravely prohibited by civil law from assisting at matrimony unless a civil marriage has first taken place, which nevertheless cannot be placed first, recourse is to be had in individual cases to the Holy See, which will then decree how the matrimony is to be celebrated.[92] In danger of death such recourse is not necessary, as was already said in the preceding number.

It is very fitting that matrimonial consent be expressed before some priest (although juridically not competent, but worthy), who can then impart the customary nuptial blessing. If, however, a priest cannot be had, nevertheless some religious ceremony is to be employed according to the Instruction of the Sacred Congregation for the Propagation of the Faith of June 23, 1830: "In such a case the parents should choose two witnesses who, going together with the bridegroom and bride and their relatives to the church of the place, should on bended knees recite in common the customary acts of faith, hope, charity, and contrition, and thus the bridegroom and bride should duly dispose themselves for contracting matrimony. After these things, rising, the bridegroom and bride should express mutual consent by words of the present before the aforesaid witnesses, and after giving thanks to God they should return home. But if they cannot go to the church, the aforesaid things are to be observed in private houses."[93] The contracting parties must take care that they are free both from every matrimonial impediment and from mortal sin.

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[89] Code of Canon Law, can. 1098.

[90] Thus, for example, the Holy Office responded on November 14, 1883: "In places where a parish priest cannot be had, a matrimony celebrated before two witnesses is valid; nevertheless, the burden rests upon the contracting parties of receiving the nuptial blessing as soon as it can be done and of taking care that their matrimony be inscribed in the sacramental register of the mission or of the nearest church to which they are subject." Several similar Instructions are brought forward by Leitner, *Lehrb. des kirchl. Eherechtes*, 306.

[91] Pontifical Commission, November 10, 1925 (*Acta Ap. Sed.* XVII, 583).

[92] Thus the Sacred Congregation of the Sacraments, January 31, 1916. Although nothing is contained concerning this recourse in the new Code, nevertheless it seems to be necessary (for liceity) if it can be made without grave inconvenience.

[93] *Collect. de Prop. Fide*, n. 816.

775. Note. 1. Such a matrimony entered without the assistance of a priest is valid even if the contracting parties, **in fraud of the law**, that is, precisely in order to avoid the assistance of a priest, depart into a region in which a priest cannot be had.[94] Indeed, in a case of true necessity a faculty has been conceded to Chinese Ordinaries, which they can also habitually delegate to directors of missions, of dispensing from the substantial form of the celebration of matrimony, that is, from the presence of two witnesses.[95]

2. Once the matrimony has been celebrated, the witnesses together with the contracting parties are bound jointly and severally to take care that, as soon as possible, the matrimony be written in the books of marriages and of baptisms of the proper church, or of the nearest church if there is no proper church.[96]

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[94] Sacred Congregation of the Sacraments, March 12, 1910, ad 3.

[95] Sacred Congregation of the Council, July 27, 1908, ad 7.

[96] Decree *Ne temere*, IX, § 3.

Article III. What Things Are to Be Done After the Matrimony Has Been Celebrated

776. 1. "Once the matrimony has been celebrated, the parish priest or the one who supplies his place shall immediately record in the book of marriages the names of the spouses and witnesses, the place and day of the celebrated matrimony, and other things according to the manner prescribed in the ritual books and by his proper Ordinary, and this even if another priest delegated either by him or by the Ordinary assisted at the matrimony."[97]

This inscription must be made **immediately**, that is, on the same day or at least within three days. It does not clearly appear from this paragraph which parish priest ought to inscribe the names if perhaps the matrimony was celebrated outside the place of domicile, quasi-domicile, or month's residence. Certainly it would be better if such a matrimony were inscribed both in the parish where it was celebrated and in the parish of the bride. Thus at least sometimes by particular law.[98] Of itself, however, it seems to suffice if the matrimony is inscribed in the parish in whose territory it was celebrated.[99] The reason is that the whole tendency of the new law, as has already often been said, is to attach the celebration of matrimony to some territory and to burden the parish priest of that place with completing all those things which are required for validity and liceity. - When a dispensation from some public impediment was necessary for the celebration of the matrimony, this also must be noted in the book of marriages.

2. Moreover, it is also necessary to note in the book of baptisms, both at the name of the bridegroom and at the name of the bride, that the matrimony was celebrated on such a day and year in such a place. But if either or both spouses were baptized elsewhere, the parish priest is to transmit notice of the matrimony entered to the parish priest (or parish priests) of baptism, so that the matrimony may be entered in the book of baptism.[100]

The obligation of inscribing the matrimony contracted both in the book of marriages and in the book of baptisms seems to be grave,[101] because its end is grave, namely, that the matrimony contracted be established and that bigamy be avoided. - On July 4, 1921, the Sacred Congregation of the Sacraments ordered that this inscription contain: a) the names and surnames of the newly married spouses, parents, and witnesses; b) the age of the newly married spouses; c) the place and day of the nuptials. If baptism was conferred elsewhere, the parish priest of the matrimony must notify the parish priest of baptism of all these things (through the Chancery of the local Ordinary) by letters signed with his own name and surname and furnished with the parochial seal.[102]

3. If the matrimony was celebrated in danger of death,[103] then the assisting priest must under grave obligation procure the inscription of the matrimony celebrated in the book of marriages and of baptisms; but if the celebration was made without a priest,[104] the obligation of making the same

inscriptions rests under grave obligation upon the witnesses or contracting parties, as was already said above.

4. A matrimony of conscience is not to be noted in the customary book of marriages and of baptisms, but in a special book to be kept in the secret archive of the episcopal Curia (can. 1107).

Epilogue. Since for resolving doubts it is very expedient to know the intention of the legislator, it is worthwhile to append a question concerning the principal intention of the legislator and the means employed. **The intention of the legislator** was to prevent the nullity of so many marriages which were customarily contracted without the assistance of the proper parish priest. All marriages of non-Catholics are contracted without the assistance of a Catholic parish priest, and therefore a great part of them was at least material concubinage. Moreover, so many mixed marriages are celebrated without the due assistance of the parish priest, which therefore likewise are concubinages. Finally, in the celebration of marriages of Catholics themselves, it was often very difficult to discern which parish priest ought to assist by reason of domicile or quasi-domicile, since spouses not rarely changed their place of residence in fraud of the law. All these inconveniences have been removed through the new laws. Non-Catholic marriages are held as valid; mixed marriages celebrated without the assistance of the parish priest are invalid. The proper parish priest of those about to marry is now very easily known, nor does attempted fraud stand in the way. Thus, therefore, there is the greatest security concerning the validity of marriages, and this seems to have been the principal intention of the legislator. - **The means employed** to attain this most excellent intention is the change of the Tridentine law, which was personal rather than territorial. On the contrary, according to the new law almost all ordinances are territorial. To the point, the consultor deputed by the Sacred Congregation of the Council to give his vote concerning the new Decree to be issued writes: "All things counsel that the power of parish priests with respect to the celebration of matrimony be made territorial. For especially since all civil Codes have adopted this principle as more opportune in celebrating acts of nuptials, as they say, civil, there is no sufficient reason why the Church should not follow it in matrimonial matter."[105] From this tendency has arisen the most limpid principle: **All those marriages are valid which have been contracted before the parish priest of the place freely assisting and two witnesses.** The sole exception is found in the East Indies.[106] In danger of death and in the month's absence of the parish priest or delegated priest, still greater liberty has been conceded. Hence matrimonial law through the new decrees has been made easier both as regards understanding and as regards practice.

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[97] Thus the Code of Canon Law, can. 1103.

[98] Thus, for example, in the Archdiocese of Cologne; cf. Vogt, *Das kirchl. Eherecht*, § 26, 6.

[99] If the matrimony was celebrated in a church of religious or elsewhere outside the parochial church, the inscription must nevertheless be made in the parochial church.

[100] Decree *Ne temere*, IX, § 2; Code of Canon Law, can. 1103, § 2.

[101] Thus theologians commonly teach, for example, Noldin-Schmitt, *De sacr.*[17], n. 653; Barret, *Decr. "Ne temere"*, n. 45; and several others.

[102] *Acta Ap. Sed.* XIII, 349.

[103] Cf. above, n. 773.

[104] Cf. above, n. 774.

[105] *Acta S. Sedis* XL, 564.

[106] Cf. above, n. 763.

Chapter IX. On the Impediments of Matrimony

Preliminary note. Since it has already been sufficiently proved above that the faculty of establishing impediments of matrimony belongs to the Church, and that in Christian marriages exclusively, that is, with civil power entirely excluded, we can immediately approach the explanation of the individual impediments, dividing this whole chapter into four articles: 1. on the notion and division of impediments; 2. on impedient impediments; 3. on diriment impediments; 4. on dispensation from impediments.

Article I. On the Notion and Division of Impediments

777. 1. Notion. An impediment of matrimony in general is some circumstance because of which, by a disposition of law, a valid or at least licit matrimonial contract cannot be made between the contracting parties.

Such a circumstance can be sanctioned by either natural and divine law, ecclesiastical law, or civil law. Civil diriment impediments which have been established conformably to natural law bind the non-baptized, as was said above. All Christians are bound by canonical impediments, that is, those which arise from natural, divine, or ecclesiastical law. Infidels are not bound by impediments of merely ecclesiastical law, for example, the impediment of crime.

778. 2. Divisions. a) **Impedient and diriment impediments.**

An impedient impediment contains a grave prohibition against contracting matrimony; the matrimony, however, is not rendered null if it is contracted notwithstanding the impediment, for example, a simple vow of chastity. A diriment impediment[1] both gravely prohibits matrimony from being contracted and prevents it from being validly contracted,[2] for example, bond.

b) **Impediments of natural or divine law and of ecclesiastical law.**

Since God Himself determined the nature of matrimony, and since Christ reduced matrimony to its pristine purity, impediments which are of natural law are also of divine law. This holds especially for Christian marriages, in which the matrimonial contract is inseparable from the sacrament. By natural or divine law all those things dirime matrimony which are directly opposed to the three goods of matrimony, for example, impotence, bond, error in the person, and defect of consent. By ecclesiastical law those impediments prohibit or invalidate matrimony which indeed are not directly opposed to the three goods of matrimony, but nevertheless are opposed to its fittingness, for example, consanguinity in more remote degrees, crime, sacred order, and so forth. Besides, it can sometimes be doubtful whether some impediment is of natural law or of ecclesiastical law. Thus, for example, authors dispute whether consanguinity in the first degree of the collateral line, that is, matrimony between a brother and his full sister, is of natural law or of ecclesiastical law.

c) **Absolute and relative.**

Those impediments are called absolute which invalidate or prohibit matrimony with any other person whatsoever, for example, bond and absolute physical impotence. But relative impediments are those which stand in the way of a determinate matrimony alone, for example, consanguinity, affinity, and so forth.

d) **Public and occult.**

Those impediments are called public which can be proved in the external forum,[3] or which are known either from their nature or from the notoriety of the fact, or at least can easily be known by many. Those things which rest upon a fact public of itself, for example, a solemn vow and natural kinship, are held public from their nature or by law. Because of the notoriety of the fact, an impediment is called public or notorious if it is known by so many and such persons that the danger of divulgation is very probable and it can be proved in the public forum. If an impediment is notorious in one place but not in the place where the matrimony is celebrated, such a circumstance must be declared when the dispensation is sought.[4] If a notorious impediment has been given over to oblivion by lapse of time, for example, after ten years, it can be considered occult, unless, however, it is public from its nature or by law.[5] - An occult impediment is distinguished as either entirely occult, which is known by no one except the parties and the confessor,[6] for example, impotence or crime, or relatively occult, which is known by a few discreet persons, so that the proximate danger of divulgation is absent. Sometimes an impediment occult **in fact**, but public **by law**, is also distinguished; for example, Titius contracts matrimony with Caia, who is held to be the legitimate daughter of Paul; but in reality she was born from the secret adultery of her mother with the maternal uncle of Titius. Therefore between Titius and Caia there is consanguinity in the second degree of the collateral line. This consanguinity in fact is entirely occult, but by law is held public. - Finally, some authors further distinguish an impediment formally occult and materially public; for example, Titius, a widower, wishes to contract matrimony with Caia, with whom he committed adultery under a mutual promise of matrimony. Many indeed know this base fact, but they do not know that an impediment of matrimony arises from it. Therefore it is materially public, but formally (insofar as it is an impediment) it is occult,[7] yet it must be held as public.[7a]

e) **Indispensable and dispensable.**

The former are those in which the Church cannot dispense, or at least is not accustomed to dispense, for example, bond, priesthood, and affinity in the direct line. The latter are those impediments from which the Church is accustomed to dispense, for example, consanguinity in the second and third degree.

Dispensable impediments are subdivided into impediments of the lesser and of the greater degree, according to the diverse manner and facility of obtaining a dispensation. Impediments **of the lesser degree** are: 1. consanguinity in the third degree of the collateral line; 2. affinity in the second degree of the collateral line; 3. public propriety in the second degree; 4. spiritual relationship; 5. crime from adultery with a promise or attempted celebration of matrimony.[8] All other diriment impediments are of the greater degree.

f) **Perpetual and temporary.**

The former, the perpetual, endure until a dispensation has been obtained, for example, consanguinity; the latter cease of themselves by lapse of time, for example, defect of age.

g) **Certain and doubtful.**

A doubt can be either a doubt of law or a doubt of fact. If a doubt of merely ecclesiastical law exists concerning an impediment, the axiom can generally be applied: "A doubtful impediment is no impediment." For "even invalidating and incapacitating laws do not bind in a doubt of law."[9] Nevertheless, it belongs neither to the confessor nor to the parish priest, but to the Ordinary, to whom the matter is to be referred (if this can morally be done), to decide concerning the existence of a doubt of law. If there is question of a doubt of divine or natural law, or of a doubt of fact, in practice the judgment of the competent ecclesiastical authority, namely, of the bishop or the Holy See, is first to be sought. Thus, for example, in a doubt concerning the existence of

the impediment of bond, matrimony is wont to be prohibited; but in a doubt concerning the existence of the impediment of impotence, matrimony is wont to be permitted.

[1] The expression "diriment impediment" is censured by some authors, for example, by Bernard of Pavia (in Freisen, *Gesch. d. kan. Eherechtes*, 223), because nothing can be dissolved which does not exist. Moreover, when a diriment impediment exists, matrimony does not exist. But since this expression is already contained in the Decretals (c. 4, X 4, 3), there is no reason for us to depart from it, since its meaning is obvious. But St. Thomas says excellently (*Suppl.*, q. 50, a. un., ad 7): "The aforesaid impediments are not said to dirime a contracted matrimony as though dissolving a true matrimony which was duly contracted; but because they dissolve a matrimony which was contracted *de facto* and not *de iure*."

[2] Code of Canon Law, can. 1036.

[3] Ibid., can. 1037.

[4] Cf. Vogt, *Das kirchl. Eherecht*, § 28.

[5] Benedict XIV, Instruction 87, n. 41 ff., treats excellently of this matter.

[6] Thus at least if there is question of a matrimony to be contracted, because one witness suffices to impede a matrimony to be contracted; but if there is question of a contracted matrimony, the impediment is held occult even if one witness knows it. Cf. Wernz-Vidal, *Ius can.* V, n. 147, and Sacred Congregation of the Council, January 29, 1889.

[7] Cf. Gennari, *Consultazioni mor.* I, CXXVII.

[7a] Pontifical Commission, June 25, 1932 (*Acta Ap. Sed.* XXIV, 284).

[8] Code of Canon Law, can. 1042.

[9] Ibid., can. 15.

Article II. On Impedient Impediments

779. Preliminary note. The impedient impediments of matrimony are not enumerated in the same manner by diverse authors. Some think there are two or four; others, five or six; and still others, eleven. Such diversity proceeds from the diverse manner of taking impediments. If by the name of an impedient impediment all grave prohibitions of matrimony are understood, then twelve could easily be enumerated; for then from the new law three impedient impediments would be added, namely, those conditions which are required for licit assistance at matrimony.[10] Indeed, the state of mortal sin would be an impedient impediment of matrimony,[11] since in that state the celebration of matrimony is gravely prohibited. Therefore the number of such impediments is not to be disputed. In the chapter on impedient impediments, cann. 1058-1066, the Code of Canon Law expressly enumerates three such impediments: 1. five vows; 2. legal relationship in those regions where civil law renders the nuptials illicit; 3. mixed religion. Each is to be treated.

[10] Cf. above, n. 766 ff.

[11] Berardi (*Comm. in ius eccl.* III, diss. 4, c. 7, q. 1 [Venice ed., p. 142 ff.]) sharply censures the customary enumeration of impediments, but he seems to beat the air.

§ 1. Vow

780. The vows which constitute an impedient impediment of matrimony are not solemn vows (which indeed not only prohibit but also dirime matrimony), **but are simple vows which introduce obligations incompatible with the matrimonial state.**

There are five vows of this kind,[12] namely: 1. the vow not to marry, or of celibacy; 2. the vow of virginity; 3. the vow of perfect chastity; 4. the vow of embracing the religious state; 5. the vow of receiving sacred orders.

The first three vows principally regard chastity, but the latter two rather regard the virtue of religion. Although theoretically the vow not to marry differs from the vow of virginity, because virginity is lost not only by the use of matrimony but also by other acts of consummated lust, nevertheless in practice the vow of virginity and the vow not to marry are wont to coincide. Sometimes the confessor can also discern with difficulty whether the penitent emitted a vow of virginity or a vow of perfect chastity. Then the penitent must be asked what he principally intended by vowing: whether, free from the burdens of matrimony, he might more easily serve God, or whether through love of purity and the most strict observance of chastity he wished to please God. In the first case the vow of virginity seems to be present, but in the other the vow of perfect chastity.

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[12] Code of Canon Law, can. 1058, § 1.

781. Gravity of the obligation. One who is bound by any of these five vows (even secret and merely internal vows) has an impedient impediment, and if he nevertheless contracts matrimony, he indeed acts validly; but as regards sin, the following things are to be distinguished:

a) One who, bound by a vow not to marry or even by a vow of virginity, enters matrimony sins gravely, because he directly violates a great vow in grave matter. But once matrimony has been entered, he can seek and render the debt without a new sin, because the vow is impossible. When the matrimony has been dissolved by the death of the other party, the vow revives if it was made absolutely. But some authors probably deny this revival.[13] One who, bound by a vow not to marry, fornicates or commits other sins against chastity does not violate the vow, since it has as its object only the renunciation of matrimony. - The bishop, a regular confessor, and other confessors having special faculties can dispense from the vow not to marry.

b) One who, bound by a simple vow of chastity, contracts matrimony sins gravely, except in the exceedingly rare case in which someone is morally certain (either through a trustworthy promise or through the vow of the other party) that he will never do anything against chastity. Thus several theologians teach that the Blessed Virgin, after emitting a vow of chastity, contracted matrimony with St. Joseph.[14] - One who is bound by this vow can never seek the conjugal debt, but can render it whenever the other party exacts it by justice. But when the other party does not have a strict right to the debt, for example, after adultery has been committed, the one bound by the vow cannot render the debt, because the vow always subsists and the right of the other is not then injured through the observance of the vow. When the other party dies, the vow revives if it was perpetual. - The simple vow of chastity of which there is question here is a vow emitted either privately in the world or publicly in religious institutes. Nevertheless, simple vows emitted in the Society of Jesus constitute a diriment, and not merely a prohibitive, impediment of future matrimony. Thus from the Constitution *Ascendente Domino* of Gregory XIII, May 22, 1589. On November 29, 1842, the Sacred Penitentiary responded that even a vow of chastity which perhaps some Protestant had emitted with the true intention of binding himself is a simple vow of chastity, binds in conscience, and therefore constitutes an impedient impediment of matrimony.

Dispensation. Who can dispense from this vow was said above, II, n. 423 ff.

Note. Formerly, when a dispensation from a vow of perfect chastity was conceded, it was wont to be limited to a determinate matrimony, so that when this matrimony had been dissolved by the death of the other party, the vow would revive. Moreover, there was added in the rescript of dispensation that the one dispensed, "if he ever sins outside the licit use of matrimony or contracts matrimony without a new dispensation, should know that he acts against the vow of chastity and cannot exact the conjugal debt." Moreover, the confessor or

superior dispensing was bound to impose some penance which had to be performed daily, so that the one who was dispensed, in fulfilling it, could always remember the obligation by which he was bound by a vow of this kind. But according to the present discipline of the Roman Curia, all these clauses are now customarily omitted and therefore do not bind.

[13] Cf. Marc, *Inst. mor.*, n. 1998; Raus, 18.

[14] Cf. *S. theol.* 3, q. 28, a. 4, and q. 29, a. 2.

782. c) One who, bound by a vow of entering religion, contracts matrimony sins gravely, since he almost always renders fulfillment of the vow impossible for himself. But once the matrimony has been consummated, the one who emitted the vow can licitly both render and seek the conjugal debt, because he did not directly promise chastity but entrance into religion, which has now been made impossible for him. When the matrimony has been dissolved by the death of the other party, or if perpetual divorce is lawful because of adultery or the consent of the other party, the vow revives, unless meanwhile the circumstances of affairs have been so changed that entrance into religion is morally impossible. - From this vow, if there is question of entering religion properly so called (that is, with solemn vows), no one can dispense except the Supreme Pontiff and one specially delegated by him.[15] But if there is question of entering a religious congregation with simple vows alone, bishops and regular confessors can concede a dispensation.

In a rescript of dispensation conceded by the Holy See, this clause was wont to be found: "You shall commute for the one dispensed into sacramental confession each month and into other perpetual works of penance, among which works there shall be some belonging to the religious order which he vowed or would have entered, which he shall be bound to perform daily, so that in fulfilling them he can always remember the obligation by which he was bound by a vow of this kind." Therefore, for example, Communion to be received on feast days principally celebrated in that order, or the visitation of churches of the order, and so forth, is fittingly imposed upon the penitent.

d) One who, bound by a vow of receiving sacred orders, contracts matrimony sins gravely, because he renders the fulfillment of the vow morally impossible for himself. He could indeed, and would be bound to, seek the consent of the other party so that, notwithstanding the matrimony, he might be able to receive sacred orders; but the other party is in no way bound to furnish this consent. If the other party does not give consent, the one bound by the vow can licitly seek and render the conjugal debt, because he did not directly vow chastity and the fulfillment of the vow has been made impossible. But when liberty has been recovered (whether through adultery or through the death of the spouse), the vow revives unless a dispensation has been obtained, which indeed can be given by the bishop or by a regular confessor. - The bishop, a regular confessor, and other confessors having special faculties can dispense from the vow of receiving sacred orders.

[15] Cf. above, II, n. 422.

§ 2. On Legal Relationship

783. Notion. Legal relationship is the proximity of persons arising from civil legal adoption.

This impediment is diriment between those persons who by the civil law of their country are declared **incapable** of nuptials because of legal adoption; but it is merely impedient if the same civil law declares such nuptials only **illicit**. Thus the Code of Canon Law, cann. 1059 and 1080, establishes. Therefore ecclesiastical discipline no longer canonizes and adopts the ancient Roman law in this matter, but the civil laws of each

region. Hence the ecclesiastical impediment of legal relationship also seems to be totally abolished in those regions (for example, in Austria, Holland, England, Chile, Mexico, and so forth) where civil law neither invalidates nor prohibits matrimony between the adopted person and the adopter.[16]

St. Thomas[17] explains the fittingness of this impediment most excellently thus: "Divine law especially excludes from matrimony those persons whom it was necessary to live together, lest, if it were lawful for them to use carnal union, an easy occasion for concupiscence should lie open; matrimony is ordained to repress this. And because an adopted son dwells in the house of the adopting father as a natural son, therefore by human laws it is prohibited that matrimony be contracted between such persons, and such a prohibition is approved by the Church."

Origin of this impediment. Legal relationship as a diriment impediment of matrimony was first established by ancient Roman law.[18] This civil law was afterward canonized by the Church. But when this was done is not so certain. Gratian already presupposes the existence of the impediment of legal relationship;[19] but Raymond in the compilation of the Decretals placed a special title concerning legal relationship,[20] which he afterward briefly and clearly circumscribed in his *Summa*.[21]

Extent of the impediment. Legal relationship dirimes or prohibits matrimony according to the civil laws of each region. In Germany, France, Hungary, Switzerland, Belgium, and Luxembourg, legal relationship is a more or less impedient impediment; in Italy, Spain, Poland, Brazil, and so forth, this relationship is a diriment impediment.

Cessation of this impediment. Since legal relationship, according to present ecclesiastical discipline, is judged entirely according to the civil laws of each region, it also seems to cease in the ecclesiastical forum when it has ceased in the civil forum. Whether the Holy See will concede a dispensation from this impediment in a case of necessity if civil law invalidates or prohibits such a matrimony is not yet established.

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[16] Legal relationship seems to be a diriment impediment in Spain and Italy, but not in Germany, Switzerland, France, Austria, Holland, or Belgium.

[17] *Suppl.*, q. 57, a. 2.

[18] *Instit. Iustin.*, l. 1, tit. 11; *Pandect.*, l. 1, tit. 7; *Cod.*, l. 8, tit. 48; *Novell.* 74, c. 3, and 89.

[19] c. 1 § 6, C. 30, q. 3.

[20] L. 4, tit. 12.

[21] *Summa*, l. 4, tit. 8.

§ 3. Mixed Religion

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[22] Cf. Alban Stolz, *Der verbotene Baum für Katholiken u. Protestanten*; Jacob Niest, *Die gemischte Ehe*, 1920; Ries, *Die Mischehe eine ernste Pastorationsfrage*, 1918.

784. Notion. The impediment of mixed religion exists between validly baptized persons about to marry, of whom one is Catholic but the other is enrolled in heresy or schism.[23]

Mixed religion is not held to be present:

1. between two persons of whom one is not validly baptized. Then there is disparity of worship (concerning which there will be discussion below, n. 806 ff.).
2. between two persons, one of whom is Catholic, but the other (already from infancy) defected from the Catholic faith. Certainly this apostate is a true heretic, and therefore the parish priest should not assist at such a matrimony without the customary guarantees furnished by the apostate. But nevertheless, before this apostate is enrolled in some heresy, his matrimony is not held mixed and does not need a pontifical dispensation (Sacred Congregation of the Inquisition, January 30, 1867). But if such an apostate (from infancy) contracts matrimony with a heretical party, it is not established whether that matrimony is to be considered purely heretical or mixed, and therefore in judging the validity of such a matrimony entered without the assistance of the parish priest, recourse must be had in individual cases to the Holy Office.
3. between faithful observing diverse rites, for example, between a Catholic of the Latin rite and a Catholic of the Ruthenian rite. For North America the Constitution *Ea semper* of Pius X, June 14, 1907, established how one is then to act both with respect to the celebration of the matrimony and with respect to the education of the children.[24]

[23] Code of Canon Law, can. 1060.

[24] *Analecta eccl.* XV (1907), 431.

785. Morality of mixed matrimony. A mixed matrimony is sometimes prohibited by natural and divine law itself,[25] namely, when a) there arises for the Catholic party a proximate danger of perversion and especially of losing the faith; b) the offspring to be born will not be educated in the Catholic faith, or even if their education will be neglected; c) there is communication in sacred things with heretics, made without an urgent cause. For the Catholic party administers the sacrament of matrimony to the heretic, which certainly is not lawful without an urgent reason.[26] Hence Gregory XVI, in a letter to the Archbishop of Fribourg on May 23, 1846, declared: "It is known and established that Catholics (whether men or women) who rashly contract mixed nuptials and cast themselves and the offspring to be received therefrom into danger of perversion sin against natural and divine law." From these things it is evident that no one (not even the Supreme Pontiff) can dispense so that a Catholic may licitly contract a mixed matrimony unless every proximate danger of perversion both for the contracting party himself and for the offspring to be born is avoided.[27] But if such a danger has been eliminated, then a mixed matrimony can be licit when a dispensation of the Church is added. Hence those authors who teach that mixed matrimony is always gravely illicit and is only tolerated by the Church, just as the Church also tolerates other evils under compulsion, seem to speak more severely than is fitting. In practice, however, even when a dispensation of the Church has been obtained, mixed marriages are often gravely illicit, because every danger of spiritual harm for the Catholic party and for the future offspring quite rarely ceases.

[25] Code of Canon Law, can. 1060.

[26] Leo XIII speaks most excellently concerning mixed marriages (Constitution *Arcanum*, February 10, 1880): "It can scarcely be hoped that minds dissenting concerning the discipline of religion will be in concord concerning other things. Indeed, it is especially clear that marriages of this kind are to be abhorred because they furnish occasion for forbidden association and communication in sacred things, create danger for the religion of the Catholic spouse, are an impediment to the good instruction of children, and very often impel minds to grow accustomed to holding all religions in equal regard, with the distinction of truth and falsity removed."

[27] In the eighteenth century and at the beginning of the nineteenth century, the evil practice was permitted by some bishops that in mixed marriages boys be educated in the religion of the father, but girls in the religion of the mother. But the Supreme Pontiffs Benedict XIV, Pius VI, Pius VIII, and Gregory XVI vigorously opposed this practice, which so gravely conflicts with divine law.

786. Duty of the parish priest and confessor with respect to avoiding mixed marriages.

With all their strength, by exhortations, persuasions, and also rebukes, priests must strive that mixed marriages not be entered. All the faithful must know "what the Catholic Church herself has constantly held concerning marriages of this kind between Catholics and non-Catholics, since she has always disapproved them and held them as illicit and plainly pernicious, both because of criminal communication in divine things, because of the danger of perversion threatening the Catholic spouse, and because of the evil education of the offspring." Thus the Antonellian Instruction,[28] which was again inculcated by the Holy Office on November 24, 1899. Leo XIII speaks in a similar manner in the Encyclical *Arcanum*, as do several particular Councils, especially those of Latin America, and the Code of Canon Law, can. 1064. - For preventing mixed marriages, it is very advantageous that all parish priests and confessors of each region or diocese collaborate with united strength and uniformly, and especially employ the following remedies: a) in catechesis and in preaching they should repeatedly instruct the faithful concerning the evils proceeding from mixed marriages; b) in the confessional they should prudently and also strenuously deter the faithful from mixed marriages and deny sacramental absolution to those who obstinately wish to enter a mixed matrimony without the prescribed guarantees; c) "after mixed nuptials have been celebrated, parish priests should know themselves to be burdened by a grave obligation of conscience to watch that the conditions promised by the spouses be observed and attain their effect."[29]

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[28] In this Antonellian Instruction of November 15, 1858 (*Analecta eccl.* IX [1901], 16 f.), the whole present discipline concerning mixed marriages is contained.

[29] Thus the Sacred Congregation for the Propagation of the Faith, June 25, 1884 (*Collect. de Prop. Fide*, n. 1621), and Code of Canon Law, can. 1064, n. 3.

787. A dispensation for contracting a mixed matrimony pertains to the Holy See alone, namely, to the Holy Office.[30] Hence the opinion of certain older moralists who thought that a bishop could dispense by his own authority from the impediment of mixed religion now has no probability. But by delegation of the Holy See very many bishops can dispense for the celebration of mixed marriages. By common law, not only when danger of death is urgent, but also when the matrimony cannot be deferred without probable danger of grave evil until a dispensation is obtained from the Holy See, the local Ordinary can dispense from this impediment. Indeed, if not even the local Ordinary can be approached, both the parish priest and the confessor possess the same faculty. But the latter only for the internal forum and in the act of sacramental confession.[31]

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[30] Sacred Congregation of the Inquisition, January 3, 1871.

[31] Code of Canon Law, cann. 1043-1045.

788. The conditions required for a dispensation from the impediment of mixed religion are the following:

1. **Just and grave causes.**

For example, grave danger of apostasy of the Catholic party if the dispensation is denied; fear that otherwise only a civil matrimony will be entered, or one only before a non-Catholic minister; a founded hope of conversion of the non-Catholic party.

2. **Guarantees furnished by a serious, explicit, and trustworthy promise**, namely:

a) that all offspring of either sex be baptized and educated in the holy Catholic religion. Each spouse must promise this.[31a]

This condition applies to all offspring, not only those to be born from this matrimony, but also those illegitimately generated by the contracting parties themselves before the matrimony. Moreover, both the parish priest and the Catholic party must prudently take care that offspring perhaps born to the other spouse in a preceding union be withdrawn from heresy and educated as Catholics. For when one spouse obstinately wishes to educate in heresy offspring begotten from another union, a vehement fear is often induced that in the new matrimony he will not fulfill the prescribed conditions. Wherefore then the dispensation must be sought and put into execution very cautiously.

b) that every proximate danger of perversion be excluded from the Catholic party and that the exercise of his religion be entirely free to him. The non-Catholic spouse must promise this.

These guarantees are regularly to be given **in writing**.[32] Moreover, it is required that those wishing to enter a mixed matrimony present themselves before a non-Catholic minister neither before nor after the matrimony. If the parish priest certainly knows that the spouses will approach, or have already approached, a non-Catholic minister, he should not assist at their matrimony except for the gravest causes, with scandal removed and the Ordinary first consulted. The Catholic spouse is bound prudently to procure the conversion of the non-Catholic spouse.[33]

[31a] See the Instruction of the Sacred Congregation of the Holy Office, January 14, 1932 (*Acta Ap. Sed.* XXIV, 25).

[32] Code of Canon Law, can. 1061.

[33] Ibid., can. 1062.

789. The rite to be observed in contracting a mixed matrimony. By common law the parish priest cannot concede (either validly or licitly) assistance so called passive in mixed marriages if the guarantees have not been furnished;[34] but even if those guarantees have been furnished, he cannot employ a sacred rite, but without sacred garb and outside the church he must ask for and receive the matrimonial consent of those about to marry before two witnesses. But by particular law the proclamations and all the ceremonies contained in the Ritual are not rarely permitted, "the celebration of Mass, however, always excluded."[35] Therefore the votive Mass for bridegroom and bride, or another Mass with the nuptial blessing, can never be said in the celebration of a mixed matrimony. It is not prohibited, however, that the contracting parties cause a private Mass to be celebrated on the day of the celebration of the matrimony and assist at this Mass as do the other faithful, provided, however, that from the circumstances this Mass cannot be regarded as a complement of the nuptial ceremony.[36]

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[34] Cf. above, n. 764.

[35] Code of Canon Law, can. 1102, § 2; can. 1109, § 3.

[36] Pontifical Commission, November 10, 1925 (*Acta Ap. Sed.* XVII, 583).

790. A mixed matrimony clandestinely contracted.

On August 23, 1877, the Holy Office responded to the question: "Whether, in marriages contracted with heretics, pastors of souls can with a safe conscience admit the penitent party to the reception of the

sacraments, provided scandal is excluded? - **As regards valid marriages**, they can be admitted to receiving the sacraments without a previous renewal of consent, but are to be kept from receiving them until they have given true signs of repentance and have promised that with all their strength they will take care both for the conversion of the heretical party and for the education in the Catholic religion of all offspring born and perhaps to be born, and finally until they have obtained absolution from the censures incurred together with salutary penances in the event that they contracted before a heretical minister. - But **as regards invalid marriages**, since their matrimony is null, for example, through the defect of clandestinity, they are not to be admitted to receiving the sacraments unless they first promise that, after obtaining a dispensation from the impediment of mixed religion, they will faithfully fulfill all those conditions which are required in the aforesaid dispensation; and then unless they renew consent before the Catholic parish priest and two witnesses; and finally unless they first obtain absolution from the censures incurred together with salutary penances in the event that they attempted matrimony before a non-Catholic minister." - From this response of the Holy Office, and also from others, especially those of August 29, 1888, and May 11, 1892, three things follow:

1. Those who **validly contracted clandestine mixed marriages**[37] cannot receive sacramental absolution unless they have promised that with all their strength they will take care for the Catholic education of all the offspring.

Hence a **Catholic husband** can never receive sacramental absolution unless he seriously promises that all offspring to be born will be educated in the Catholic religion. With respect to offspring already born and not yet brought to puberty, the father is likewise altogether bound to procure a Catholic education. The reason is that according to civil laws the education of offspring is usually placed in the absolute power of the father, at least until puberty, whatever was stipulated beforehand. Therefore the father can, and consequently must, procure the education of all the offspring in the Catholic religion, even if certain material inconveniences arise for him therefrom. But if the offspring is no longer subject to paternal power, the father must at least most insistently exhort the offspring freely to accept the Catholic faith. - But a **wife** who contracted a valid mixed matrimony is indeed bound with all her strength to procure the education of all the offspring in the Catholic religion; nevertheless, because she is under the power of the husband, who perhaps in no way consents to this Catholic education, she can be sacramentally absolved even if, because of the husband's opposition, the offspring is not in fact educated in the Catholic religion. The reason is that no one is bound to the impossible. It is evident of itself that the scandal given by the woman must be repaired according to her ability.

2. Those who **invalidly contracted a clandestine mixed matrimony** cannot be sacramentally absolved unless the matrimony has first been convalidated or dissolved.

This is evident, because concubinarians are unworthy of sacramental absolution, at least if they are not in good faith. But this good faith can scarcely ever be supposed. The convalidation of an invalid mixed matrimony is to be made in diverse ways: a) If the spouses are prepared to furnish the customary guarantees recounted above, nothing else is required except that, after a dispensation has been obtained from the impediment of mixed religion (and from other impediments perhaps existing), the matrimony be celebrated according to ecclesiastical law, that is, before the parish priest and two witnesses. b) But if neither spouse wishes to furnish the necessary guarantees, the matrimony ordinarily cannot be convalidated, because this would be to cooperate in something intrinsically evil. c) If at least the Catholic party sincerely promises to take care with all his strength for both the exercise of the true religion and the education of the offspring,

insofar as this is possible, the bishop can concede by delegated power that the matrimony be convalidated by a radical sanation if otherwise the gravest inconveniences would arise.[38]

[37] Clandestine mixed marriages were valid before the Decree *Ne temere* in all regions where the Declaration of Benedict XIV or a similar indult was in force; but now they are invalid everywhere in the world.

[38] Cf. Wernz-Vidal, *Ius can.* V, n. 181; Vogt, *Das kirchl. Eherecht*, § 36, n. 10.

791. 3. Those who either validly or invalidly contracted a mixed matrimony **before a non-Catholic minister**[39] incur a censure, namely, excommunication reserved to the Ordinary.[40] This excommunication indeed is held to have been incurred in the external forum because a mixed matrimony is a public fact which can easily be proved in the external forum. Therefore absolution must also be sought and received in the external forum,[41] unless, however, in some diocese an indult exists for granting absolution in the internal forum alone.

Since in the internal forum no censure is incurred unless the sinner had knowledge of the censure, a penitent who did not know that those contracting matrimony before a non-Catholic minister were punished by excommunication does not need absolution from the censure in the internal forum.[42]

Note. A Catholic party who not only contracted matrimony before a non-Catholic minister but also consented **to the non-Catholic education of the offspring** incurs a twofold excommunication. Therefore, in a petition for the faculty of absolving, both facts must be stated.[43] If such a Catholic party died without signs of repentance, for example, suddenly struck by apoplexy, he cannot be granted ecclesiastical burial and obsequies.[44]

[39] Code of Canon Law, can. 2319. It is required that the non-Catholic minister assist at the matrimony as one devoted to sacred things; hence excommunication is not incurred if he assists as an official of the civil government.

[40] If, however, up to May 11, 1892, they were absolved from a fault of this kind without any previous absolution from censures, they do not seem to be disturbed further.

[41] Thus, for example, in the Archdiocese of Cologne it is prescribed that, before obtaining absolution from censures, the Catholic party, by signing a document before the parish priest and two witnesses, declare in express words that he sincerely grieves for the things committed and will repair them according to his ability (cf. Vogt, loc. cit., n. 6).

[42] Cf. Leitner, loc. cit.; Hollweck, *Die kirchl. Strafgesetze*, § 34, notes 1 and 3.

[43] Code of Canon Law, can. 2319; cf. above, n. 522.

[44] Thus the Holy Office, May 8, 1907 (*Anal. eccl.* XVI [1908], 487).

792. Scholion 1. On the matrimony of a public sinner. Because of the grave harms to follow, the faithful are to be deterred from matrimony with public sinners, for example, with those who notoriously cast off the Catholic faith, even if they did not pass into a non-Catholic sect; with those who are notoriously enrolled in societies condemned by the Church, for example, the Masonic sect or communist or anarchist societies; with those who are notoriously bound by a censure and do not wish to be reconciled with the Church. The parish priest is gravely prohibited from assisting at the aforesaid nuptials unless the Ordinary is consulted, who, after inspecting all the circumstances, can permit him to be present at the matrimony, provided that a) a grave cause is present; b) the danger of perversion of the other spouse is removed; c) sufficient provision is made for the Catholic education of all the offspring.[45]

[45] Code of Canon Law, cann. 1065 and 1066. Although the Code in can. 1066 does not expressly require the latter two conditions enumerated, nevertheless they are required by divine-natural law itself.

793. Scholion 2. The **prohibition of the Church** is no longer discussed among matrimonial impediments in the Code of Canon Law, which nevertheless generally establishes in can. 1039: "Local Ordinaries can forbid matrimony in a particular case to all actually residing in their territory and to their subjects even outside the boundaries of their territory, but only for a time, for a just cause and while that cause endures. The Apostolic See alone can add an invalidating clause to the prohibition."

Article III. On the Diriment Impediments of Matrimony

794. General notions. A diriment impediment renders those about to marry incapable, so that they cannot enter the matrimonial contract either licitly or validly, as was already said above. Therefore such an impediment directly affects the contract and indirectly the sacrament of matrimony. In placing certain diriment impediments against validity, the Church does not change the matter and form of the sacrament of matrimony, but brings it about only that contracting parties under certain conditions cannot furnish valid matrimonial consent. For just as civil government can establish for the public good that citizens under certain conditions are altogether incapable of completing certain contracts (for example, that minors cannot complete a contract of purchase and sale, that wills lacking form are invalid), so, *a fortiori*, the Church, for the spiritual good of the faithful and for the good of the whole Christian society, can determine that matrimony is invalid unless it is entered under the established conditions. - In the Church, this power of placing diriment impediments is exercised only by the Supreme Pontiff or by an ecumenical Council.

All diriment impediments principally have the character of an **incapacity**, or of an invalidating law; but the character of a penalty, which is found in some, is altogether secondary, and therefore ignorance never excuses from a matrimonial impediment. Hence the Holy Office says: "It must also be noted, with respect to diriment impediments, that invincible ignorance or good faith does not suffice for matrimony to be contracted validly. Although at times that ignorance and good faith can excuse from sin, nevertheless it can never render valid a matrimony which was entered with a diriment obstacle."[46]

The end for which the Church instituted diriment impediments is a) the public good, b) the good of the contracting parties, c) the good of religion and of the sacrament. - The impediments of ecclesiastical law are ordered with such wisdom that civil governments themselves have not rarely adopted them even in civil marriages.

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[46] Pius IX, December 9, 1874, and several times (*Collect. de Prop. Fide*, n. 1427, p. 86).

795. Number. Authors do not agree on the number of diriment impediments. Formerly, however, fifteen were quite commonly enumerated, expressed by the following mnemonic verses:

> Error, condition, vow, relationship, crime, Disparity of worship, force, order, bond, propriety, Age, affinity, if clandestine, and impotence, If the woman has been abducted and not restored to a safe place. These prohibit marriages to be joined; they undo those already made.

The Code of Canon Law enumerates thirteen impediments, namely: 1. age; 2. impotence; 3. bond; 4. disparity of worship; 5. sacred order; 6. solemn profession; 7. abduction; 8. crime; 9. consanguinity; 10. affinity; 11. public propriety; 12. spiritual relationship; 13. legal relationship.

§ 1. Defect of Age

796. Notion. The impediment of age is the defect of legitimate age. For the Code of Canon Law, can. 1067, establishes: "A man before the completed sixteenth year of age, and a woman likewise before the

completed fourteenth year, cannot validly enter matrimony." The years must be altogether completed, so that if even one day is lacking, matrimony is contracted invalidly.

In warm regions, where physiological puberty in each sex is wont to arrive earlier and therefore matrimony also is celebrated earlier, a dispensation from this impediment is obtained from the Holy See for those who are already mature. Generally, however, pastors of souls should take care to turn young people away from entering matrimony before the age at which, according to the received customs of the region, matrimony is wont to be entered (ibid., § 2).

The impediment of defect of age had already existed for centuries, but its extent was circumscribed by the Code of Canon Law in the place cited. The old discipline, therefore, has been abrogated.

This impediment of age, since it is of merely ecclesiastical law, does not bind the non-baptized, who therefore can contract a valid matrimony among themselves even before attaining the age of sixteen or fourteen years, provided that they have sufficient use of reason and the other things required by natural law. The same seems to be said if matrimony is contracted between a member of the faithful who has the canonical age and an unbeliever who does not yet have it.[47]

Note. If matrimony was invalidly contracted because of the impediment of deficient age, it does not convalidate of itself after puberty has been attained, but a renewal of consent is required, and indeed ordinarily before the parish priest and two witnesses according to the legal norms. For defect of age is an impediment **of public law**.

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[47] Thus also Wernz-Vidal, *Ius can.* V, n. 211; Cappello, loc. cit., n. 336.

§ 2. Physical Impotence

797. Notion. The impediment of impotence is "the impossibility of coition, or a defect of mind or body or of both, by which someone is prevented from carnally commingling with another (in the natural manner)." Thus St. Raymond of Peñafort.[47a]

Explanation. It is said, 1. **the impossibility of coition.** Coition is defined by Gasparri[48] as "the insertion of the virile member into the woman's vagina with the emission of semen." Hence incapacity for conceiving and for generating must be altogether distinguished from impotence as it is discussed here. In the commingling of man and woman, three things are to be distinguished: active conception, or coition; passive conception, or the vivification of the female ovum; generation, or the birth of the generated human being. For the validity of matrimony, only the possibility of active conception is required. For if this copula is perfect on the part of the man and the woman, it is only accidentally that pregnancy and generation do not follow from it. And so, if spouses have completed the carnal copula in this manner, they are rightly said to have performed the conjugal debt. But all things that follow afterward depend upon nature, and by no means upon the spouses. Not without reason has someone compared the conjugal act with eating. Nutrition is completed by three things: eating, digestion, and assimilation. Eating is ordered to digestion, but digestion to assimilation. Thus, in like manner, coition is ordered to passive conception, but this conception to generation. One who places nourishing food into his mouth and swallows it is said truly to eat, although, because of a disorder of the stomach, all digestion and nutrition are altogether impossible. Eating, as such, is perfect; if it attains no effect, the eating itself is not to be blamed. But if someone swallows inedible matter (stones, iron, etc.), he is no longer properly said to eat. The case is similar in carnal copulation: if true virile semen is naturally deposited in the female vessel, that act of itself suffices for conception and generation. But if neither conception nor

generation actually follows, this is accidental, and not essential. Therefore such a copula is licit, nor are those who can complete commingling in this manner to be barred from matrimony, although conception and generation are impossible because of natural defects.[49] - Furthermore, matrimony was instituted not only for generating offspring, but also as a remedy for concupiscence. Hence St. Paul says: "Because of fornication, let every man have his own wife, and let every woman have her own husband. But if they do not contain themselves, let them marry. For it is better to marry than to burn."[50] Therefore it is licit rightly to complete the marital copula, even if no generation is hoped for. The doctrine thus far set forth concerning the notion of impotence is greatly strengthened by repeated decisions of the Holy Office,[51] which permitted matrimony to women who (as deprived of both ovaries and of the uterus) certainly could not complete a copula of itself apt for generation.

It is said, 2. **or a defect of mind or body or of both** (by which someone is prevented from commingling with another in the natural manner). - By these words are indicated the causes from which impotence is wont to arise. These causes are both spiritual or psychic and bodily. Among spiritual causes, the ancient canonists spoke much about sorcery, which consists in the influence of a demon impeding the perfect conjugal act. Although an influence of this kind is possible, nevertheless it is not easily to be admitted; indeed, in our times certain examples of this influence are entirely lacking. - Among other spiritual or psychic causes producing impotence, the first place is held by weariness, hatred, and aversion existing between spouses, and vehement homosexuality. Sometimes the genital nerves are so vehemently affected by affections of this kind that perfect coition is plainly impossible. Yet these spiritual or psychic causes rarely produce perpetual impotence. For they are wont to cease with the passage of time, unless bodily causes are also present. Bodily causes are distinguished on the part of the man or on the part of the woman.

[47a] *Summa*, bk. 4, *De impotentia coeundi*, § 2. - Canonists vehemently dispute concerning the genuine notion of the impediment of impotence. The definition given by St. Raymond seems better than that which is wont to be given by other authors: "The impediment of impotence is the perpetual and antecedent incapacity of a man or woman for completing a copula of itself apt for generation." For both the authority of great authors and the decisions of the Holy Office permitting the matrimony of an excised woman, who certainly cannot exercise a copula of itself apt for generation, favor Raymond's definition. Hence Gasparri rightly says, loc. cit., n. 510: "We, after diligently weighing all things, both the doctrine of the canons and the declarations of the Apostolic See and the conclusions of physiologists or physicians, say that impotence for coition is an incapacity for the copula by which the man and woman become one flesh, or, in other words, by which virile semen enters the woman's vagina." St. Thomas seems to agree with St. Raymond; for he explains the impediment of impotence as an incapacity for rendering the conjugal debt (*Suppl.*, q. 58, a. 1). Wigandt (*Tribunal confessar.*, tr. 16, exam. 6, q. 10), Reiffenstuel (on bk. 4, tit. 15, n. 2), Ferraris (*Prompta Bibl.*, s.v. "Debitum coniugale"), and, among the moderns, especially Eschbach (*Disp. physiol.-theol.*, 190), speak in the same manner. The latter says: "The canonical diriment impediment of impotence is solely the antecedent and perpetual incapacity of the spouses for the perfect copula, by which, namely, the man, penetrating the female vessel with the natural debt, pours true semen into it." Thus also Larraga-Saralegui (*Prontuario de Teología moral*, 3rd ed., n. 1501) and Augustus Sili, who, as consultor in the celebrated Münster case (1899), cites sixteen authors for this opinion of his (*Analecta eccl.* VIII [1900], 253). Thus also Vogt (*Das kirchl. Eherecht*, § 33), De Smet (*De sponsal. et matrim.*, 3rd ed., n. 554), who calls this opinion speculatively probable and practically safe; Noldin-Schmitt (*De sacr.*, 17th ed., n. 567); Wernz-Vidal (*Ius can.* V, n. 219). Among moderns, Antonelli (*De conceptu impotentiae*), Leitner (*Lehrb. des kirchl. Eherechtes*, § 26, p. 145), Lehmkuhl (*Theol. mor.* II, n. 975), Rosset (*De sacr. matrim.*, n. 1406), and others hold the contrary opinion.

[48] *De matrim.* I, n. 510.

[49] Cf. Eschbach, *Disp. physiol.-theol.*, disp. 2, c. 3; and Van de Burgt-Schaepman, *Tract. de matrim.*, pt. 2, c. 6, § 11.

[50] 1 Cor. 7:2 ff.

[51] Cf. below, n. 799, note 56.

798. On the part of the man, the following are enumerated among the bodily causes producing impotence:

a) **The absence or atrophy of both testicles.** Therefore eunuchs and castrated men are impotent. Eunuchs are those who were born without testicles, which sometimes occurs in cryptorchidism; but castrated men are those who have been deprived of the testicles by art or accident. Sixtus V declared that eunuchs and castrated men truly labor under the canonical impediment of impotence.[52] Before this authentic declaration, the canonists did not agree. Thus Peter Ledesma[53] writes: "The Church never judged it certain that castrated men lacking both testicles contracted true matrimony; for there were always opinions in the Church concerning this matter, and therefore, because of that variety of opinions, she permitted marriages of this kind, just as she permits others which are made in the Church according to probable opinions. But now it has been determined by the Head of the Church that they do not contract true marriages." - The same seems more probably to be said of those who have undergone the surgical operation which is called vasectomy and which in our times is frequently performed by physicians. This operation consists in the severing of the "vasa deferentia." A man whose vasa deferentia have been severed can still complete the carnal copula and can even introduce semen into the female vessel, but that semen now lacks spermatozoa and is not semen in the proper sense, since spermatozoa are an essential part of sperm. Therefore between a man who has undergone vasectomy and one who has undergone complete castration there seems to be only an accidental difference, and accordingly both are judged to be impotent.[54] - Complete castration is perpetual and complete impotence.

b) **Certain diseases of the nerves**, such as sexual anesthesia, which is also called anaphrodisia and is the absence of erectile capacity for completing the copula; aphrodisia, which consists in excessive venereal excitation, by which it happens that the emission of semen precedes penetration.[55] Such or similar diseases, unless they are joined with an incurable mental disease or with a defect of the organs, are wont to cease with the passage of time.

c) **Deformity or absence of the virile member.** Such deformities are hypospadias, epispadias, excessive size of the virile member, etc.

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[52] Constitution *Cum frequenter*, June 27, 1587.

[53] *De magno sacr. matrim.*, q. 68, a. 2.

[54] Thus also De Smet, *De sponsal. et matrim.*, 3rd ed., n. 550; Ferreres in *Eccl. Review* (1912), 208 ff. Besides, the entire doctrine is not yet sufficiently clear, nor are the effects following from this operation sufficiently known. Hence Dr. A. O'Malley (in *Eccl. Review*, loc. cit.) teaches that impotence does not arise from vasectomy. If those things which this author says concerning the nature of vasectomy are true, then perhaps he rightly asserts: "The sexual act of a man who has undergone vasectomy has a perfect likeness to the sexual acts of men sterile from old age, debilitating disease, and other causes, who are permitted to enter matrimony and whose matrimony is valid; indeed, a man who has undergone vasectomy is sexually much more potent than all the others [just cited]" (loc. cit., 335 f.). The whole controversy will be resolved if it is established whether the fluid emitted by men who have undergone vasectomy is still true semen or not. If true semen is present (although sterile), impotence is not present. - An operation similar to vasectomy can also be performed in a woman by severing the Fallopian tubes. This vasectomy performed in a woman certainly does not cause the impediment of impotence. But vasectomy performed in a man is a doubtful impediment, and therefore after it matrimony is not necessarily to be impeded.

[55] Cf. Surbled, *La morale dans ses rapp. avec la méd. et l'hyg.* II, 142.

799. On the part of the woman, impotence is caused:

a) by defect of the vagina;

b) by excessive narrowness of the vagina;

c) by the disease which is called vaginismus and which is a certain hyperesthesia or spasmodic contraction of the vagina prohibiting every coition.[56]

It is said, 3. **by which someone is prevented from commingling naturally with another.** In our times, so-called artificial fecundation is sometimes efficaciously employed by physicians. The Holy Office, having been asked whether the artificial fecundation of a woman is licit, responded on March 24, 1897: "It is not licit." - Nevertheless, it is still disputed among authors whether this artificial fecundation is never licit, because the Holy Office condemned only that artificial fecundation which is obtained after the pollution of the man, since this is intrinsically evil. But since there are other modes of artificial fecundation, Berardi,[57] Eschbach,[58] De Smet,[59] Van de Burgt-Schaepman,[60] and others teach that it is sometimes licit. But whatever may be true concerning the liceity of this artificial fecundation, the common opinion teaches that it does not remove the diriment impediment of impotence. The reason is that it does not give the power of naturally engaging in coition.

Scholion. On hermaphrodites. According to an ancient fable, a human being begotten of Hermes and Aphrodite was at the same time a participant in the male and female sex, or an androgyne. According to present-day physiology, such perfect participation in each sex does not exist. Sometimes, however, it happens that a human being is of doubtful sex, having sexual organs so deformed that even physicians doubt which sex prevails. Such apparent hermaphrodites are wont to be impotent for true carnal copulation and therefore labor under the impediment of impotence. In practice, when such a hermaphrodite wishes to contract matrimony or has already contracted it, it must be investigated with the aid of expert physicians whether the power of coition is present or not. But if such power is lacking, the diriment impediment of impotence is present.

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[56] Cf. De Smet, loc. cit., n. 550. It is much disputed among modern authors whether impotence arises in a woman if, either by nature or from a surgical operation, she lacks the uterus and both ovaries. All those authors cited above who define impotence as the impossibility of a copula apt for generation favor the affirmative opinion. For it is clearer than daylight that a woman who lacks the uterus and both ovaries cannot perform a copula of itself apt for generation. All those who place the impediment of impotence in the simple impossibility of naturally engaging in coition defend the negative opinion. This latter opinion is indeed truer, more common, and more conformable to the responses of the Holy Office. The Holy Office, February 3, 1887: "Can the woman N. N., whose two ovaries and uterus have been removed by a surgical operation, be admitted to contract matrimony? - Matrimony is not to be impeded." The Holy Office responded similarly on July 23, 1890; July 31, 1905; and March 3, 1909. You will find the objections which are raised resolved in De Smet, loc. cit., n. 556, who deservedly calls this opinion practically safe.

[57] *Praxis confess.* I, n. 1009.

[58] *Disp. physiol.-theol.*, 70 ff.

[59] *De sponsal. et matrim.*, n. 560.

[60] *Tract. de matrim.* I, n. 208.

800. Divisions. There are distinguished: 1. **natural impotence**, which exists from nature itself or from birth, that is, a defect of the genital organs; **artificial or acquired impotence**, which has arisen from a surgical operation, disease, injury, wound, etc.

2. **Perpetual impotence**, which according to the prudent judgment of experts will never cease; **temporary impotence**, which can cease through human work without grave danger to life.

3. **Absolute impotence**, which renders a person impotent for carnal copulation with any person whatsoever;[61] **relative impotence**, which renders carnal copulation impossible with a determinate person, but not with every person.

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[61] If a matrimony is dissolved when absolute impotence exists, the clause is wont to be added: "with passage to other nuptials forbidden," and thus there arises the impediment which is called the "prohibition of the Church."

801. 4. **Antecedent impotence**, which precedes the celebration of matrimony; **consequent impotence**, which supervenes upon a matrimony already legitimately contracted.

The law now in force. § 1. "Antecedent and perpetual impotence, whether on the part of the man or on the part of the woman, whether known to the other or not, whether absolute or relative, dirimes matrimony by the law of nature itself. § 2. If the impediment of impotence is doubtful, whether by a doubt of law or a doubt of fact, matrimony is not to be impeded. § 3. Sterility neither dirimes nor impedes matrimony" (thus the Code of Canon Law, can. 1068).

Certain older authors[62] taught that impotence was indeed an impediment to matrimony if it was unknown by the other contracting party, but not if it was known. This doctrine must now be abandoned, since the Code of Canon Law expressly establishes the contrary. - Sterility, which neither dirimes nor impedes matrimony, must be altogether distinguished from impotence.

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[62] Cf. St. Thomas, *Suppl.*, q. 52, a. 1.

802. Manner of acting for the parish priest and confessor. Where a suspicion of impotence arises, the parish priest and confessor should employ the greatest prudence.

1. If someone doubts concerning his own physical impotence, he cannot licitly enter matrimony before the doubt has been resolved and the power of coition is morally certain. Therefore a prudent and God-fearing physician must be approached. If the doubt remains after diligent investigation, it is lawful to enter matrimony, as the Code manifestly establishes, provided that the other party has been made aware of the doubtful impotence. The reason is that for a grave cause it is lawful to administer a sacrament with doubtful validity. But in this case a grave cause is present, since otherwise the person who is doubtfully potent would have to remain celibate perpetually.

2. If a doubt concerning impotence arises **after matrimony has already been contracted**, it must first be cautiously investigated with the aid of an expert and upright physician whether impotence is truly present and whether it is perpetual and antecedent to the matrimony. If the physician responds that such impotence is not present, then the matrimony is valid, and it pertains not to the confessor or parish priest, but to the physician, to give remedies for obtaining true coition. But if the physician says that such impotence is certainly present, then the confessor or parish priest must prudently inquire whether the putative spouses are in good faith, that is, whether they consider the matrimony entered to be valid or not. But if the spouses are **in good faith**, they are not to be disturbed if great inconveniences are rightly feared from the dissolution of the matrimony, or if there is little hope that the putative spouses will live chastely together as brother and sister. But if the spouses are **in bad faith**, that is, if they know their matrimony to be null, then it must be imposed upon them either that they live chastely as brother and sister or that they seek the dissolution of the matrimony through a canonical process. This process must have at least two instances, according to the norm of the Constitution *De miseratione* of Benedict XIV, November 3, 1741; the Instruction of the Holy Office to the Eastern bishops, June 20, 1883; and the Code of Canon Law, cann. 1975-1981. There is no leisure here to treat this process, which is wont to last for quite a long time. See the canonists.[63] In practice it is often easier to prove the non-consummation of the contracted matrimony than the existence of antecedent and perpetual impotence. Then it is preferable to seek from the Supreme Pontiff a

dispensation from a ratified and non-consummated matrimony. See several cases of this dispensation in *Analect. ecclesiast.* I (1893), 111; Sacred Congregation of the Council, March 18, 1893; May 6, 1893; April 27, 1895; etc.

[63] Cf. Leitner, *Lehrb. des kirchl. Eherechtes*, § 26, p. 152; Wernz-Vidal, *Ius can.* V, n. 234 ff.; our *Man. iur. can.*, q. 540 f.

§ 3. The Bond

803. Preliminary note. Enough was already said above, n. 659 ff., concerning the unity and indissolubility of matrimony, and therefore the things contained there are presupposed as known. From all history not even one certain example can be adduced in which a Pope permitted one man to have two wives at the same time, and much less one woman to have two husbands at the same time. But the things which are adduced concerning the Count of Gleichen, to whom Gregory IX is said to have conceded two wives, and concerning a Swiss man, to whom Pius VI is said to have granted the same, are fables meriting no belief.[64] - On the contrary, it is certain that Luther, with the consent of seven other Protestant theologians, on March 4, 1540, benignly granted that Philip, Landgrave of Hesse, while retaining his first wife, might take another.[65] This example is not unique among Protestants; indeed, even to our days they teach and effect the dissolution of even consummated matrimony as regards the bond. But the Catholic Church defined in the Council of Trent:[66] "If anyone says that it is lawful for Christians to have several wives at the same time, and that this is prohibited by no divine law, let him be anathema"; and she established in the Code of Canon Law, can. 1069: "One who is held by the bond of a prior matrimony invalidly attempts matrimony, although the prior matrimony has not been consummated, without prejudice to the privilege of faith" (that is, excepting the Pauline privilege).

Notion. The impediment of bond is the incapacity for contracting a new matrimony while the bond of a prior valid matrimony endures, whether ratified or consummated.

This impediment is of divine law, as is evident from the Council of Trent cited above, and it is never dispensed.[67] If the preceding matrimony is doubtfully valid, a judicial process is required by which the validity or invalidity of the matrimony is declared, as will be said below. But if there is doubt whether the first matrimony has been dissolved by the death of the spouse, then an authentic declaration of death is required, concerning which the following things are to be noted:

[64] Cf. Döllinger, *Papstfabeln*, 34 ff.; Wernz-Vidal, *Ius can.* V, n. 243, notes 18 and 21.

[65] Cf. Rockwell, *Doppelehe Philipps*, 1904.

[66] Sess. 24, can. 2, on the sacrament of matrimony (Denz., n. 972).

[67] How matrimony can be dissolved as regards the bond was said above, n. 665 ff.

804. A declaration of death must be pronounced by ecclesiastical authority. For a declaration of death made by civil governments, which are sometimes too lenient in this matter, by no means suffices. The general rule is: moral certainty is required concerning the death of the other party as having truly occurred, so that every prudent doubt is altogether excluded. But for affirming this moral certainty, the mere absence of the spouse for a long time, such as civil governments admit, does not suffice; rather, it is required that the method prescribed by the Holy Office[68] be observed, namely: a) first of all, an authentic document of death is to be diligently sought from the registers of the parish, military, hospital, or civil magistracy; b) if such a document cannot be had, at least two trustworthy witnesses are to be heard, who are bound to say under oath what they think in the case concerning the death. If they are not eyewitnesses, the testimony of hearsay witnesses can

also be accepted. But if two witnesses cannot be found, even the testimony of one trustworthy witness has great weight. c) If not even one witness can be found who can give sufficient testimony of the death, proof of the death is to be investigated from conjectures, presumptions, indications, etc. - Thus, for example, the Holy Office on July 20, 1898, granted to the bishops of Italy the faculty of conceding a document of freedom to the wives of soldiers who fought at Adwa in Africa and of whom no memory remained, notwithstanding the investigations made by the government.

From what has been said it clearly appears that the parish priest cannot assist at nuptials unless he has moral certainty concerning the free state of each person about to marry; but if even a slight doubt remains, he must refer everything to the episcopal curia, whose office it is then to determine what must be done. But before issuing a declaration of death, the bishop must observe the statutes of the Instruction of the Holy Office cited above. In more difficult cases, however, it seems better (although not strictly necessary) to institute a judicial process or to have recourse to the Sacred Congregation of the Sacraments.[69] But if, notwithstanding all the cautions employed, the declaration of death was false and the first spouse unexpectedly appears, the second nuptials are invalid and must be dissolved immediately.

[68] This entire Instruction, given on May 13, 1868, was printed again in *Acta Ap. Sedis* II, 199-203, in the year 1910.

[69] Cf. Sacred Congregation of the Council, December 14, 1889; and Holy Office, May 6, 1891, ad 3. See such cases resolved by the Sacred Congregation of the Sacraments on December 18, 1914, and June 25, 1915 (*Acta Ap. Sed.* VII, 40 ff., 476 ff.).

805. Penalties against those violating the impediment of bond.

1. If someone **in good faith** contracted second nuptials while bound by the impediment of bond, he did not sin and therefore incurred no ecclesiastical penalty; nevertheless, when the truth of the matter has become known, he must immediately separate himself from the second spouse, as was just said. - Children born from such a matrimony are held to be legitimate, as born from a putative matrimony.
2. One who **knowingly** attempted second nuptials incurs a) **the impediment of crime**;[70] for which reason he cannot remain with the second spouse without a prior special dispensation, even after the death of the first spouse. How such a dispensation is to be given will be said below, where matrimonial dispensations will be discussed; b) irregularity because of bigamy; c) infamy of law; d) if, in contempt of the Ordinary's warning, he persists in the illicit cohabitation, he is to be excommunicated or punished with a personal interdict.[71] By particular law, the faithful are sometimes punished with a *latae sententiae* excommunication reserved to the bishop if, after obtaining a civil divorce, they attempt a new matrimony.[72] - Children born from such a matrimony are illegitimate, as being adulterine.
3. Polygamists are held to be **public sinners**, and therefore they are to be barred from the sacraments, the blessings of the Church, and ecclesiastical burial. Hence, for example, in this case a woman cannot receive the blessing of a woman after childbirth.[73]

[70] Cf. below, n. 825.

[71] c. 3, X, I, 21; Code of Canon Law, can. 2356.

[72] Thus, for example, it was established for North America by the Third Council of Baltimore (1884), n. 124.

[73] Cf. Gasparri, *De matrim.* I, n. 632.

§ 4. Disparity of Worship

806. Notion. Disparity of worship, as it is taken here, is an impediment instituted by ecclesiastical law which dirimes matrimony between a non-baptized party and a party baptized in the Catholic Church or converted to it from heresy or schism.[74]

Among older authors, for example, St. Raymond of Peñafort, compiler of the Decretals of Gregory IX, disparity of worship also includes mixed religion between a Catholic party and a baptized non-Catholic party.[75] Hence it is customary to distinguish imperfect disparity of worship, or mixed religion, and perfect disparity of worship, or diversity of religion between a baptized and a non-baptized person. Since above, n. 784, we already spoke of the impedient impediment of mixed religion, it remains that we now treat perfect disparity of worship, which indeed is twofold: antecedent and consequent. The former precedes the matrimony to be contracted; the latter supervenes upon a matrimony already contracted. We shall treat antecedent disparity alone, adding a few things below in a scholion concerning consequent disparity.

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[74] Code of Canon Law, can. 1070, § 1.

[75] *Summa*, bk. 4, tit. 10.

807. Origin of this impediment. The principal end of matrimony itself, namely, the true and perfect good of the offspring and of the spouses, requires that matrimony not be entered between a baptized and a non-baptized party. For although, absolutely speaking, the offspring begotten of parents disparate in worship can both be rightly baptized and be well educated in the Catholic religion, just as the Catholic party can also do many things for his own spiritual salvation and that of the other party, nevertheless experience proves that the altogether contrary very often occurs, namely, that the spiritual salvation of the offspring and of the Catholic spouse perishes. For this reason, already in the Mosaic law God prohibited the Israelites from entering matrimony with gentile peoples.[76] In the first centuries of the Christian era, several particular Councils[77] gravely prohibited marriages between a member of the faithful and an unbeliever, and especially between a member of the faithful and a Jew; but it is not so clear whether at that time these marriages were considered invalid or merely illicit. Certainly marriages between a member of the faithful and an unbeliever were sometimes validly contracted, for example, between St. Cecilia and Valerian, between St. Monica and Patricius, and between Clotilda and Clovis; but again it is not clear whether they were contracted with the due dispensation or not. Gratian (about the year 1150) enumerates the impediment of disparity of worship in the same manner as the impediments of consanguinity and affinity, which were certainly held as diriment.[78] From the time of Gratian, disparity of worship seems to have been held by all as a diriment impediment of matrimony. Therefore St. Thomas presupposes as something known to all: "Disparity of worship preceding matrimony impedes it from being contracted and dirimes it when contracted."[79] Nevertheless, it is unknown which ecumenical Council or which Supreme Pontiff established this diriment impediment for the whole Church; hence Benedict XIV says: "Marriages because of disparity of worship are invalid, not indeed by the law of the sacred canons, but by the general custom of the Church, which has flourished for many centuries and obtains the force of law."[80] The same Pontiff thinks that this customary law already existed in the sixth century.[81] But now the Code of Canon Law, can. 1070, § 1, establishes: "A matrimony contracted by a non-baptized person with a person baptized in the Catholic Church or converted to it from heresy or schism is null." Therefore, from May 19, 1918, this impediment no longer exists between a pagan and a person baptized in a non-Catholic Church and not yet converted, which indeed is very much to be attended to in practice. The terminology "a person baptized in the Catholic Church" seems to be taken in the same sense in which can. 1099, § 1, employs it. Cf. above, n. 754.

[76] Cf. Deut. 7:3.

[77] For example, the Council of Elvira, 306; the Council of Arles, 314; the Council of Hippo, 393; the Second Council of Orléans, 533.

[78] "Those who have been joined contrary to a decree of God or of the Church are commanded to be separated from one another, such as members of the faithful with unbelievers, blood relatives with blood relatives, or relations by affinity with relations by affinity. All these, if they have been joined to one another, are to be separated" (c. 14, C. 28, q. 1).

[79] *Suppl.*, q. 59, a. 1, ad 1.

[80] Constitution *Singulari nobis*, February 9, 1749.

[81] *Opera inedita*, 431.

808. In a case of doubtful baptism, serious inquiry must be made so that the truth may be discovered. But while the doubt remains, one must proceed as follows: 1. If there is question of a matrimony to be contracted, then the doubtful baptism of the Catholic party is to be repeated. But if the baptism of the other party is doubtful and that party does not wish to be converted to the faith, then a dispensation from the impediment of mixed religion is to be sought and, for greater security, also from the impediment of disparity of worship. 2. If there is question of a matrimony already contracted, before the Code of Canon Law (May 19, 1918) the general rule was: In relation to matrimony, a doubtful baptism is held to be valid. Thus the Holy Office declared several times. - But when the doubtful baptism is afterward known with certainty to be null and invalid, nevertheless the matrimony cannot be dissolved by private authority because of the impediment of disparity of worship, but recourse must be made to the Ordinary, who, "with the intervention of the defender of the matrimonial bond, without need of a second sentence,"[82] can declare the nullity of the aforesaid matrimony.

Some grave authors[83] thought otherwise concerning this matter, namely, they taught that a matrimony contracted between persons putatively baptized always remained valid, even if it was afterward discovered that either of the contracting parties was not baptized (or was invalidly baptized). Thus, for example, Santi-Leitner[84] says: "Whenever matrimony was contracted with certainty or presumption of baptism, the matrimony was valid. And because it was valid, afterward, when the invalidity of the baptism was discovered, it is not rendered invalid, because a matrimony once valid is always valid." In other words: Whenever matrimony is contracted between persons certainly or doubtfully baptized, there arises a presumption of law and of law that the matrimony is valid, against which presumption no exception is admitted because of the impediment of disparity of worship. Deservedly it is said in the "De Breuil-Denison case": "This doctrine does not seem easily reconcilable with certain authentic declarations of the Sacred Congregation of the Holy Office. For in the Instruction of the Holy Office of June 5, 1889, it is said: 'When there is question of the impediment of disparity of worship and it is evidently established that one party is baptized and the other party was not, ... the matrimony can be declared null by the Ordinary.'"[85] But how could the matrimony be declared null if it had been valid from the beginning? Besides, this opinion seems to be manifestly opposed to canon 1070, § 2.

After the Code, another rule was established if there is question of a contracted matrimony while the doubt remains: "If at the time the matrimony was contracted a party was commonly held as baptized, or his baptism was doubtful, one must stand, according to the norm of can. 1014, for the validity of the matrimony until it is certainly proved that one party is baptized and the other is not baptized."[86] Therefore in doubt matrimony must always be favored. The only exception seems to be the **privilege of faith**, which in a doubtful matter enjoys the favor of law[87] (Code of Canon Law, can. 1127). Therefore, for example, if a non-baptized person contracted matrimony with a Catholic person doubtfully baptized, the doubtful baptism can be considered as null, and therefore such a matrimony can be dissolved by the Pauline privilege or by a dispensation of the Holy See.[87a] But whether the baptism is to be repeated conditionally for the greater security of eternal

salvation and for the licit reception of the other sacraments is another question, which must be resolved after all the circumstances have been considered. If, after an investigation has been made, the nullity of the baptism is established, either the matter must be referred to the Ordinary, who can declare the matrimony null, as was said above, or the putative spouses must renew their matrimonial consent in legitimate form after baptism has been validly conferred. If the party whose baptism is established to be null indeed refuses to receive baptism, but wishes to persevere in the matrimony and to furnish the prescribed guarantees, a dispensation from the impediment of disparity of worship is to be sought.

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[82] Thus the Holy Office, June 5, 1889; and the Code of Canon Law, can. 1990.

[83] Gasparri, *De matrim.*, n. 598; Leitner, *Lehrb. des kirchl. Eherechtes*, 273.

[84] *Prael. iur. can.* IV, 71.

[85] *Acta Ap. Sed.* III, 400.

[86] Code of Canon Law, can. 1070, § 2.

[87] Ibid., can. 1127.

[87a] Cf. Holy Office, November 5, 1924.

809. Cessation of the impediment of disparity of worship. This impediment can cease in three ways:

1. **By the valid reception of baptism and the legitimate renewal of consent.** This is evident of itself.
2. **By dispensation**, which the Supreme Pontiff is wont to concede through the Holy Office,[88] or, in mission territories, through Vicars Apostolic or even simple missionaries. In Catholic regions this dispensation is rarely conceded, especially if there is question of entering matrimony with a Jew.[89] But in grave danger of death or another urgent case, Ordinaries, parish priests, or even all priests can dispense from this impediment, as will be said below, n. 857. A dispensation from the impediment of disparity of worship cannot be given unless those things are observed which were indicated above for celebrating mixed marriages, and especially unless the **guarantees prescribed** for mixed marriages are first furnished, namely, the education of all the offspring in the Catholic faith and freedom of worship for the Catholic spouse. But if these guarantees were not sought or were denied, the dispensation conceded is invalid, and the Ordinary can pronounce the nullity of a matrimony thus contracted without its being necessary in individual cases to recur to the Holy See for a definitive sentence. Thus the Holy Office, June 21, 1912.[90] **The dispensation is invalid if each contracting party has not furnished these guarantees.** These things are indeed especially to be attended to if a parish priest or priest dispenses from this impediment in grave danger of death.

Likewise to be noted is the Instruction of the Holy Office of September 16, 1824, which seems still to remain in force today after the promulgation of the Code: "In dispensing with the Catholic party from disparity of worship so that the party may contract with an unbeliever, the Church is understood to dispense also from those impediments from which the unbelieving party is exempt, so that, because of the indivisibility of the contract, the latter's exemption remains communicated also to the other party."[91] The unbelieving party is exempt from all impediments of merely ecclesiastical law because he is not subject to the jurisdiction of the Church. Impediments of this kind are age, affinity, crime, etc. Hence, when, for example, a dispensation from the impediment of disparity of worship has been conceded, the affinity which the unbelieving party incurs has also implicitly been dispensed, as is evident from the following case resolved in the same Instruction of the Holy Office: "Paul, a Christian widower, took Balbina, an unbeliever, as his wife.... Demetrius, Paul's son from

a prior wife, declares that he had relations with Balbina. It is asked whether an impediment of affinity in the first degree results from such copulation with an unbelieving woman. - If Paul took Balbina after a prior apostolic dispensation, even if the copulation of Demetrius with the same Balbina had preceded, the matrimony is now to be held as valid." Today affinity no longer arises from illicit copulation.

3. **In a case of impossibility.** Hence, if in some region there are so few Christians that they cannot enter matrimony among themselves and cannot, because of the distance of places or for other reasons, seek a dispensation, the impediment ceases, since in this case the natural right to matrimony seems to prevail over the ecclesiastical law establishing the impediment of disparity of worship. Several authors, for example, Gasparri[92] and Leitner,[93] deservedly teach thus; their opinion is favored by the Holy Office, June 4, 1851, which teaches that the faithful who in circumstances of this kind entered matrimony with non-baptized persons without first obtaining a dispensation are not to be disturbed. Nevertheless, even in these cases the guarantees recounted above are required, since they are required not by ecclesiastical law alone, but by divine law.

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[88] Constitution *Sapienti consilio*, June 29, 1908, I, 5; Code of Canon Law, can. 247, § 3.

[89] Cf. the dispensation denied to the Jew Popper, in Leitner, *Lehrb. d. kirchl. Eherechtes*, 275.

[90] *Acta Ap. Sed.* IV, 443.

[91] *Collect. de Prop. Fide*, n. 784.

[92] *De matrim.*, n. 623.

[93] *Lehrb. des kirchl. Eherechtes*, 273.

810. Scholion 1. Supervening disparity of worship is present when, after a legitimate matrimony of pagans has been contracted, one of the spouses is validly baptized. How one must then act is evident from the things said above, n. 671, concerning the "Pauline privilege."

Scholion 2. As regards the ceremonies to be employed in the celebration of a matrimony between a baptized and a non-baptized party, nearly the same things have force which are prescribed for the celebration of a mixed matrimony, unless special things are required in the indult of dispensation.

§ 5. The Impediment of Sacred Order

811. Notion. The impediment of sacred order is an incapacity established by ecclesiastical law (in the Latin Church), by which clerics initiated into sacred order (namely, at least the subdiaconate) cannot validly contract matrimony, nor licitly use a matrimony perhaps contracted previously. But for the existence of this impediment it is required that the cleric have received the subdiaconate a) after attaining puberty, b) without coercion and grave fear, c) with knowledge of the celibacy annexed to it.

Explanation. It is said, 1. **an incapacity established by ecclesiastical law.** For the origin of this impediment is to be derived from ecclesiastical law and not from divine law, as some have wished. Hence St. Thomas briefly and succinctly teaches: "The debt of continence is not essentially annexed to sacred order, but by the statute of the Church."[94] This is confirmed both from the practice of the Eastern Church, in which the use of a matrimony entered before the subdiaconate is permitted even to priests; from ecclesiastical history, in which examples are adduced, even from the Latin Church, of priests formerly living legitimately in matrimony; and finally from Sacred Scripture, where St. Paul writes: "It behooves a bishop, therefore, to be blameless, the husband of one wife, ... having his children subject with all chastity."[95] But it is altogether

absurd to say that in apostolic times something contrary to natural or divine law was permitted to clerics. - Besides, in this matter three questions are to be distinguished, which are not rarely confused and thus cause obscurities, not to say falsehoods. These three questions are: 1. Whence arose the power of diriming matrimony annexed to sacred order? 2. Whence arose the obligation of celibacy joined with the reception of sacred order? 3. Whence arose the obligation of perfect chastity joined with the reception of sacred order?

[94] *S. theol.* 2, 2, q. 88, a. 11.

[95] 1 Tim. 3:2-4. Several authors, however, explain this text otherwise.

812. To the first question it is answered: The power of diriming matrimony was attributed to sacred order by ecclesiastical law; hence all teach that sacred order received freely with sufficient knowledge of the annexed obligations dirimes a subsequent matrimony, even if the ordained cleric expressly did not wish to make a vow of continence. In this case a vow of chastity would certainly be lacking, and nevertheless the diriment impediment would remain; this impediment therefore does not arise (at least uniquely) from the vow. If, however, the cleric, as commonly happens, also emits a vow of continence (at least tacit or implicit) in the reception of the subdiaconate, then that vow thus solemnized has the power of diriming matrimony, as is manifestly evident from the words of Boniface VIII cited below, n. 816. - It is not established at precisely what time sacred order became a diriment impediment of matrimony. From the particular laws of several regions, for example, Spain and Italy, sacred order was already held as a diriment impediment of matrimony in the fifth century. But by general law this impediment seems to have been established at the Second Lateran Council (1139). In the time of Gregory IX, and still more of Boniface VIII, there was already no reasonable doubt in the Latin Church concerning the diriment impediment arising from sacred order received. This impediment was confirmed again in the Code of Canon Law, can. 1072.

To the second question it is answered: The obligation of celibacy is annexed to the reception of sacred order likewise by ecclesiastical law alone. This is evident from the same arguments which were adduced above for the origin of the diriment impediment arising from sacred order. The celibacy of clerics in major orders already existed from the most ancient times and was held as at least an impedient impediment of matrimony, although it cannot be clearly proved that it already flourished thus from the times of the apostles.[96]

[96] Bickell (in *Innsbrucker Theol. Zeitschr.* II, 26 ff., and III, 792 ff.) defended the opinion that celibacy flourished in apostolic times as a true precept. Funk wrote against him (in *Tübinger Theol. Quartalschr.*, 1879, p. 208 ff., and 1880, p. 202 ff.).

813. To the third question it is answered: The obligation of clerics constituted in major orders to perfect chastity, so that any sin whatsoever (even internal) committed against chastity has the character of sacrilege, does not arise from ecclesiastical law alone, but from the **vow annexed to the subdiaconate** (which consequently also obliges to celibacy and which, because of its solemnity, furthermore constitutes a diriment impediment of any subsequent matrimony). Thus St. Thomas,[97] St. Bonaventure,[98] Peter Ledesma,[99] and commonly the Thomists, Suarez,[100] Reiffenstuel,[101] Benedict XIV,[102] St. Alphonsus,[103] and among moderns, with many others, Feije,[104] Freisen,[105] Wernz-Vidal,[106] and Lehmkuhl.[107] Many authors, both ancient and modern, for example, Scotus,[108] John of Torquemada,[109] Hinschius,[110] Scherer,[111] Leitner,[112] Sägmüller,[113] Hollweck,[114] Scharnagl,[115] and De Smet,[116] teach the contrary opinion, namely, that the obligation both of celibacy and of complete chastity, so that every voluntary violation of chastity is sacrilege, arises from ecclesiastical law alone. - The former opinion seems to be preferred, both because Boniface VIII in the text cited below speaks expressly of a vow solemnized through the reception of sacred order, and because otherwise it seems unintelligible how a cleric in major orders committing a merely internal sin against

chastity truly perpetrates sacrilege, as the most common opinion and the Code of Canon Law, can. 132, § 1, teach. For the Church probably cannot command merely internal acts. Therefore, if someone posits an internal act against a merely ecclesiastical precept, he does not commit sacrilege. The authors of the second opinion indeed have recourse to some personal consecration, I know not what, which according to them the cleric receives in sacred order; but this particular consecration is fictitious, and it is not found in the sacred orders of the Eastern Church, nor is any trace of it found anywhere. Furthermore, even if this ecclesiastical consecration were admitted (not granted), it is not apparent how it could be violated by true sacrilege through a merely internal act. Finally, moralists quite commonly teach that a sin of lust committed by a cleric in major orders and the same sin committed by a solemnly professed religious do not differ essentially, so that a regular priest committing such a sin is not bound in confession to declare his religious state, provided that he confesses his priestly state. Moreover, it seems certain that the violation of a truly solemn vow really differs from the violation of some merely ecclesiastical consecration. Nor should anyone say: if the Church cannot command an internal act, neither can she command a vow, which essentially consists in an internal act of the will; for although the Church cannot absolutely command some vow, she can nevertheless annex a vow to some state to be undertaken, so that no one can licitly undertake that state unless he also emits the prescribed vow. Thus no one can undertake the religious state unless he emits the three customary vows. In like manner, no one can licitly undertake the state of sacred order unless he emits the vow of perfect chastity.

It is said, 2. **in the Latin Church**; for in certain Eastern Churches this impediment of sacred order does not exist, so that clerics can enter matrimony before receiving the subdiaconate and afterward use this matrimony even after receiving the orders of the diaconate and priesthood. But if the wife of an Eastern cleric in major orders has died, second nuptials are prohibited and invalidated.[117] Besides, the practice is not the same in all the Eastern Churches, both with respect to the celibacy of clerics and with respect to clerics in major orders who attempt second nuptials.[118] Eastern bishops must observe celibacy altogether.[119]

It is said, 3. **clerics initiated into sacred order cannot licitly use a matrimony perhaps contracted previously.** A husband can receive sacred orders, provided that his wife freely consents and emits a vow of perpetual chastity (either in a monastery, or, if suspicion of a violation of chastity is absent, in the world).[120] Besides, according to the discipline now in force, a husband is impeded from receiving orders.[121] Therefore, in practice the Holy See must be consulted, which determines what is to be done. Matrimony indeed is not dissolved as regards the bond by the reception of sacred order, but divorce as regards bed and even habitation is commanded.[122]

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[97] *S. theol.* 2, 2, q. 88, a. 11. Elsewhere (*Suppl.*, q. 53, a. 3) the Holy Doctor says: "Sacred order ... has from the constitution of the Church that it impedes matrimony; nevertheless, differently among the Latins than among the Greeks; because among the Greeks it impedes matrimony to be contracted solely by the force of order, but among the Latins it impedes by the force of order and, further, by the vow of continence which is annexed to sacred orders; although someone does not emit this verbally, nevertheless, from the very fact that he receives the order according to the rite of the Western Church, he is understood to have emitted it."

[98] Bk. 4, dist. 38, tit. 2, q. 1.

[99] *De magno sacr. matrim.*, q. 53, a. 3.

[100] *De virt. relig.*, tr. 7, bk. 9, c. 17, n. 11.

[101] *Ius can.*, bk. 4, tit. 6, n. 15.

[102] *De syn. dioec.*, bk. 12, c. 4, n. 2.

[103] *Theol. mor.*, bk. 6, n. 808. The Holy Doctor calls this opinion more probable and more common.

[104] *De imped. et dispens. matrim.*, 384.

[105] *Gesch. des kan. Eherechtes*, 767 ff.

[106] Loc. cit. V, n. 284. Wernz treats this question excellently (with Ballerini).

[107] *Theol. mor.* II, n. 782.

[108] Bk. 4, dist. 37, sole q.

[109] *Comm. in Decr. Grat.*, c. 3, D. 84.

[110] *System d. kath. Kirchenr.* I, 159.

[111] *Kirchenr.* II, 367.

[112] *Lehrb. d. kirchl. Eherechtes*, 189.

[113] *Kirchenr.* I, 264.

[114] *Kirchenr.*, 257.

[115] *Das feierl. Gelübde als Ehehindernis*, 207 ff.

[116] Loc. cit., n. 574.

[117] Benedict XIV, Constitution *Anno vertente*, June 19, 1750; cf. also Papp-Szilagyi, *Enchir. iur. eccl. orient. cath.*, 3rd ed., §§ 16 f. and 101.

[118] Cf. Papp-Szilagyi, loc. cit., and especially Wojuki, *Die Wiederverehelichung der Priester in der morgenl. Kirche*, in *Arch. f. kath. Kirchenr.* (1908), p. 405 ff.

[119] Benedict XIV, Constitution *Etsi pastoralis*, May 26, 1742.

[120] c. 6, X, 3, 32.

[121] Code of Canon Law, can. 987, n. 2.

[122] Leitner, *Lehrb. des kirchl. Eherechtes*, 193.

814. Exceptions. The impediment of sacred order is not incurred:

a) if the subdiaconate was received **before puberty**, that is, before the fourteenth year of age, unless after the sixteenth year the obligation of celibacy was freely accepted.[123] The ordination of those below puberty no longer occurs today.

b) if someone received the subdiaconate **because of grave fear unjustly inflicted or because of coercion**, unless afterward he freely accepts the obligation of celibacy. This free acceptance can be made either through express words or tacitly through conclusive acts, for example, if through the free exercise of sacred order someone freely accepts all the obligations of such an order. It is very equitable that a cleric initiated into sacred order because of grave fear (unjustly) inflicted is not held to celibacy, because it would be too harsh to subject an unwilling man, coerced by grave fear (unjustly), to the perpetual yoke of continence. Thus also the Code of Canon Law, can. 214, expressly establishes.[124]

c) if someone **invincibly did not know that the obligation of celibacy was annexed to the reception of the subdiaconate**.[125] Today this case is almost impossible, since before the ordination of subdeacons the bishop expressly announces the obligation of celibacy to those to be ordained.

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[123] Cf. St. Alphonsus, *Theol. mor.*, bk. 6, n. 810.

[124] In this canon it is said: "A cleric who, coerced by grave fear, received sacred order and afterward, when the fear had been removed, did not ratify that ordination at least tacitly through the exercise of the order, yet willing through such an act to subject

himself to the clerical obligations, is to be reduced to the lay state by sentence of the judge, when the coercion and the absence of ratification have been legitimately proved, without any obligations of celibacy and the Canonical Hours."

[125] Cf. St. Alphonsus, loc. cit., n. 809.

815. Cessation of this impediment. Although the impediment of sacred order was instituted by ecclesiastical law alone, nevertheless a dispensation is conceded with the greatest difficulty so that a cleric in major orders can contract matrimony. The reason is that otherwise wide doors would be opened to many abuses, with grave detriment to religion and great scandal of the people. Nevertheless, the faculty of dispensing subdeacons and deacons (but not priests) from the impediment of order is conceded if they or their accomplices are in grave danger of death and wish to celebrate matrimony in order to provide for their conscience.[126] Matrimony is never permitted by the Holy See to bishops, but almost never to priests.[127]

The penalties established against violators of the impediment of sacred order are two:

1. **Excommunication simply reserved to the Holy See.** It is the same as that which is imposed against the solemnly professed (alleged in the following paragraph).
2. **Irregularity from delict**, as the Code of Canon Law, can. 985, n. 3, establishes.
3. Clerics constituted in sacred orders who attempt matrimony by that very fact lose their ecclesiastical offices, and if, after being warned by the Ordinary, they have not repented, they are to be degraded.[128]

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[126] Cf. below, n. 857 ff.

[127] The examples frequently adduced of a dispensation conceded to bishops, for example, Talleyrand, John Butler, and Synesius, are spurious. Cf. Leitner, loc. cit., § 89, p. 192. - Pius VII conceded a dispensation to priests who entered matrimony during the first French Revolution.

[128] Code of Canon Law, can. 188, n. 5; cann. 2359 and 2388.

§ 6. The Diriment Impediment of a Vow or Religious Profession

It was already said above, n. 665, concerning solemn religious profession insofar as it dirimes a preceding ratified matrimony. Likewise, it was already said, n. 780 ff., concerning vows which do not dirime but prohibit matrimony from being contracted. It remains that we speak of the vows which dirime a matrimony to be contracted.

816. Extent of the impediment. According to the discipline now in force, the following vows dirime a matrimony to be contracted:

1. **a solemn vow emitted in religious orders strictly so called**;[129]
2. **a simple vow emitted in the Society of Jesus.**
3. That a solemn vow emitted in religious orders dirimes a matrimony to be contracted is evident both from the Decretals,[130] from the Council of Trent,[131] and from the Code of Canon Law, can. 1073. But in which religious institutes solemn vows are found is a question of fact and cannot be determined by a general rule. In certain regions, as, for example, in France, Belgium, Bavaria, and North America,[132] women rarely or not at all emit solemn profession. - It is evident of itself that religious profession does not produce this effect if it was invalid, for example, because of grave fear, because of defect of the essential formalities, etc.[133]

4. Simple vows pronounced by scholastics of the Society of Jesus after the two years of novitiate dirime a subsequent attempted matrimony.[134]

Several authors, among whom are Benedict XIV[135] (not indeed as Pope, but as a private author), Sanchez,[136] Tanquerey,[137] and Gasparri,[138] teach that even the simple vow of chastity emitted by a spouse remaining in the world, while the other spouse, with the free consent of the former, enters religion or receives sacred orders after the consummation of the matrimony, is equivalent to a solemn vow and therefore dirimes a subsequent matrimony; but this opinion is deservedly rejected by almost all moderns, because neither a solid argument nor any text of law can be adduced for it.[139] Therefore, if such a spouse who emitted a simple vow of chastity contracted matrimony after the death of the other spouse, he would act validly but illicitly. For he ought first to obtain a dispensation from the simple vow of chastity. - Besides, present discipline has been changed in this matter, since no one joined in matrimony can enter religion or receive sacred orders without the previous permission of the Holy See.

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[129] This power of a solemn vow is already indicated not obscurely in c. 27, C. 27, q. 2: "It is not lawful for parents to give an espoused girl to another man; it is lawful, however, for her to choose a monastery for herself." Certainly several authors, for example, Berardi, Wernz, etc., think that this text did not emanate from Pope Eusebius (about the year 300), since monasteries did not yet exist at that time; but whatever may be true concerning this opinion, the text is certainly most ancient. Mention of it is already made in the *Penitential of Theodore of Canterbury*, bk. 2, c. 12, n. 33 (in Schmitz, *Die Bußbücher*, etc., 547); in the *Decree of Ivo of Chartres*, pt. 7, c. 40; in the *Sentences of Peter Lombard* IV, dist. 27; and in other authors. All these things demonstrate that this most ancient text was held in great esteem. But although the text says "an espoused girl," nevertheless there is no discussion there of mere betrothals, but of the so-called betrothals *de praesenti*, which are nothing other than a ratified matrimony. - Furthermore, already in the most ancient times consecrated virgins or monks attempting matrimony were not only gravely punished but were also compelled to separate from their spouses (cf. Council of Tours, 567, can. 15). This is an evident sign that already in the first centuries a solemn vow or religious profession was held to be a diriment impediment of matrimony. Cf. Wernz-Vidal, *Ius can.* V, n. 298; and especially Weckesser in *Arch. f. kath. Kirchenr.* LXXVI, 83. Finally, after the Second Lateran Council (in Gratian, c. 40, C. 27, q. 1), the matter was plainly defined by Boniface VIII (c. unic., III, 15 in VI°), by the Council of Trent (sess. 24, can. 9, on the sacrament of matrimony; Denz., n. 979), and by the Code of Canon Law, can. 1073.

[130] Boniface VIII, having been asked by the Bishop of Bourges what vow ought to be called efficacious for diriming matrimony, responded: "We have judged that it must be declared by the oracle of a sanction that only that vow ought to be called solemn with respect to diriming a matrimony contracted afterward, which was solemnized through the reception of sacred order or through an express or tacit profession made in one of the religious institutes approved by the Apostolic See. But the other vows, although they sometimes impede a matrimony to be contracted, ... nevertheless cannot rescind it after it has been contracted" (c. unic., III, 15, in VI°). From these words it seems clearer than light that no vows other than these two, namely, the solemn vow of religion and the vow emitted in the reception of sacred order, dirime a subsequent matrimony.

[131] "If anyone says that clerics constituted in sacred orders or regulars who have solemnly professed chastity can contract matrimony and that the matrimony contracted is valid, notwithstanding ecclesiastical law or the vow, and that the contrary is nothing other than to condemn matrimony, ... let him be anathema" (sess. 24, can. 9, on the sacrament of matrimony; Denz., n. 979).

[132] According to Leitner (*Lehrb. d. kirchl. Eherechtes*, § 28, p. 175), solemn profession is emitted in four Visitation convents in Georgetown, Baltimore, Mobile, and St. Louis.

[133] Cf. our *Man. iur. can.*, q. 213.

[134] Gregory XIII, Constitution *Ascendente Domino*, May 25, 1584.

[135] *De syn. dioec.*, bk. 13, c. 12, n. 16.

[136] *De matrim.* VII, disp. 40, nn. 1-3.

[137] *De matrim.*, n. 950.

[138] *De matrim.* I, n. 575.

[139] Cf. Scharnagl, *Das feierliche Gelübde als Ehehindernis*, 195.

817. Cessation of this impediment. Although, according to the opinion of several very grave authors[140] (which St. Alphonsus calls more probable[141]), a solemn vow dirimes matrimony by divine law, nevertheless the Supreme Pontiff, as the vicar of Christ, can, when a grave cause exists, concede permission that someone solemnly professed may validly and licitly enter matrimony, just as for the gravest reason he can also permit a consecrated chalice to be employed for profane uses. - By an indult of secularization, a dispensation from vows is conceded by that very fact, unless, however, the secularized person is constituted in sacred orders.[142] How a dispensation from this impediment can be conceded in danger of death and in other more urgent cases will be said below, n. 866 ff.

The impediment of the simple vow emitted by scholastics of the Society of Jesus ceases by the very fact that one professed in this manner has been legitimately dismissed by the superior general of the Society.[143]

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[140] In favor of this opinion stand St. Thomas (bk. 4, dist. 38, q. 1, a. 3, sol. 3), St. Bonaventure (on bk. 4, dist. 38, a. 2, q. 1), Valentia (on 2, 2, disp. 6, q. 6, punct. 5), Victoria (*Relect.* IV, *De potestate Papae*, prop. 1, ad 1 arg.), and several others, especially Thomists; and among moderns Rosset (*De sacr. matrim.*, n. 1676), who says: "A solemn vow of religious profession, both by its own force or natural law and by divine law, has the power of diriming a matrimony to be contracted, apart from any ecclesiastical law whatsoever." But modern authors more commonly teach that this impediment dissolves matrimony by ecclesiastical law alone; yet their argument, derived from the words of Boniface VIII and Gregory XIII, does not seem probative.

[141] *Theol. mor.*, bk. 6, n. 1025.

[142] Code of Canon Law, can. 640.

[143] Gregory XIII, Constitution *Ascendente Domino*, May 25, 1584.

818. Penalties against the solemnly professed who attempt matrimony.

1. **Excommunication simply reserved to the Holy See.** Regulars (whether men or women) who, after a solemn religious profession validly emitted, presume to contract even a civil matrimony, and also all who presume to contract matrimony with any of the aforesaid persons, by the fact itself incur excommunication simply reserved to the Holy See.[144]

Therefore, for this excommunication truly to be incurred, it is required:

a) that these persons presume to contract a **true matrimony** (although it is civil and even if other diriment impediments obstruct it).[145] But if they intend nothing other than concubinage, the excommunication does not reach them;

b) that there be **presumption**, that is, knowledge of the censure and freedom in contracting the matrimony; therefore, if the contracting parties are ignorant of the censure (but not through affected ignorance), or if they enter matrimony under coercion or because of grave fear, they do not incur the excommunication.[146] Ignorance of the censure is sometimes found in lay persons who contract matrimony with the solemnly professed.

Scholastics of the Society of Jesus, simply professed, who attempt matrimony do not incur this censure, because their profession is not solemn.

2. **Irregularity from delict**, which in the Code of Canon Law, can. 985, n. 3, is extended also to those who are bound by simple vows. For religious profession is held to be a matrimony between the soul and Christ, and therefore through a new matrimony such a person becomes as though a bigamist. But

nuns (who are incapable of irregularity) are excluded from those offices to which only virgin nuns can be admitted by particular law.

3. **Dismissal from the order.** For by the fact itself those religious are to be held as legitimately dismissed who attempt or contract matrimony, or even a so-called civil bond.[147]

4. By the particular law of diverse orders, grave penalties are still wont to be established against transgressors of the vow of this kind, who, if they are clerics constituted in sacred orders, furthermore incur the penalties against concubinarians.[148]

[144] Code of Canon Law, can. 2388. Formerly this excommunication was reserved to the Ordinary.

[145] Holy Office, January 13, 1892.

[146] For every diminution of imputability, whether on the part of the intellect or on the part of the will, exempts from penalties imposed against those who presume. Code of Canon Law, can. 2229, § 2.

[147] Code of Canon Law, can. 646, § 1, n. 3.

[148] Ibid., can. 2359.

§ 7. Abduction

819. Notion. Abduction, insofar as it is an impediment of matrimony, is distinguished from abduction insofar as it is a sin of lust, which is wont to be defined: the violent abduction of a woman from a safe place to an unsafe place for the purpose of satisfying lust. But abduction as an impediment of matrimony is defined: **the violent abduction or detention of a woman for the purpose of entering matrimony.**

Origin of this impediment. The abduction of women for the purpose of entering matrimony occurred many times among the ancient pagans and Jews. Examples are the abduction of the Sabine women and the abduction of Helen. Even in our days, among barbarous peoples, women are sometimes abducted for matrimony.[149] In ancient Roman law the abduction of women was punished most gravely, namely, by the penalty of death.[150] In the law of the Decretals, abduction is not yet found, at least as an impediment distinct from the impediment of fear.[151] But the Council of Trent[152] established abduction as a special impediment in these words: "The holy Synod decrees that between the abductor and the abducted woman, so long as she remains in the power of the abductor, no matrimony can subsist. But if the abducted woman, separated from the abductor and constituted in a safe and free place, consents to have him as husband, the abductor may have her as wife; and nevertheless, the abductor himself and all those furnishing counsel, aid, and favor are by the law itself excommunicated and perpetually infamous, and incapable of all dignities, and, if they were clerics, they are to fall from their proper rank. Furthermore, the abductor is bound to endow the abducted woman decently, according to the judgment of the judge, whether he has taken her as wife or has not taken her." The Code of Canon Law, can. 1074, establishes similar things.

[149] Cf. Westermarck, *History of Human Marriage*, c. 17.

[150] L. 5, § 2, Dig., *Ad leg. Iul. de vi publica*, 48, 6.

[151] c. 7, X, 5, 17.

[152] Sess. 24, c. 6, *De reform. matrim.*

820. Required conditions. In order that abduction constitute a diriment impediment of matrimony, and one distinct from the impediment of force and fear, the following are required according to the discipline now in force:

a) **Violent abduction from a safe place to an unsafe place**, that is, the woman must be abducted from a place in which she was safe to a place physically and morally diverse in which she is no longer safe.

Hence the abduction of a woman from one house to another in the same city suffices, because the place is diverse; but the abduction of a woman from one room to another in the same house does not suffice, since the rooms of the same house are not held to be morally diverse places. Nevertheless, even in this case the matrimony could be invalid a) because of the impediment of **force and fear**, b) because of the violent **detention** of the woman in such a place. - It makes no difference whether the abductor himself, who desires to enter matrimony, abducted the woman, or another did so at the command of the abductor. For what someone does through another, he is held to do himself.[153]

The abduction must be violent, that is, against the will of the woman. This violence can be either physical (*raptus violentiae*) or moral, that is, accomplished by grave fear, fraud, deceit, hypnotic suggestion, etc. Therefore the impediment of abduction is not present if a woman **freely** flees with a man to a distant place for the purpose of contracting matrimony there against the will of her parents. But in the external forum, the free consent both to the flight and to the matrimony must then be proved; otherwise abduction is presumed.[154]

Violent detention is equivalent to abduction. If a woman indeed freely flees with a man but afterward is violently detained in an unsafe place and induced by fear or deceit to contract matrimony, the impediment of abduction is also present in this case.[155]

b) **The abduction of a woman**, whether honorable or dishonorable, whether espoused or not yet espoused.

The impediment of abduction does not arise if a man is forcibly abducted from a safe place to an unsafe place for the purpose of entering matrimony. Thus the most common and today certain opinion, with a few contradicting.[156] The reason is that the Code of Canon Law speaks of a male abductor and a female abducted, but not of a female abductor and a male abducted; nor is there a sufficient cause for extending the impediment to the abduction of a man.

c) **For the purpose of entering matrimony.**

It is required that the end of the abduction or detention was entering matrimony, and not lust, vengeance, the extortion of money, or something else.[157] If there is doubt what the end of the abduction was, the end of matrimony is presumed.

d) **That the abductor retain the abducted woman in an unsafe place and contract matrimony there.**

For the Code of Canon Law, can. 1074, § 2, expressly establishes after the Council of Trent:[158] "But if the abducted woman, separated from the abductor and constituted in a safe and free place, consents to have him as husband, the impediment ceases."

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[153] Cf. Rule of Law 68 in VI°.

[154] Cf. Leitner, *Lehrb. d. kirchl. Eherechtes*, § 25, p. 142.

[155] Code of Canon Law, can. 1074, § 3.

[156] Cf. St. Alphonsus, *Theol. mor.*, bk. 6, n. 1107.

[157] Sacred Congregation of the Council, January 23, 1586.

[158] Loc. cit.

821. Cessation of the impediment. Although the impediment of abduction (insofar as it is not joined with the impediment of force and fear) is constituted by ecclesiastical law alone and therefore does not bind unbelievers among themselves,[159] nor did it exist before the Council of Trent, nevertheless the Supreme Pontiff most rarely dispenses from it, because a) it is so intimately connected with the impediment of force and fear, b) there is a great danger that the woman, existing under the power of the abductor, may furnish matrimonial consent that is not altogether free but merely feigned.

For this reason, the Holy Office, in an Instruction directed to the bishops of Albania on February 15, 1901, was unwilling to delegate the faculty of dispensing to the bishops. These are the words: "Nothing prevents assistance from being given to the abducted woman by a dispensation if, in whatever manner, it is certainly established that her consent is truly free and sufficient motives for dispensing are present. But in a matter of such moment, especially lest the most holy Tridentine law become cheapened through excessive facility in obtaining a dispensation of this kind, it is fitting that judgment be altogether reserved to the Holy See."[160]

Indeed, in every concession of a matrimonial dispensation the clause is wont to be added: "provided that the woman was not abducted, and if she was abducted, that she does not exist under the power of the abductor." This clause imports a true condition without which the dispensation is not valid. - But in the most ample faculty of dispensing from impediments, however public, conceded by the Code of Canon Law, cann. 1043-1045, for imminent danger of death and for a case in which matrimony cannot be deferred without grave danger, there is also included the faculty of dispensing from the impediment of abduction. But care must then be taken that the abducted woman furnishes true and free consent.

The impediment of abduction ceases **by that very fact** when the abducted woman has been separated from the abductor and restored to a safe place. This is evident from the words of the Code cited. But it belongs not to the parish priest but to the bishop to judge whether the abduction has truly been purged, that is, has ceased;[161] nevertheless, even after the abduction has been purged, there remain not only the penalties imposed against abductors of women (concerning which below), but also, if some other impediment obstructed the matrimony, mention of the abduction previously committed would have to be made in the petition for a dispensation. When it is necessary to convalidate a matrimony invalid because of the impediment of abduction, the spouses must first be separated, and both must express marital consent before the parish priest and two witnesses according to the legal norms. For this impediment is held to be of public law. Only a dispensation conceded in danger of death is excepted.

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[159] If the abductor is a member of the faithful but the abducted woman an unbeliever, and likewise conversely, if the abductor is an unbeliever but the abducted woman a member of the faithful, the impediment of abduction seems to bind each: the member of the faithful directly, but the unbeliever indirectly. Cf. Cappello, *De sacr.* III, n. 472; Wernz-Vidal, *Ius can.* V, n. 310.

[160] *Collect. de Prop. Fide*, n. 2101.

[161] Cf. Gasparri, *De matrim.*, n. 559; Feije, *De imped. et dispens. matrim.*, 4th ed., n. 186; Van de Burgt-Schaepman, *Tract. de matrim.*, n. 115. - Wernz-Vidal, *Ius can.* V, n. 313, and Vogt, loc. cit., § 43, teach that the judgment of the bishop is not required, at least by common law.

822. The penalties against abductors of women imposed by the Council of Trent[162] or by ancient law have been abolished. But the Code of Canon Law, can. 2353, establishes: "One who, with a view to matrimony or for the purpose of satisfying lust, has abducted an unwilling woman by force or deceit, or a woman who is a

minor (below twenty-one years of age) indeed consenting but without the knowledge or against the will of her parents or guardians, is by the law itself to be held excluded from legitimate ecclesiastical acts and furthermore is to be punished with other penalties according to the gravity of the fault."

The abduction of women (especially that perpetrated for the purpose of lust, which today rages so widely in what are commonly called *Mädchenhandel*, "traffic in girls," and *la traite des blanches*, "white-slave traffic") is also wont to be punished most gravely by civil laws.[163]

[162] Sess. 24, c. 6, *De reform. matrim.*

[163] Cf. Austrian Civil Code, §§ 56, 94; French Penal Code, art. 354 ff.; German Penal Code, § 236 ff.; Spanish Civil Code, art. 135; and Penal Code, art. 460 ff.

§ 8. Crime

Notion. The impediment of crime is a law constituted by the Church by which persons who have committed either qualified adultery or qualified spouse-killing are barred from valid matrimony.

The end of this law is to protect matrimony against the infidelities of either spouse. The discipline now in force and the extent of this impediment for the whole Church were first established in the Decretals of Gregory IX,[164] in the title "Concerning one who took as wife the woman whom he defiled through adultery"; Benedict XIV explained this discipline excellently in the Constitution *Redditae nobis*, December 5, 1744.

Division. As appears from the definition given, the impediment of crime arises from a twofold source, namely, either from qualified adultery or from qualified spouse-killing. Furthermore, adultery is qualified or aggravated in three ways, namely, by an added promise of matrimony, by an attempted matrimony added to it, and by spouse-killing committed by either adulterer. Spouse-killing is qualified by the fact that it was done by common counsel. Therefore, there are four cases in which this impediment arises:

1. from adultery with a promise of matrimony;
2. from adultery with an attempted matrimony;
3. from adultery with spouse-killing perpetrated by either adulterer;
4. from spouse-killing alone, but perpetrated by common counsel.[165]

Because of their similarity, we treat the first and second cases together, following the Code of Canon Law, can. 1075.

[164] Bk. 4, tit. 7.

[165] Certain authors distinguish only three cases of the impediment of crime, which they briefly state thus: 1. **with each plotting** (spouse-killing); this is the fourth case indicated above; 2. **with one plotting**; this is the third case; 3. **with neither plotting**; this is the first and second cases joined together.

823. First and second cases: Adultery with a promise or attempted matrimony.[166]

In order that the impediment of crime truly arise, certain conditions are required both on the part of the adultery, on the part of the promise, and on the part of the attempt.

On the part of the adultery, it is required that it be:

1. **True**, that is, that a true and valid matrimony be violated. Therefore the impediment does not arise if the matrimony to which the injury is done is null or even putative.
2. **Formal on the part of each**, that is, each sinner must know that one and the same matrimony (or two marriages) is being violated. Therefore, for example, if a disguised spouse sins with another's spouse who is likewise disguised, each indeed knows that he is violating his own matrimony, but nevertheless the impediment of crime does not arise, because each adulterer does not know that the same matrimony is being violated.[167] Ignorance of the matrimony, therefore, provided that it is not affected, excuses from this impediment; but ignorance of the impediment does not excuse, as will be said below.
3. **Consummated**, that is, through a copula of itself apt for generation. Therefore an onanistic or sodomitical copula or another immodest act does not suffice.

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[166] This is deduced from cc. 1, 6, 7, X, 4, 7. If anyone rightly understood these chapters, it certainly was St. Raymond, who compiled them with the full authority of Gregory IX. Now St. Raymond speaks thus concerning this case: The impediment is present if someone "gives a pledge to an adulteress that he will take her after the death of her legitimate husband, or after the death of the wife of the adulterer himself" (*Summa*, bk. 4, *De impedimento criminis*).

[167] Cf. St. Alphonsus, *Theol. mor.*, bk. 6, n. 1036.

824. On the part of the promise, it is required that it be:

1. **True and serious.** Therefore neither a mere proposal or desire of celebrating matrimony, nor a feigned or jocular promise, suffices.[168]
2. **Free and not extorted by grave fear or deceit.**
3. **Manifested and mutually accepted**; for the Code requires that there be a "mutually given pledge." But a pledge cannot be mutual unless it is accepted by the other party; this acceptance need not be made in express words, but conclusive acts suffice, for example, a nod of the head or manifested joy at hearing the promise. Yet mere taciturnity does not suffice, because in this case the maxim does not have force: One who is silent is seen to consent. For this maxim cannot be applied in an onerous matter, such as the acceptance of a matrimonial promise, since this is equivalent to a reciprocal promise of matrimony and constitutes an onerous contract. But although authors disputed whether not only an accepted promise but also a mutual or reciprocal promise was required, today it seems that the impediment of crime is not present unless there was **a mutual and reciprocal promise of future matrimony**.[169] Betrothals entered in legitimate form, however, are by no means required.
4. **Absolute and not conditional.** Hence, for example, the impediment would not arise if the adulterer said to the adulteress: I promise you matrimony if my parents consent. Therefore he must say absolutely: I promise you matrimony after the death of the other party. More probably, the impediment is also not present if the adulterer says to the adulteress: I promise you matrimony after a civil divorce has been obtained.[170] The reason is that such a promise includes the condition of obtaining a divorce. But if, after a civil divorce has been obtained, matrimony is truly contracted and consummated, then the second case of the impediment of crime is present, as will be said below.
5. **While the same matrimony endures.**[171] Therefore both the adultery and the promise must inflict injury upon the same matrimony. But it makes no difference whether the promise preceded or the perpetration of adultery, provided that each act existed **while the same spouse was living**, and that the promise was not revoked before the adultery, and indeed by an external act known to the

accomplice. Therefore a merely internal revocation does not suffice. The impediment arises even if perhaps the other spouse consents to the adultery or to the promise of the other party, because even in this case a grave injury is inflicted upon the matrimony; for spouses cannot renounce their right in this matter.[172]

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[168] A promise of mere concubinage indeed does not suffice, but a promise of civil matrimony seems to suffice.

[169] Thus also Linneborn, *Grundriß des Eherechtes*, 2nd ed., § 29; Vlaming, *Prael. de iure matrim.* I, 8th ed., n. 314; De Smet, loc. cit., n. 659.

[170] Cf. Gasparri, *De matrim.*, n. 648; Cappello, *De sacr.* III, n. 484.

[171] Thus it is deduced from c. 8, X, 4, 7, and from the Constitution *Redditae nobis.*

[172] The opposite opinion defended by De Smet (*De sponsal. et matrim.*, 3rd ed., n. 659) does not seem probable. This author thinks that the impediment of crime was not present in the following case occurring in the Diocese of Bruges: A man had committed adultery with his wife's sister, but did not promise matrimony to his accomplice except before his dying wife, who not only consented to this promise but urgently pressed it for the sake of the offspring born. Marc-Raus, loc. cit. II, n. 2033, approves the same opinion.

825. On the part of the attempted matrimony, the same qualities are required which were enumerated above for the **promise** of matrimony. By an attempted matrimony is understood an act by which two persons, conscious of the existing impediment of bond, truly and seriously furnish conjugal consent to one another by words or other signs of the present, whether publicly or clandestinely.[173] Therefore an attempted matrimony is not present a) if the two adulterers intend nothing other than **pure concubinage**; b) if either of the contracting parties is unaware of the impediment of bond; but if, after becoming aware of the bond of the prior valid matrimony, that person perseveres in concubinage, the impediment of crime immediately arises. - In our times this attempted matrimony is found especially **in so-called civil matrimony**, to which a spouse hastens after obtaining the civil divorce of the prior matrimony.[174] Therefore, when such a civil matrimony is contracted and consummated in contempt of the prior matrimony, the impediment of crime is present.

Note. All marriages invalidly contracted while this impediment existed (the second case) were sanated by Pius X on June 3, 1912.[175]

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[173] Thus Vlaming, *Prael. de iure matrim.* I, 8th ed., n. 318.

[174] Cf. Sacred Congregation for the Propagation of the Faith, January 14, 1844; Vogt, *Das kirchl. Eherecht*, § 42; Wernz-Vidal, *Ius can.* V, n. 329.

[175] *Acta Ap. Sed.* IV, 403. The same Supreme Pontiff established that thereafter a dispensation from the said impediment in a given case is held to be conceded a) through a dispensation given from a ratified and non-consummated matrimony, b) through permission given for passage to other nuptials because of the presumed death of the spouse. The Code of Canon Law, can. 1053, confirmed this, but with the case of spouse-killing excluded.

826. Third case: Adultery with spouse-killing.

The adultery must have the same conditions which were enumerated above for the first case. But on the part of the spouse-killing it is required:

1. **That death actually followed**, and indeed from the physical or moral action of one adulterer. Hence the impediment arises whether the adulterer killed the legitimate spouse (whether his own or the accomplice's) by his own hand or with another's aid; on the contrary, the impediment is not present if the legitimate spouse escaped the death attempted against him by the adulterous party.

2. **That death was inflicted with the intention of contracting matrimony with the adulterer.** Therefore, if death is inflicted from another motive, for example, from vengeance, hatred, a duel,[176] etc., the impediment does not arise. But it is by no means necessary that the intention of contracting matrimony be possessed by each adulterer or that it be manifested to the accomplice.

From what has been said it is evident how atrocious this crime is. For a twofold, most grave injury is inflicted upon the spouse, namely: 1. conjugal fidelity to the spouse is violated through adultery; 2. life is taken from the spouse by either adulterer for the purpose of entering a new matrimony.

[176] Cf. Linneborn, *Grundriß des Eherechtes*, § 29.

827. Fourth case: Spouse-killing without adultery.

In order that the impediment of crime arise from this title, the following conditions are required:

1. **True spouse-killing**, that is, that a true and not a putative spouse is actually killed. Therefore the impediment is not present a) if death does not actually follow from the physical or moral action posited, or b) if the spouse lived with one of the killers not in a true but in a putative matrimony.
2. **The mutual plotting or cooperation of the man and woman toward the killing of the spouse.** Therefore the impediment of crime does not arise if the man alone or the woman alone kills the spouse without mutual counsel; or even if one kills and the other afterward approves the crime. It is altogether required that each exercise a true and efficacious influence, whether moral or physical, upon the death of the spouse. In one word: **both must be true killers of the spouse.**
3. **Spouse-killing committed with the intention of contracting matrimony with the accomplice.** Certain authors deny this condition;[177] certain others deduce it from c. 1, X, 3, 33; but it is taught more truly and more commonly that it is not found in express words in the sources of ecclesiastical law, but is clearly and certainly deduced **from the end of the law**, which indeed intends to prevent someone from killing his own spouse or the spouse of the accomplice from a desire to enter another matrimony.[178] The impediment is not incurred if the spouse-killing was perpetrated from anger, vengeance, or another motive apart from the intention of matrimony. Authors dispute whether this intention of contracting matrimony must be on the part of each killer or of only one; likewise, whether the intention of contracting matrimony must necessarily have been manifested to the accomplice before the spouse-killing. In practice these controversies are of little utility. For if a man and woman plot and cause the death of the spouse of either, the intention of entering matrimony and the mutual manifestation of this intention are deservedly presumed.

[177] Vogt, loc. cit.

[178] Cf. Feije, *De imped. et dispens. matrim.*, n. 483; Gasparri, *De matrim.*, n. 643.

828. Multiplication of this impediment.

The impediment of crime is multiplied from a twofold cause:

1. **According to the number of marriages upon which injury is inflicted.**

Hence, for example, the impediment is twofold if Caius, during his matrimony with Anna, commits adultery with the maidservant Paula while at the same time promising matrimony; but afterward, when Anna has died

and he has entered a second matrimony with Maevia, he again commits adultery with the maidservant Paula while promising matrimony. Likewise, the impediment is twofold if both adulterers are joined in matrimony and promise matrimony to each other when their respective spouses have died.

2. **According to the number of diverse delicts perpetrated against one and the same matrimony.**

Hence, for example, if Peter, a married man, commits adultery with Anna while at the same time promising matrimony, one impediment arises; if afterward he attempts matrimony with Anna and finally kills his own wife with the intention of contracting a legitimate matrimony, a threefold impediment of crime is present because of the threefold crime committed. But the impediment is not multiplied if the same delicts are multiplied in number, for example, if promises of matrimony and adulteries are multiplied during the same matrimony. - In seeking a dispensation, the essential circumstances of the case must be set forth, without its being necessary expressly to seek a dispensation from each existing impediment.

829. Cessation of this impediment.

The impediment of crime once contracted is perpetual and does not cease except through a legitimate dispensation. Therefore it does not cease, for example, if after perpetrating adultery the adulterer revokes the promise of matrimony made, or if, after a civil divorce was obtained and a new matrimony attempted, the prior spouse has died. Since this impediment is of ecclesiastical law, the Supreme Pontiff can indeed always dispense; but he is not wont to dispense if there is question of public spouse-killing. The first two cases of this impediment, however, are held to be of the lesser degree.[179] The faculty of dispensing from this impediment is also contained in cann. 1043 and 1044, conceded for danger of death and another urgent case. - It was already said above, n. 651, note 168, that the impediment of crime does not affect the non-baptized if both are non-baptized.

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[179] Code of Canon Law, can. 1042, § 1, n. 5.

830. It is asked: Does ignorance excuse from this impediment? Authors disputed much whether this impediment is incurred even if one or each of the contracting parties did not know that it was imposed for the crimes recounted above. - The much more probable opinion taught that ignorance does not excuse from this impediment; today this has become certain and is admitted by all, since the Code of Canon Law, can. 16, § 1, establishes without any restriction: "No ignorance of invalidating or incapacitating laws excuses from them unless something else is expressly stated." But all diriment impediments of matrimony are invalidating laws, and the impediment of crime is not expressly exempted.

§ 9. Natural Relationship or Consanguinity

Preliminary Note. A threefold relationship is commonly distinguished: 1. **natural**, which is also called consanguinity or kinship; 2. **spiritual**, which arises from baptism and confirmation; 3. **legal**, which proceeds from legal adoption. Each must be treated separately.

831. Notion. The impediment of consanguinity (unity of blood) is the proximity of persons descending from the same proximate stock or progenitor, which invalidates matrimony within determined degrees.

Explanation. The foundation of consanguinity is a common and indeed proximate stock, from which the persons about to marry descend through carnal generation. All men indeed descend from the same first stock, namely, from Adam, but matrimony is prohibited only between persons who descend from a proximate stock

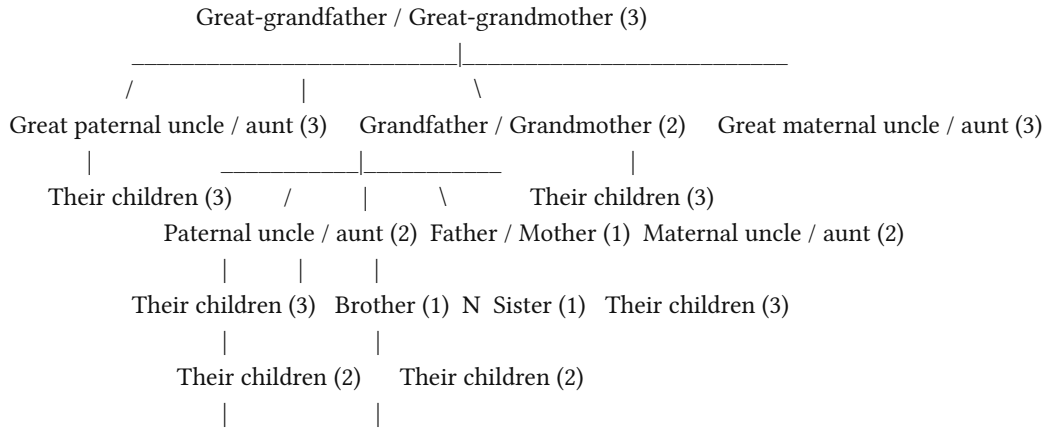
within the third generation. For judging correctly concerning consanguinity insofar as it is an impediment of matrimony, three things must be considered especially: the stock, the line, and the degree.

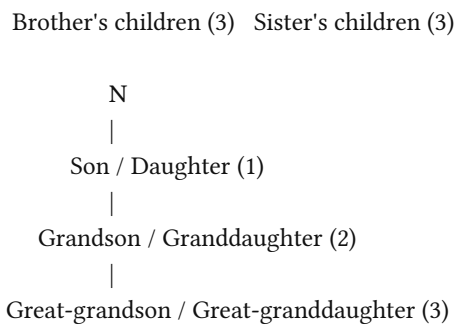
The **stock** (root, trunk) is called that person (whether male or female) from whom, as from a common root, the persons about to marry (whose consanguinity is in question) descend through carnal generation (whether legitimate or illegitimate, whether mediate or immediate). Hence, for example, a grandfather is the common stock of grandchildren, a father of children, etc.

A **line** is called the natural series of consanguineous persons. A twofold line is distinguished: direct and collateral. A **direct line** is called a series of persons, one of whom descends from another, and therefore it comprises: a) **ascendants**, such as father, grandfather, great-grandfather (the direct ascending line); b) **descendants**, such as son, grandson, great-grandson (the direct descending line). - A **collateral** (transverse, oblique) **line** is a series of persons who indeed descend from one and the same stock, but not one from another; for example, brother and sister indeed descend from the same stock, namely, from the father, but the brother does not descend from the sister, and conversely the sister does not descend from the brother. If persons of the collateral line are equally distant from the common stock, as a brother and sister from their father or grandchildren from their grandfather, there is an **equal collateral line**; but if one person is farther from the common stock than another, for example, a brother and a female cousin, there is an **unequal collateral line**. (See below the tree of consanguinity.)

A **degree** is the measure of distance in consanguinity. Two principal methods exist for computing these degrees or this distance: the **civil or Roman computation**, which is commonly in force in civil laws and in the Eastern Church;[180] and the **canonical** (Germanic, Teutonic) **computation**, which is now in force in the Latin Church.[181] In the direct line both computations are the same. But in the collateral line the civil computation counts the degrees or generations both on the bridegroom's side and on the bride's side, so that as many degrees are judged to be present as there are generations from both sides taken together. For example, a brother and sister are consanguineous in the second degree according to the civil computation, because there is one generation from the common stock (the father) on the brother's side, and likewise there is one generation on the sister's side. - The canonical computation, however, indeed counts the degrees or generations from each person about to marry up to the common stock, but **does not join them together**. Thus, for example, a brother and sister according to this computation are consanguineous in the first degree, because from both the brother and the sister to the common stock there is only one generation. - With these things premised, the following rules are given by the Code of Canon Law, can. 96, for computing degrees.

Figure 1. Tree of Consanguinity





Rule 1. In the direct line there are as many degrees as there are generations; or, what is the same: there are as many degrees as there are persons, the stock being subtracted.

For example, between a bridegroom and his great-grandfather there are three degrees, because there are three generations, or three persons if the great-grandfather is subtracted.

Rule 2. In an equal collateral line there are as many degrees as there are generations (or persons, the stock being subtracted) computed on one side only (whether it is the bridegroom or the bride).

For example, first cousins are consanguineous in the second degree, because there are two generations up to the common stock, who is the grandfather. There are also two persons, if the grandfather is subtracted, namely, the first cousins themselves and their parents.

Names of Blood Relatives in Certain Vernacular Languages

Direct Line

Degree and Latin	German	French	English	Italian	Spanish
1. *Pater*	Vater	Père	Father	Padre	Padre
Mater	Mutter	Mère	Mother	Madre	Madre
2. *Avus*	Großvater	Aïeul	Grandfather	Nonno, Avolo	Abuelo
Avia	Großmutter	Aïeule	Grandmother	Nonna, Avola	Abuela
3. *Proavus*	Urgroßvater	Bisaïeul	Great-grandfather	Bisnonno, Bisavolo	Bisabuelo
Proavia	Urgroßmutter	Bisaïeule	Great-grandmother	Bisnonna, Bisavola	Bisabuela
1. *Filius*	Sohn	Fils	Son	Figlio	Hijo
Filia	Tochter	Fille	Daughter	Figlia	Hija
2. *Nepos*	Enkel	Petit-fils	Grandson	Nipote	Nieto
Neptis	Enkelin	Petite-fille	Granddaughter	Nipote	Nieta
3. *Pronepos*	Urenkel	Arrière-petit-fils	Great-grandson	Pronipote	Bisnieto
Proneptis	Urenkelin	Arrière-petite-fille	Great-granddaughter	Pronipote	Bisnieta

Collateral Line

Degree and Latin	German	French	English	Italian	Spanish
1. *Frater*	Bruder	Frère	Brother	Fratello	Hermano
Soror	Schwester	Sœur	Sister	Sorella	Hermana
2. *Patruus*	Onkel (Vaters Bruder)	Oncle paternel	Paternal uncle	Zio paterno	Tío carnal paterno
Amita	Tante (Vaters Schwester)	Tante paternelle	Paternal aunt	Zia paterna	Tía carnal paterna
3. *Patruus maior*	Großonkel (Großvaters Bruder)	Grand-oncle paternel	Great paternal uncle	Prozio paterno	Tío segundo paterno
Amita maior	Großtante (Großvaters Schwester)	Grand'tante paternelle	Great paternal aunt	Prozia paterna	Tía segunda paterna
1. *Frater*	Bruder	Frère	Brother	Fratello	Hermano
Soror	Schwester	Sœur	Sister	Sorella	Hermana
2. *Avunculus*	Oheim (Mutters Bruder)	Oncle maternel	Maternal uncle	Zio materno	Tío carnal materno
Matertera	Muhme (Mutters Schwester)	Tante maternelle	Maternal aunt	Zia materna	Tía carnal materna
3. *Avunculus maior*	Großoheim (Großmutters Bruder)	Grand-oncle maternel	Grandmother's brother	Prozio materno	Tío segundo materno
Matertera maior	Großmuhme (Großmutters Schwester)	Grand'tante maternelle	Grandmother's sister	Prozia materna	Tía segunda materna
1. *Frater*	Bruder	Frère	Brother	Fratello	Hermano
Soror	Schwester	Sœur	Sister	Sorella	Hermana
2. *Fratris filii*	Geschwisterkinder	Cousins germains	First cousins	Cugini primi	Primos hermanos
Sororis filii	Id.	Cousines germaines	Id.	Cugine prime	Primas hermanas
3. *Fratris nepotes*	Andere Geschwisterkinder	Cousins issus de germains	Second cousins	Cugini secondi	Primos segundos
Sororis nepotes	Id.	Cousines issues de germains	Id.	Cugine seconde	Primas segundas

Rule 3. In an unequal collateral line there are as many degrees as there are generations (or persons, the stock being subtracted) to be computed in the longer line.

For the adage is valid: **the more remote degree draws the nearer to itself**. Thus, for example, a paternal uncle and niece,[182] that is, a brother's daughter, are consanguineous in the second unequal collateral degree; for the common stock is the grandfather, from whom the paternal uncle is distant by one degree, but the niece by two degrees. In petitions for dispensations both degrees must be expressed; this is commonly done in this manner: a paternal uncle and niece are consanguineous in the second degree touching the first. For finding and computing degrees more easily, the so-called "tree of consanguinity" was already delineated in the *Corpus*

of Canon Law,[183] whose figure, slightly altered, we have given above, as also the names of blood relatives in certain vernacular languages.

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[180] Papp-Szilagyi, *Enchir. iur. eccl. orient. cath.*, 262.

[181] c. 2, C. 35, q. 5.

[182] *Onkel und Nichte* [uncle and niece].

[183] After c. 6, C. 35, q. 5.

832. Divisions. Consanguinity is distinguished:

a) as **legitimate and illegitimate**, according as generation was effected in a valid or putative matrimony, or outside matrimony. Illegitimate offspring, however, can be legitimated, as will be said below, n. 884;

b) as **full** (perfect) and **less full** (imperfect), according as consanguineous persons descend from the same **two** parents, or only from the same father or the same mother. - Brothers having the same father but not the same mother are called "consanguineous"; but those having the same mother but not the same father are called "uterine"; while those having the same father and the same mother are called "germane";

c) as **cognation and agnation**, according as consanguinity arose through the female line or mother, or through the male line[184] or father;

d) as **simple and multiple**, according as two consanguineous persons descend from one common stock, or according as several common stocks are present. Thus according to the discipline now in force.[185] Formerly other cases of multiple consanguinity also occurred.

Since in practice it is sometimes sufficiently difficult to discover multiple consanguinity, it is necessary to explain at somewhat greater length at least two cases of multiple consanguinity.

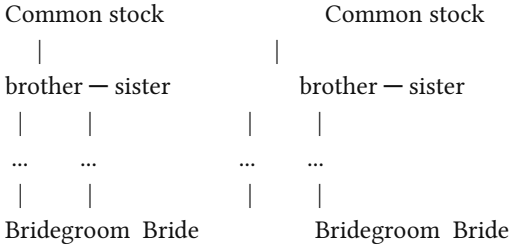
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[184] In the old German law, cognates were called *Spillmagen* and agnates *Schwertmagen*.

[185] Code of Canon Law, can. 1076, § 2.

833. Multiple consanguinity. First case: if among the ascendants of two spouses members of one family celebrated marriages with members of another family, for example, two brothers of one family married two sisters of another family. In this case there are two common stocks, as is apparent from the diagram placed here. For both grandfathers of the bridegroom and both grandfathers of the bride were brothers and sisters. Hence the two persons about to marry are consanguineous in a double third degree. As is evident of itself, other similar examples can also be devised.

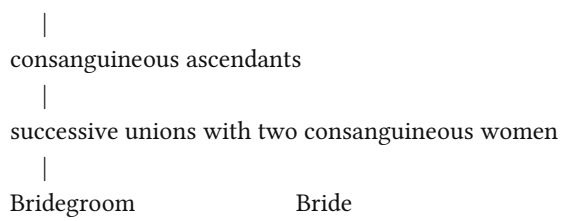
Figure 2. First case



Second case: if the ascendants were consanguineous and one of them successively married two consanguineous women, as is clearly seen from the diagram placed above (fig. 3). In this case there are

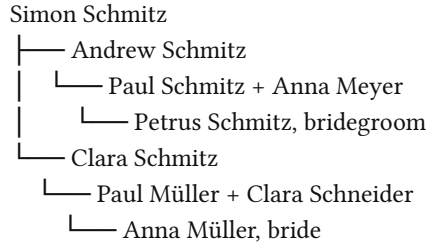
likewise two common stocks, and the persons about to marry are consanguineous in the third and second degree.

Figure 3. Second case



834. Note. When a dispensation from the impediment of consanguinity is to be requested, it must necessarily be expressed whether the consanguinity is simple or multiple; whether it is full or half-full; whether it is in the direct or in the collateral line. It is highly expedient that a diagram of consanguinity be drawn in the petition, as is shown here; indeed, in some dioceses a diagram of this kind is expressly required in every petition submitted.

Figure 4. Diagram of Consanguinity



Method of finding the degree of consanguinity. Several methods are available, of which, however, the following seems easier, clearer, and safer. If any reasonable doubt arises for the parish priest concerning the consanguinity of those about to marry, the names of the bridegroom and bride are to be written on a sheet of no very small size; then above the bridegroom's name all the names of his ascendants, and similarly above the bride's name all the names of her ascendants. Afterward the intervening generations are to be counted until the common stock is reached. The number of these generations from the common stock to the bridegroom gives the degrees of consanguinity on his side; but the number of generations from the common stock to the bride gives the degrees of consanguinity on the bride's side. If, for example, three generations are found from the common stock both on the bridegroom's side and on the bride's side, there is consanguinity in the equal third degree of the collateral line. See the diagram placed above (fig. 4). But if there are four generations from the common stock to the bridegroom and three to the bride, then the persons about to marry are consanguineous in the fourth degree of the collateral line touching the third. In this last case a dispensation is no longer necessary, because according to the adage stated above, **the more remote degree draws the nearer degree to itself**, and a dispensation is required only, as will be said below, if the persons about to marry are consanguineous up to and including the third degree. If multiple consanguinity is present, the degrees must be computed from each common stock, or according to the diverse paths by which ascent is made to each common stock.

835. Origin of the impediment of consanguinity.

1. **From natural law itself arises the diriment impediment of consanguinity in the direct line** (whether ascending or descending), and it extends not only to the first degree (between father and daughter, between mother and son), but also to all other degrees. In the first degree of the direct line, that is, between father and daughter as also between mother and son, all admit that matrimony is prohibited by natural law itself, and even barbarous peoples themselves, indeed even brute animals, are wont to recoil from a carnal union of this kind. The reason is taken both from the physical and from the moral order. For from such carnal intercourse either no offspring or weak and deformed offspring is wont to be born. Moreover, in marital and carnal union there exists equality between the contracting parties, whereas between parents and children there is not equality, but subjection and reverence due to parents. - **In other degrees of the direct line** matrimony is probably also prohibited by natural law because of the same reasons of physical and moral order; but several very weighty authors, such as Billuart,[186] Cajetan,[187] to whom St. Thomas[188] seems to favor, teach that consanguinity in the other degrees dirimes matrimony by ecclesiastical law alone. Hence, in practice, if a case should occur in which a grandfather in paganism had married his granddaughter and afterward one or the other spouse were baptized, the Holy See would have to be consulted about what must be done.

2. **By ecclesiastical law alone the diriment impediment of consanguinity in all degrees of the collateral line arose in the New Testament.** Thus the more probable opinion, concerning which Benedict XIV says: "There is no agreement among theologians whether matrimony between brother and sister is prohibited by natural, divine, or human law; certainly St. Thomas, Gonzalez, Pontius, Parisius, and Aversa acknowledge only a prohibition of positive law."[189] - The reason is that between a brother and sister, or other blood relatives of remoter degrees, there does not intervene such a relation of reverence and subjection as exists between parents and children. Then it is incongruous to say that immediately at the beginning of the world God established something contrary to natural law itself. But it is certain that the sons of Adam took their own germane sisters as wives. From this opinion it follows that, if in paganism a brother and sister contracted matrimony (provided the civil law of that region did not invalidate such a matrimony), and if afterward one or both spouses are baptized, their matrimony cannot by that very fact be declared invalid, but recourse must be had to the Holy See. - If it is a question of a matrimony to be contracted, the Supreme Pontiff never dispenses so that matrimony may be entered between brother and sister, or in the first degree of the collateral line, even if that consanguinity is not certain but only doubtful;[190] but he very rarely dispenses in the second degree touching the first, for example, so that a maternal uncle may marry his sister's daughter.[190a]

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[186] *De matrim.*, diss. 7, a. 4, § 2, I say 3°.

[187] *Comm. in* 2, 2, q. 154, a. 9.

[188] The Angelic Doctor says: "In the intercourse of related persons there is something which is in itself indecent and repugnant to natural reason, as that intercourse should occur between parents and children, whose relationship is of itself and immediate; for children naturally owe honor to parents. Hence the Philosopher says that a certain horse, because it had been deceived so that it coupled with its mother, cast itself down as though from horror, because even in some animals a natural reverence toward parents is present. - But other persons, who are not joined according to themselves but by order to parents, do not have such indecency from themselves; rather, decency or indecency in this matter varies according to custom and human and divine law, because the use of venereal things, which is ordained to the common good, is subject to law. And therefore, as Augustine says: 'Intercourse between sisters and brothers, the more ancient it was under the compulsion of necessity, the more afterward it was made damnable when religion prohibited it'" (*S. theol.* 2, 2, q. 154, a. 9, ad 3). Similar things are found in *Suppl.*, q. 54, a. 3. Certain older authors wittily refuted the opposite opinion, saying: If consanguinity in all degrees of the direct line dirimed matrimony by natural law itself, Adam, restored to life, could marry no woman, because all descended from him in the direct line.

[189] Benedict XIV, Epistle *Aestas anni*, n. XIII, October 11, 1757. Wernz-Vidal, *Ius matr.*, n. 348, note 60 ff., strongly maintains that the impediment of consanguinity in the first degree of the collateral line arose from natural law. Several others, such as Sanchez, Suarez, Lugo, Noldin, etc., teach the same.

[190] Benedict XIV, loc. cit.; and Code of Canon Law, can. 1076, § 3.

[190a] Instruction of the Sacred Congregation of the Sacraments, August 1, 1931 (*Acta Apost. Sed.* XXIII, 413).

836. Extent of the impediment of consanguinity. According to the discipline now in force in the Latin Church, consanguinity in the collateral line dirimes matrimony up to and including the third degree; and it makes no difference whether the consanguinity arose from a legitimate or an illegitimate bed.[191]

Formerly the impediment of consanguinity in the collateral line extended to the seventh degree and, after the Fourth Lateran Council, to the fourth degree; but now, after May 19, 1918, it is restricted to the third degree. - Since, according to the adage cited repeatedly, the more remote degree draws the nearer to itself, the diriment impediment of consanguinity is no longer present if on one side of the contracting parties there are four degrees up to the common stock, although on the other side there are only two or three degrees. - The best rule to be given to the people and sufficiently easy to apply in practice for discerning whether the impediment of consanguinity is present is this:

The impediment of consanguinity is not present if the parents of those about to marry were not at least first cousins, or, what is the same: if the grandparents of those about to marry were not brothers or sisters.

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[191] Code of Canon Law, can. 1076, § 2. In the Eastern Church this impediment is valid up to the seventh degree, that is, up to the third degree according to the canonical computation. Cf. Papp-Szilagyi, loc. cit., § 107.

837. The suitability of the impediment of consanguinity is evident especially from a threefold reason:

1. **The social good is greatly promoted through it.** As St. Augustine bears witness,[192] it is necessary that the whole human race, by the will of God and by bonds of charity extended more and more widely, grow together into one society and the city of God. But marriages, as seedbeds of charity, are means most suitable and efficacious for effecting this union, provided, however, that they are duly entered and holily preserved. But if marriages were contracted only among blood relatives, this social union would be obtained less perfectly.[193]
2. **The moral good is preserved through it.** Blood relatives are wont to live together with familiar intercourse, often dwell under the same roof, and visit one another rather frequently. From this familiar intercourse great dangers to chastity could very easily arise if blood relatives were not conscious from earliest childhood that they could never enter legitimate nuptials with one another. Therefore, the impediment of consanguinity is a strong guardian of morality.
3. **The physical good of the offspring is better obtained.** For experience proves that offspring born from the matrimony of blood relatives are often weak both in mind and in body.[194] Certainly, if both spouses, free from every bodily defect, enjoy robust health, a danger of this kind for the offspring is sometimes absent, but this case does not always occur. Generally it is permissible to affirm that offspring born from the matrimony of blood relatives are of an inferior condition to the offspring of

other marriages (other things being equal). - Since these things are so, confessors and parish priests should deter the faithful from entering marriages between blood relatives.

[192] *De civ. Dei*, bk. 15, c. 16 (c. un., C. 35, q. 1).

[193] Cf. St. Thomas, *Suppl.*, q. 54, a. 4.

[194] Hence that adage: *Heirat im Blut tut selten gut* [marriage within the blood seldom turns out well].

838. Cessation of this impediment. This impediment ceases only through a dispensation of the Supreme Pontiff, which, however, is never granted not only in consanguinity of the direct line, as probably diriming matrimony by natural law in all degrees, but also in the first degree of the collateral line, as was said. Therefore, not even in danger of death can a parish priest or confessor permit matrimony between a brother and sister.

§ 10. Affinity

839. Notion. Affinity is the proximity of persons arising from a valid matrimony, whether merely ratified or ratified and consummated, between the man and the blood relatives of the woman, and conversely between the woman and the blood relatives of the man.[195]

Explanation. Before the new Code of Canon Law, the efficient cause of affinity was carnal intercourse of itself apt for generation; and therefore affinity arising from matrimonial intercourse (diriming matrimony up to and including the fourth degree) and from fornicarious intercourse (diriming matrimony up to and including the second degree) was distinguished. But now the efficient cause of affinity is every and only a valid matrimony, at least ratified, and it makes no difference whether carnal intercourse intervened or not. Therefore, the modern discipline must be carefully distinguished from the ancient discipline. For affinity now does not arise a) from fornicarious intercourse, b) from an invalid matrimony (although putative), c) from the legitimate, consummated matrimony of two pagans, since it is not a ratified matrimony. But if two pagans joined in legitimate matrimony are afterward baptized, the impediment of affinity certainly arises; indeed, it probably arises if either one is baptized, or if matrimony is contracted between a baptized and a non-baptized person.[196]

[195] Code of Canon Law, can. 97. Concerning the history of the impediment of affinity, see Freisen, *Gesch. d. kan. Eherechtes*, § 39 f. The Code of Canon Law adopted the notion of affinity as it was employed in old Roman law and is employed in modern civil laws. Roman law established (L. 4, § 3, D. 38, 10): "Affines are the blood relatives of husband and wife, so called from this, that two relationships which are diverse from each other are joined through nuptials, and one approaches the boundary of the other's relationship; for the cause of affinity to be joined arises from nuptials."

[196] Thus the more common and truer opinion. Cf. Wernz-Vidal, loc. cit., n. 367. Nevertheless, some contradict it, for example, Blat, *Commentar.* III, 475; Ojetti.

840. Division. According to the discipline now in force, only simple and multiple affinity is distinguished, according as it rests upon one or several causes. Multiple affinity arises only:

1. whenever the impediment of consanguinity from which it proceeds is multiplied. How consanguinity is multiplied was said above, n. 833.
2. by successive matrimony repeated with a blood relative of the deceased spouse.[197] For example, if Caius successively marries Paula and Anna, who are sisters, he contracts a double affinity with Theresia, the cousin of Paula and Anna.

[197] Code of Canon Law, can. 1077, § 2.

841. Origin and suitability of this impediment. Although from matrimony a certain natural bond arises with the blood relatives of one's spouse, nevertheless it does not yet follow therefrom that the impediment of affinity arises from **natural law itself**. There were indeed several weighty authors (St. Antoninus, Reiffenstuel, Bellarmine, Pirhing, and others) who taught that at least affinity in the first degree of the direct line dirimes matrimony by natural law itself, and therefore that the Pope cannot dispense in such affinity, and also that a matrimony of pagans entered between such persons related by affinity is invalid; but the far more common and probable opinion teaches that no affinity whatsoever dirimes matrimony by natural law.[198] On September 4, 1743, the Holy Office declared that "there is no reason to doubt the power of the Pontiff to grant a dispensation in the first degree of affinity in the direct line, even from licit intercourse between a stepfather and stepdaughter."

The Supreme Pontiff is not wont to dispense from the impediment of affinity in the first degree of the direct line, at least if it is a question of a matrimony to be contracted and if the affinity arose from a consummated matrimony. Indeed, several Supreme Pontiffs, for example, Urban VIII, Alexander VII, Innocent X, and Benedict XIII, expressly denied such a requested dispensation.[199] The matter is otherwise if carnal intercourse was exercised in paganism and matrimony is contracted after baptism has been received. On August 26, 1891, the Holy Office determined generally that "affinity which is naturally contracted in unbelief from intercourse, both licit and illicit, is not an impediment for marriages entered in unbelief, but becomes an impediment for marriages entered **after baptism**, by the reception of which unbelievers become subjects of the Church and therefore subject to her laws."[200]

[198] Cf. Billuart, *De matrim.*, diss. 7, a. 5, § 3.

[199] In Leitner, *Lehrb. d. kirchl. Eherechtes*, § 31, p. 223. Cappello, *De sacr.* III, nn. 537 and 539, asserts that dispensations of this kind have been granted in our age.

[200] The same Holy Office applied this rule on December 16, 1898, in the following practical case: Andrew, formerly a pagan but now baptized, wishes to marry Clara, who is still a catechumen but is about to receive baptism in the near future. Clara was Andrew's stepmother, that is, the second wife of Andrew's father; indeed, she had been the concubine both of Andrew's maternal uncle and of Andrew's grandfather. Therefore, Clara was related by affinity to Andrew in three ways (namely, in the first degree, in the second touching the first, and in the second degree of the direct line). The Holy Office responded: "If both betrothed parties, related by affinity in unbelief, ask to be joined in matrimony after receiving baptism, petition is to be made to the Most Holy One for a dispensation." - If Andrew and Clara, while existing in paganism, had contracted matrimony, no dispensation would have been necessary after baptism was received by each party. But if Andrew, baptized, had contracted with Clara, non-baptized, a dispensation from the impediment of disparity of worship would have been necessary; that dispensation would at the same time have removed the impediments of affinity. Cf. above, n. 809.

842. The impediment of affinity was most suitably established by the Church. For through matrimony the man and woman are united so intimately that the man contracts a certain close relation also with the blood relatives of the woman, and conversely the woman with the blood relatives of the man. Hence, just as it is fitting that matrimony not be contracted between blood relatives, so likewise it is not expedient that marriage occur between persons related by affinity. In addition, otherwise, namely, if such a matrimony were licit, grave dangers to chastity would arise, since the man is wont to associate familiarly with the blood relatives of the woman, and the woman with the blood relatives of the man. - Already in the Old Testament matrimony with a stepmother, stepdaughter, son’s stepdaughter, or daughter’s stepdaughter was prohibited.[201] - Although general laws concerning the impediment of affinity are not found in the first centuries of the Church, nevertheless from particular Councils[202] the existence of this impediment is clearly perceived, which

at that time extended much more widely than now. Innocent III brought about its first limitation at the Fourth Lateran Council (A.D. 1215), decreeing that affinity arising from both licit and illicit intercourse dirimed matrimony up to the fourth degree.[203] The Council of Trent[204] brought about another limitation, establishing that affinity from fornicarious intercourse dirimed matrimony up to the second degree. Today the extent of this impediment is still more limited, as will be said below.

Names of Persons Related by Affinity in Certain Languages

1. Direct Line

Latin	Italian	Spanish	French	German	English
Socer	Suocero	Suegro	Beau-père	Schwiegervater	Father-in-law
Socrus	Suocera	Suegra	Belle-mère	Schwiegermutter	Mother-in-law
Gener	Genero	Yerno	Gendre	Schwiegersohn	Son-in-law
Nurus	Nuora	Nuera	Bru, Belle-fille	Schwiegertochter	Daughter-in-law
Vitricus	Patrigno	Padrastro	Beau-père	Stiefvater	Stepfather
Noverca	Matrigna	Madrastra	Belle-mère	Stiefmutter	Stepmother
Privignus	Figliastro	Hijastro	Beau-fils	Stiefsohn	Stepson
Privigna	Figliastra	Hijastra	Belle-fille	Stieftochter	Stepdaughter

2. Collateral Line

Latin	Italian	Spanish	French	German	English
Levir	Cognato	Cuñado	Beau-frère	Schwager	Brother-in-law
Glos	Cognata	Cuñada	Belle-sœur	Schwägerin	Sister-in-law

Sororius (a sister's husband) and *fratria* (a brother's wife) are named in the same manner in the vernacular languages as *levir* and *glos*, unless for the sake of clarity the entire phrase is given, that is, *der Mann der Schwester* [the sister's husband].

Note. If more remote degrees of affinity are present, the names of consanguinity must be employed, for example, the wife's grandmother or the husband's great-grandmother, etc.

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[201] Cf. Lev. 18:8 ff.; Deut. 27:20.

[202] For example, the Council of Elvira around A.D. 300; the Council of Neocaesarea around A.D. 314.

[203] c. 8, X, 4, 14.

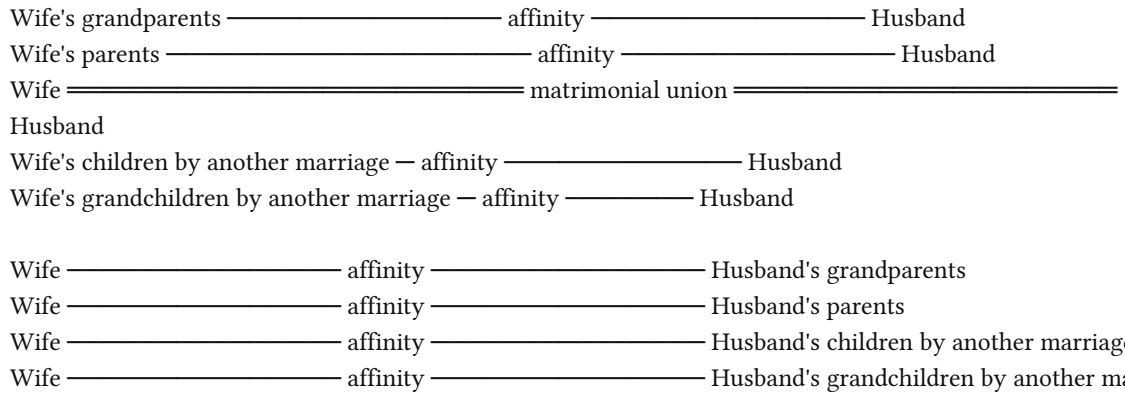
[204] Sess. 24, c. 4, *De reform. matrim.*

843. Computation of degrees in affinity. St. Thomas[205] and the older authors taught that affinity properly does not have its own degrees, for degrees are computed from a series of generations. But there are no generations of persons related by affinity, since generations belong only to blood relatives. Therefore, affinity, not having its own degrees, takes its degrees from the consanguinity of the other party. Hence the blood relatives of the man are related by affinity to the woman, and the blood relatives of the woman are related by affinity to the man. From these things said, the following rule for computing the degrees of affinity follows:

There are as many degrees of affinity on one side as there are degrees of consanguinity on the other side, or as St. Thomas says:[206] "In whatever degree of consanguinity my husband is related to me, in that degree of affinity his wife is related to me"; or as the Code of Canon Law, can. 97, § 3, says: "Affinity is computed so that those who are blood relatives of the husband are persons related by affinity to the woman in the same line and degree, and conversely."

This rule is clearly seen in figures 5 and 6, where affinity up to the second degree of the direct and collateral line is delineated, and from which it appears that the husband and wife are the stock from which affinity is to be computed.

Figure 5. Affinity in the Direct Line



The adages are very much to be noted: **"Affinity does not beget affinity,"** and: **"Affinity does not go beyond the persons joined."** Therefore, between the blood relatives of the man and the blood relatives of the woman no affinity exists, and affinity is never present unless at least one of the contracting parties was previously bound by a valid sacrament of matrimony.

Hence, for example, two brothers can marry two sisters; a father and son can marry a mother and daughter; indeed, the father can marry the daughter and the son the mother, in which case the son would become the father-in-law of his own father; the husband's son and the wife's daughter born of previous marriages can enter matrimony with one another; someone can successively marry two widows whose deceased husbands were germane brothers.

Figure 6. Affinity in the Collateral Line

Their sons and daughters - Husband's brothers and sisters - Husband = Wife - Wife's brothers and sisters - Their sons and daughters

[205] *Suppl.*, q. 55, a. 7.

[206] Ibid.

844. Extent of the impediment of affinity according to the ecclesiastical law now in force. Affinity in the direct line dirimes matrimony in every degree, but in the collateral line up to and including the second degree.[207]

Cessation of this impediment. The impediment of affinity once contracted does not cease except through a legitimate dispensation. If it is a question of affinity in the direct line, a dispensation is not wont to be granted (at least for contracting matrimony),[208] as was already said above, n. 841. But in all other cases a dispensation

can be obtained; and a faculty of dispensing of this kind for danger of death and another urgent case is contained in the Code of Canon Law, cann. 1043 and 1044.

[207] Code of Canon Law, can. 1077.

[208] The Sacred Penitentiary granted such a dispensation for convalidating a matrimony already contracted on December 2, 1911.

§ 11. Public Propriety

845. Notion. The impediment of public propriety (which is also called the justice of public propriety or quasi-affinity) **is the proximity of persons arising either a) from an invalid matrimony, or b) from public or notorious concubinage.**[209]

Origin. This impediment was introduced by Benedict XV. For the ancient impediment of public propriety was something altogether different. According to the discipline now in force, the impediment of public propriety arises a) from a matrimony invalid for any cause whatsoever, and therefore also from a putative matrimony; b) from public or notorious concubinage, which is habitual sexual intercourse between a man and woman and publicly known as such. Today the impediment of public propriety most frequently arises from a civil matrimony known as invalid, but only when cohabitation follows.[209a] - Since marriages contracted before the new Code must be judged according to the ancient law, it must be kept before the eyes that public propriety then dirimed matrimony up to the first degree if it arose from valid betrothals (even entered privately); but up to the fourth degree if it arose from a ratified matrimony.

[209] Code of Canon Law, can. 1078.

[209a] Pontifical Commission, March 12, 1929 (*Acta Apost. Sed.* XXI, 170).

846. Extent of the impediment. The impediment of public propriety dirimes nuptials in the first and second degree of the direct line between the man and the blood relatives of the woman, and conversely.[210] If two non-baptized persons live in an invalid matrimony or in public concubinage, this impediment, since it is merely of ecclesiastical law, does not arise; it is otherwise if one baptized and one non-baptized person do the same.

The cessation of this impediment is obtained only through a dispensation of the Supreme Pontiff.

In danger of death of either contracting party and in a case of urgent necessity, the parish priest or confessor can dispense from this impediment according to cann. 1043 and 1044 of the Code of Canon Law. Since this impediment in the second degree is numbered among those which are of the lesser degree, a dispensation once granted is valid although a defect of obreption or subreption was committed in the petition for the dispensation. Therefore, the same holds that was said above concerning the impediments of affinity in the second degree of the collateral line and consanguinity in the third degree of the collateral line.

This impediment does not cease through the death of either concubinary partner or spouse, nor even through the legitimate dissolution of the concubinage or invalid matrimony; in other words: **the impediment of public propriety once contracted is perpetual and never ceases unless it has been legitimately dispensed.**

[210] Code of Canon Law, can. 1078.

847. It is disputed among authors whether there is a double impediment, namely, of public propriety and affinity, if an invalid matrimony is convalidated; or whether, on the contrary, public propriety or quasi-affinity then passes into true and sole affinity. Some assert that there is a double impediment, for example, Vlaming,[211]

Scharnagl,[212] Schäfer,[213] De Smet,[214] and Linneborn.[215] - Several weighty authors teach that public propriety passes into affinity through convalidation, so that there is only one impediment of matrimony, for example, Gasparri,[216] Leitner,[217] D'Annibale,[218] and Vogt.[219] Each opinion does not exceed the bounds of probability, but the second seems to be preferred, both because it is highly fitting that quasi-affinity cease when true affinity supervenes, and because in practice a dispensation is not wont to be requested from both impediments, but only from the sole impediment of affinity arising from a convalidated matrimony.

[211] *Prael. iur. matr.*, 3rd ed., I, 367.

[212] *Das neue kirchl. Gesetzbuch*, 2nd ed., 98.

[213] *Das Eherecht*, 7th ed., 151.

[214] *De sponsal. et matrim.*, 3rd ed., 633.

[215] *Grundriß des Eherechtes*, 2nd ed., § 32.

[216] *De matrim.*, nn. 698 and 721.

[217] *Lehrb. des kirchl. Eherechtes*, 231.

[218] *Summula Theol. mor.* III, n. 434, note 25.

[219] *Das kirchl. Eherecht*, § 41.

§ 12. Spiritual Relationship

848. Notion. Spiritual relationship is the proximity of persons arising from the conferral and reception of baptism or confirmation. For since in baptism we are born spiritually, and this birth receives, as it were, its final completion in confirmation, those persons who concur in these sacraments, namely, the minister and sponsors, are regarded as the spiritual parents of the baptized person. But spiritual relationship arising from confirmation no longer causes an impediment of matrimony.

849. Origin and extent of this impediment. In the first times of the Christian era this impediment seems to have been unknown. Nevertheless, explicit mention of it is already found in the Code of Justinian around A.D. 534.[220] Statutes concerning spiritual relationship are found both in the Decree of Gratian,[221] in the Decretals of Gregory IX,[222] and in the sixth book of Boniface VIII;[223] likewise in the Council of Trent.[224] Finally, Benedict XV limited this impediment, establishing in the Code of Canon Law, cann. 768 and 1079: "From baptism only the baptizer and the sponsor contract spiritual relationship with the baptized person." But a sponsor does not contract this spiritual relationship if he was employed a) in supplying the ceremonies of baptism, b) in a conditional repetition of baptism (unless, however, the same sponsor was present at the first baptism and at the second conditionally repeated baptism).[225]

[220] L. 26 (C. *de nupt.*) V, 4.

[221] C. 30, q. 1, 2, 3.

[222] Bk. 4, tit. 11.

[223] Bk. 4, tit. 3.

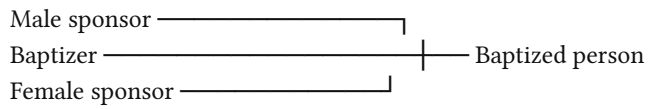
[224] Sess. 24, c. 2, *De reform. matrim.*

[225] Code of Canon Law, can. 762, § 2; can. 763, § 2.

850. The conditions required for this impediment to be present are the following:

1. The true and valid administration of baptism (whether private or solemn). From the supplying of sacramental ceremonies or from the invalid administration of this sacrament, spiritual relationship is in no way contracted; on the contrary, it seems to arise even from private baptism, and that not only between the baptized person and the baptizer, but also between the baptized person and a sponsor who perhaps was employed. For the law establishes without any distinction that spiritual relationship arises from baptism between the persons indicated. But if the law does not distinguish, neither ought we to distinguish.[226] For the rest, sponsors are not wont to be employed in private baptism because of lack of time or other causes.

Figure 7. Spiritual Relationship from Baptism



2. The minister of baptism and the sponsors must be baptized.

Therefore, non-baptized unbelievers assumed for such a function, since they are not subject to ecclesiastical laws, do not contract spiritual relationship,[227] even if they themselves are afterward baptized. But if a validly baptized heretic were the minister of baptism, he would not be free from this impediment. The reason is that heretics are subject to ecclesiastical laws unless they are specially exempted. There is no reason for us to note again that a heretic or unbeliever is to be employed as minister of private baptism only in a case of urgent necessity, but never as a sponsor, who cannot even validly exercise this function and therefore does not contract the impediment of spiritual relationship either.

3. The sponsor must knowingly and freely exercise his function and have the other conditions required by law under pain of nullity.[228]

Hence, if someone lacks the actual use of reason, or if, compelled by force or fear or without the intention, he exercises the function of sponsor, or if he is only an honorary witness or a proxy acting in the place of another,[229] or if he is not duly designated, he does not contract this impediment. Moreover, since the sponsor is said to receive or take up, hold or lift the baptized person, it is altogether required that he physically touch the baptized person (over the clothing, however) at the moment in which the essential form of the sacrament is pronounced; or at least that the sponsor receive the baptized person from the hands of the minister. If more than two sponsors were illicitly designated at baptism, were admitted, and truly wished knowingly and freely to undertake the office of sponsor and physically touched the baptized person, all seem to have contracted the impediment of spiritual relationship.[230]

4. Spouses baptizing or holding their own offspring do not contract spiritual relationship and therefore do not lose the right of seeking the debt.[231]

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[226] Thus also Vlaming, *Prael. iur. matr.*, 3rd ed., I, 377; Cappello, *De sacr.* III, n. 559 ff.; Wernz-Vidal, *Ius can.* V, 393.

[227] Cf. De Smet, *De sponsal. et matrim.*, 3rd ed., n. 642.

[228] Code of Canon Law, can. 765. Cf. above in the treatise on baptism, n. 145.

[229] Sacred Congregation of the Council, June 11, 1881.

[230] Cf. Leitner, *Lehrb. d. kirchl. Eherechtes*, § 33, p. 241; Vlaming, loc. cit., n. 379.

[231] c. 2, X, 4, 11. Thus also De Smet, loc. cit., n. 234; Cappello, loc. cit., n. 565.

851. Cessation of this impediment is obtained through a dispensation of the Supreme Pontiff. In the petition the existing impediment must be described clearly and distinctly, namely, whether the spiritual relationship is simple or double. Nevertheless, double spiritual relationship (if the baptizer and sponsor are the same person) scarcely occurs. Since spiritual relationship is now numbered among those impediments which are removed by a dispensation of the lesser degree, a dispensation from it is always valid as though it had been imparted "of his own motion and from certain knowledge." Therefore, such a dispensation is now never invalid because of a defect of obreption or subreption.[232] - In grave danger of death and in other more urgent cases, the parish priest or confessor can grant a dispensation from this impediment according to cann. 1043 and 1044.

[232] Code of Canon Law, can. 1042, § 2, and can. 1054.

§ 13. Legal Relationship

Already above, n. 783, where the impedient impediments of matrimony were discussed, enough was said concerning the impediment of legal relationship, which according to the civil laws of each region either invalidates matrimony or renders it merely illicit.

Article IV. On the Cessation of the Impediments of Matrimony

Preliminary Note. After all impedient and diriment impediments have been explained, and after it has been said briefly and summarily concerning each how they cease, it remains for us to give the general rules for the cessation of impediments. In general, impediments can cease in three ways:[233]

1. **By lapse of time.** In this way there can cease age, a temporary vow, the bond through the death of the spouse, abduction through the liberation of the abducted woman, mixed religion and disparity of worship through the conversion of the other party.
2. **By the consent of the contracting parties legitimately given.** In this way there cease the impediment of error, namely, if the party led into error, after the truth is known, consents to the matrimony; and the impediment of force and fear, if, when the fear has ceased, free consent is given.
3. **By a legitimate dispensation.** Several impediments of ecclesiastical law cannot cease except through a legitimate dispensation, for example, affinity, consanguinity, spiritual relationship, etc.

Enough has already been said above concerning the first and second modes of the cessation of impediments; but concerning the dispensation from impediments several things remain to be added. For the sake of clarity, we divide all these things into five paragraphs: 1. on the notion and division of dispensation, 2. on its author, 3. on its causes, 4. on the methods of seeking a dispensation, 5. on the methods of executing a dispensation.

[233] Some authors added a fourth mode, namely, legitimate custom. But today "a custom introducing a new impediment or contrary to existing impediments is reprobated." Code of Canon Law, can. 1041.

§ 1. On the Notion and Division of a Matrimonial Dispensation

853. Notion. The name dispensation is not always taken in the same sense; for sometimes it signifies the total abolition of a law for a particular case, but sometimes the suspension of the obligation of a law while the law remains. Thus, for example, a dispensation from a ratified matrimony totally removes that matrimony, but a dispensation from a solemn vow does not always remove that vow, but sometimes only suspends its obligation in relation to matrimony. In a general manner a matrimonial dispensation can be defined: **a relaxation of a**

law invalidating or prohibiting matrimony, legitimately made in a particular case by a legitimate superior.

854. Divisions. 1. A dispensation for the internal forum and for the external forum. - The internal forum regards conscience and comprises both the penitential forum strictly so called and the private and occult forum. A dispensation for this forum has place especially in occult impediments of crime and of vows emitted privately. The external forum regards the external polity and the public good of ecclesiastical society. According to the prescription of the Code of Canon Law, can. 258, § 1, no dispensations for the external forum can now be given by the Sacred Penitentiary. - **A dispensation given for the external forum is valid also in the internal forum, but not conversely**; and therefore, if a dispensation from an occult impediment was granted in the internal forum, nevertheless a dispensation for the external forum must regularly be requested if perhaps this impediment afterward became notorious; at least this is so if the dispensation was granted in the sacramental internal forum alone. But if a dispensation from an occult impediment was granted in the non-sacramental internal forum, it is to be noted in the secret book of the archive of the diocesan curia, and no other dispensation for the external forum is necessary, even if the occult impediment afterward became public. Thus it is, unless a rescript of the Sacred Penitentiary provides otherwise.[234]

2. A dispensation for contracting matrimony and for convalidating a matrimony invalidly contracted. In the first case a simple dispensation is granted, but in the second case sometimes a dispensation is granted which is called a radical sanation.[235]

3. A dispensation in gracious form and in commissorial form. According to the discipline now in force, the former is granted immediately to the petitioners themselves, for example, to persons of great dignity; the latter is committed to a bishop, parish priest, or confessor to be executed. This second method is now almost always in use.[236]

4. A dispensation of the greater and of the lesser degree. There are five impediments of the lesser degree: 1. consanguinity in the third degree of the collateral line, 2. affinity in the second degree of the collateral line, 3. public propriety in the second degree, 4. spiritual relationship, 5. crime from adultery with a promise or attempted celebration of matrimony. All other impediments are of the greater degree.[237]

Scholion 1. Before the Constitution *Sapienti consilio*, a dispensation in the form of nobles, in the common form, and in the form of the poor was also distinguished. All these now seem to have been abolished, since no matrimonial dispensation is now granted by the Dataria.[238]

Scholion 2. As regards the history of matrimonial dispensations, several things are still obscure. From the first centuries no certain matrimonial dispensations are known. Nevertheless, it is not yet permissible to conclude therefrom that dispensations of this kind were never granted at all at that time. The first example of a dispensation seems to be an Indult granted to John, son of Henry II, King of England (1154-1189), so that he could contract matrimony with a blood relative. The glossators of the Decree of Gratian in the twelfth century clearly acknowledge that the Supreme Pontiff can not only convalidate a matrimony invalidly contracted because of an impediment of ecclesiastical law, but also dispense for contracting matrimony notwithstanding such an impediment.[239] From the time of Innocent III, the discipline of dispensations now in force gradually obtained, according to which a dispensation from all diriment impediments is reserved to the Supreme Pontiff. Nevertheless, by delegation bishops today are wont to have broad faculties of dispensing, as will be said below.

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[234] Code of Canon Law, can. 1047.

[235] Cf. below, n. 878.

[236] Cf. below, n. 871, where the execution or fulmination of dispensations will be treated.

[237] Code of Canon Law, can. 1042.

[238] Cf. *Regolamento*, c. 11, n. 13.

[239] Cf. Freisen, *Gesch. d. kan. Eherechtes*, § 77; Leitner, *Lehrb. d. kirchl. Eherechtes*, 389.

§ 2. On the Authority to Dispense

855. The Supreme Pontiff possesses the faculty of dispensing from all impediments which are not certainly of natural or divine law. Hence, for example, a dispensation cannot be granted from the impediment of the bond if it is a question of a consummated matrimony of Christians, since this is indissoluble by divine law. Likewise, the Supreme Pontiff cannot dispense from impediments arising from a defect of consent, for example, from substantial error or from a defect of the use of reason. For these impediments are of natural law. But although, speaking absolutely, the Pope could dispense from all impediments of ecclesiastical law, since he is above the whole of ecclesiastical law, nevertheless he is not accustomed to dispense from certain impediments, for example, from affinity in the direct line arising from a consummated matrimony, from consanguinity in the direct line and in the first degree of the collateral line, or from the impediment of crime arising from publicly known spouse-murder.

The Supreme Pontiff is not accustomed to exercise this faculty of dispensing immediately by himself,[240] but a) through the Sacred Congregations of Cardinals and the Tribunal of the Sacred Penitentiary, b) through local Ordinaries, and c) through simple priests or delegated confessors. The old discipline of dispensing was greatly changed by the new Code of Canon Law. Hence, with the old abolished statutes omitted, the following things are observed according to the discipline now in force:

[240] In extraordinary cases, especially when the dispensation must remain wholly occult, the Supreme Pontiff grants the dispensation orally.

856. 1. Dispensations granted by the Roman Curia.

a) The Sacred Congregation of the Holy Office grants dispensations from the impediments of mixed religion and disparity of worship, and likewise concerning the interpellations to be made in the application of the Pauline privilege.[241]

b) The Sacred Congregation of the Sacraments grants a dispensation from the other public impediments; it grants a radical sanation and a dispensation from a ratified matrimony; it declares the legitimation of offspring. If, however, it is a question of the impediment of religious profession, the dispensation must be sought from the Sacred Congregation of Religious. All petitions for matrimonial dispensations coming from places which are still under the jurisdiction of the Sacred Congregation for the Propagation of the Faith must indeed be directed to that Congregation; nevertheless, it does not itself grant the dispensations sought, as was formerly done, but proposes the petitions to the other Congregations named above.

c) The Sacred Congregation for the Oriental Church grants all matrimonial dispensations, except those which pertain to the Holy Office, for faithful of an Eastern rite who contract matrimony either among themselves, with a faithful person of the Latin rite, or with an unbeliever.[242]

d) The Tribunal of the Sacred Penitentiary grants all dispensations from occult impediments and for the internal forum alone. What an occult impediment is was said above, n. 778. If an occult impediment is present together with a public impediment, and the petitioners consent to the disclosure of the matter, the

dispensation must be sought from the Sacred Congregation of the Sacraments, which then grants a dispensation from both impediments. But if the petitioners refuse disclosure of the matter, the dispensation from the public impediment must be sought from the Sacred Congregation of the Sacraments, and the dispensation from the occult impediment from the Sacred Penitentiary. It is then required, however, that in the petition presented to the Sacred Penitentiary mention be made of the public impediment from which a dispensation has already been sought, or is still to be sought, from the Sacred Congregation of the Sacraments, or even from a duly delegated bishop. From the things said thus far it is evident that neither the Dataria, the Congregation for Extraordinary Ecclesiastical Affairs, nor the Secretariat of Briefs now grants matrimonial dispensations.

[241] Code of Canon Law, can. 247, § 3.

[242] Ibid., can. 257.

857. 2. The faculty of dispensing belonging to local Ordinaries. For the sake of clarity, we distinguish the faculty of dispensing which belongs to bishops or local Ordinaries: 1. in urgent danger of death, 2. in other cases of urgent necessity, 3. in ordinary cases.

1. "When danger of death is urgent, local Ordinaries,[243] in order to provide for conscience and, if the case calls for it, for the legitimation of offspring, can dispense their own subjects wherever they are staying and all persons actually residing in their own territory, both from the form to be observed in the celebration of matrimony and from each and every impediment of ecclesiastical law, whether public or occult, even if multiple, except impediments arising from the sacred order of the priesthood and from affinity in the direct line when the matrimony has been consummated, scandal having been removed,[244] and, if the dispensation is granted from disparity of worship or mixed religion, the customary guarantees having been given."[245] Thus the Code of Canon Law, can. 1043.

Therefore, in order that a local Ordinary may use this faculty, it is required: a) that scandal be removed; b) that the customary guarantees be given if it is a question of a dispensation from disparity of worship or mixed religion; c) that there be no impediment of natural or divine law, nor an impediment of the priesthood, nor affinity in the direct line arising from a consummated matrimony,[246] nor an impediment from which not even the Supreme Pontiff is accustomed to dispense, for example, consanguinity in the first degree of the collateral line.[247] If these requirements are present, the Ordinary's faculty of dispensing is truly unlimited. Accordingly, the local Ordinary can then dispense, for example, from the presence of the witnesses or the parish priest at the celebration of matrimony, and from all impedient and diriment impediments, whether public or occult, simple or multiple; he can dispense not only his own subjects, wherever they are staying, but also all travelers and vagrants residing in his territory. He cannot, however, sanate a matrimony in its root.

[243] By the name of Ordinary are understood not only diocesan bishops but also all those enumerated above, n. 759.

[244] When a dispensation is granted to those who are marked with the sacred order of the subdiaconate or diaconate, or who have emitted solemn religious profession, notice of the dispensation imparted must be sent to the Holy Office, and meanwhile care must be taken, so far as possible, that any scandal which exists be removed, both by inducing those persons to betake themselves to places where their ecclesiastical or religious condition is unknown and, if that cannot be obtained, by imposing at least special salutary penances for expiating past excesses and for present good example. Thus the Holy Office, February 20, 1888.

[245] Unless these guarantees, indicated above, n. 788, are given, the dispensation is always invalid. Holy Office, June 21, 1912 (*Acta Apost. Sed.* IV, 442 sq.).

[246] Therefore, if affinity arose from a matrimony only ratified, it is not excluded from dispensation.

[247] Code of Canon Law, can. 1076, § 3.

858. 2. In other cases of urgent necessity, namely, a) when an impediment of matrimony is discovered after all things are already prepared for the nuptials and the matrimony cannot be deferred without probable danger of grave evil, that is, for approximately two weeks or even a longer time outside Italy, until a dispensation is obtained from the Holy See; b) when it is a question of convalidating a matrimony already contracted, if the same danger exists in delay and there is not time to have recourse to the Holy See, bishops or local Ordinaries can dispense from all the impediments of which there was discussion in the preceding number.[248] It is required, however, that any scandal which exists be removed and that the customary guarantees be given before a dispensation is granted from the impediments of mixed religion and disparity of worship.

Note. In these cases of urgent necessity, the Ordinary cannot dispense from the legitimate form of celebrating matrimony, that is, from the presence of the parish priest and two witnesses,[249] although he possesses this faculty in danger of death, as was said.

3. In ordinary cases, bishops and other local Ordinaries can dispense: a) from the proclamations to be made, b) from non-reserved vows, c) from the closed time, d) from doubtful impediments.[250] It makes no difference whether the impediment is doubtful in fact or in law. Thus the common and certain opinion. But due diligence must first be employed to resolve the doubt.[251]

For practice. Unless secrecy stands in the way or there is a danger of violating the sacramental seal, it is very advantageous to direct all petitions for dispensations to the episcopal curia, which will almost always grant the dispensation sought, or obtain it from the Roman Curia, both more easily and more quickly, by virtue of special faculties.[251a]

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[248] Thus the Code of Canon Law, can. 1045, §§ 1 and 2.

[249] Thus also Linneborn, *Grundriß d. Eherechtes*, 2nd ed., § 14 (II). The contrary opinion of certain writers, for example, De Smet, loc. cit., n. 764, does not seem probable.

[250] Cf. Code of Canon Law, can. 75.

[251] Cf. Benedict XIV, *De syn. dioec.*, bk. 9, c. 12, n. 1.

[251a] Cf. the admonition of the Sacred Apostolic Penitentiary (*Acta Apost. Sed.* XXVII, 62).

859. 3. The faculty of dispensing granted to simple priests. All priests inferior to the local Ordinary have no faculty of dispensing from matrimonial impediments. There are, however, two cases in which they can grant certain dispensations:

1. In urgent danger of death, when the local Ordinary cannot be approached, the same faculty of dispensing which would then belong to the Ordinary belongs to the parish priest or priest.[252] The parish priest or priest validly and licitly assisting at such a matrimony can dispense from matrimonial impediments for both the external and internal forum; he must, however, immediately, that is, within three days, inform the local Ordinary of the dispensation granted for the external forum, so that this dispensation may be noted in the matrimonial register.[253] The confessor then validly and licitly dispenses from impediments only in the act of sacramental confession and for the internal forum alone.[254] According to the present ecclesiastical discipline, therefore, an invalid matrimony can easily be convalidated if either of the contracting parties is in danger of death. For since there is then rarely time to approach the local Ordinary either personally or by letter,[255] or the parish priest or his delegate, any priest can receive the matrimonial consent of the contracting parties and

dispense both from the presence of the witnesses and from all impediments of ecclesiastical law except the two indicated above.

[252] Cf. above, n. 857.

[253] Code of Canon Law, can. 1046.

[254] Ibid., can. 1044. If the confessor must dispense from impediments which are public or can easily become public, he should seek from the penitent permission to speak about the dispensation granted with the competent authority, or he should convalidate the matrimony outside the sacrament of penance before two witnesses according to can. 1098, n. 2. Certain authors, such as Hilling, De Smet, and Wernz-Vidal, deny that a confessor can dispense from public impediments in danger of death; but since he possesses the same faculty as the parish priest, the affirmative opinion is probable.

[255] The Ordinary is judged unable to be approached even though there exists the possibility of approaching him by telephone or telegraph. Thus the Pontifical Commission, November 12, 1922 (*Acta Apost. Sed.* XIV, 663).

860. 2. In two cases of urgent necessity, namely, if an impediment is discovered a) when all things are already prepared for the nuptials and the matrimony cannot be deferred without probable danger either of grave evil or of violation of secrecy until the local Ordinary, or the parish priest or his delegate,[255a] can be approached; b) when a matrimony has already been contracted and the same danger in delay as under a) is present, the priests enumerated in n. 1 can dispense from impediments, but not from the presence of two witnesses, just as in danger of death, though only for occult cases. If the case is public, that is, if the impediment is public in law and in fact, the celebration of matrimony must be deferred, since defamation does not then arise. If the impediment is public of its nature, for example, consanguinity or the diaconate, but occult in fact, a dispensation can then also be granted, since such a case is truly occult and an occult case is not the same thing as an occult impediment. Thus the opinion today is certain.[256] But if the occult impediment which was dispensed afterward becomes public, the Ordinary should either grant a new dispensation or ratify the dispensation previously granted. This faculty of dispensing now removes the difficulties which formerly arose in a perplexing case,[257] but it does not extend to the external form of the celebration of matrimony.

Note. If in danger of death or in other urgent cases, according to the faculties described above, an Ordinary or priest legitimately dispenses from impediments, by that very fact the legitimation of offspring perhaps born or conceived is also granted, except, however, adulterine and sacrilegious offspring.[258]

[255a] Thus, if the one assisting is not a confessor.

[256] Pontifical Commission, December 28, 1927 (*Acta Apost. Sed.* XX, 61).

[257] Cf. above, n. 731.

[258] Code of Canon Law, can. 1051.

§ 3. On the Causes of Dispensations

861. The Council of Trent[259] established: "In contracting marriages, either no dispensation at all is to be given, or it is to be given rarely, and that for a cause and gratuitously." In other words: for a **licit dispensation** a just cause is always required; but for a **valid dispensation** from impediments of ecclesiastical law the supreme legislator, namely, the Supreme Pontiff, does not indeed need a cause, since he is above the whole ecclesiastical law, but in fact he is not judged to dispense when a cause is lacking. All others inferior to the Supreme Pontiff, however, dispense neither licitly nor validly without a just cause. The reason is that the Pope does not delegate this faculty of dispensing unless it is exercised prudently and for a reasonable cause. If, however, the one dispensing thinks that a true cause is present which is in fact absent because of error or even because of

deceit, the dispensation is not thereby invalidated, as will be said below. But in doubt concerning the sufficiency of the cause, a valid dispensation is licitly sought and granted.[260]

Kinds of causes.

a) Final causes (motive causes) are those which suffice by themselves for obtaining a dispensation. **Impelling causes** (impulsive causes) are those which by themselves alone do not suffice for obtaining a dispensation, but nevertheless assist toward this effect. Hence, if one final cause and several impelling causes are adduced, a dispensation is obtained more easily than if the final cause alone is present.

b) Defaming causes (dishonorable, shameful causes) are those which arise from an offense and are wont to produce infamy. **Honorable causes** have the mark neither of an offense nor of infamy. Since great harm can easily arise from defaming causes, for example, from illicit intercourse, unless a dispensation for entering matrimony is granted, those causes are wont to be very efficacious for obtaining a dispensation.

c) Canonical causes are those which in law or according to the style of the Roman Curia are held to be final and sufficient. **Non-canonical causes**, which are also called reasonable or certain causes, are those which by themselves alone do not suffice for obtaining a dispensation; wherefore, if a dispensation is nevertheless granted because of them alone, it is said to be granted "without a cause," that is, without a canonical cause. Canonical causes are the same as final causes, while non-canonical causes are equivalent to impulsive causes.

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[259] Sess. 24, c. 5, *De reform. matrim.*

[260] Code of Canon Law, can. 84, § 2.

862. The following sixteen canonical causes for dispensing are enumerated in the Instruction of the Sacred Congregation for the Propagation of the Faith of May 9, 1877:

1. "Narrowness of place, whether absolute or relative (by reason only of the female petitioner), namely, when in the place of origin or even of domicile the woman's kindred is so widely spread that she cannot find another man of equal condition whom she may marry unless he is a blood relative or relative by affinity, while it would be hard for her to leave her native country."

Narrowness of place is judged absolute if there are not more than 300 households or 1,500 inhabitants there, though not merely in the parish,[261] and the distance from the nearest place is more than a mile, that is, 1,500 meters.[262] If the place of the bridegroom is the same as, or equally narrow as, the place of the bride, this can then usefully be stated in the petition in this manner: "the narrowness of the place in which the petitioners were born," or "have their domicile"; or: "the narrowness of the places where the petitioners...." Narrowness of place is relative if there are indeed more than 1,500 Catholic inhabitants in the place of domicile, but the woman's kindred is so widely spread that she cannot find another husband of equal condition. It must be noted that heretics perhaps staying in a place are not counted in the computation of its inhabitants; impious and unbelieving Catholics, however, must be counted.

2. "The advanced age of the woman, namely, if, having already passed the twenty-fourth year of age, she has thus far not found a man of equal condition whom she can marry. This cause, however, does not favor a widow who desires to pass to other nuptials."

It is no longer required that an investigation be made as to whether the woman has thus far been unable to find a man of equal condition, but the age of twenty-four completed years by itself alone suffices. For to the question, "Whether in the verification of the cause, namely, the advanced age of the female petitioner, it is also necessary to inquire into and prove that up to that age the older woman had not found a man of equal

condition whom she could marry, and this for the validity of the dispensation?" the Sacred Penitentiary responded on April 5, 1902: "It is enough that the advanced age be certainly established."[263]

3. "Deficiency or inadequacy of dowry, namely, if the woman does not actually have so great a dowry that she can marry an unrelated man of equal condition, who is neither a blood relative nor a relative by affinity, in the place in which she is staying. This cause is more urgent if the woman is entirely without a dowry and a blood relative or relative by affinity is prepared to take her as wife, or even suitably to provide her with a complete dowry."

The name of dowry is not to be understood in the strict juridical sense, but as that fortune which is actually brought by the wife into the matrimony to sustain its burdens. Consequently, a woman who after the death of her parents will have a sufficient fortune, but who at present, upon contracting matrimony, receives either nothing or little from her parents, is without a dowry, or at least her dowry is inadequate. This cause for dispensation can often occur in the case of a bride whose parents indeed have high rank but a moderate fortune.

4. "Lawsuits concerning succession to goods which have already arisen, or grave or imminent danger of them. If the woman is sustaining a grave lawsuit over succession to goods of great importance, and there is no one other than the man who wishes to take her as wife who will undertake such a lawsuit and prosecute it at his own expense, a dispensation is wont to be granted; for it is in the interest of the commonwealth that lawsuits be extinguished. Another cause closely approaches this one, namely, a dowry involved in lawsuits, when the woman is deprived of another man by whose aid she can recover her goods. Such a cause, however, suffices only for the more remote degrees."

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[261] Pius IX, August 30, 1847.

[262] Sacred Congregation of the Council, December 16, 1876, and March 8, 1884; cf. Sacred Congregation of the Council, August 24, 1907.

[263] *Collectan. de Prop. Fide*, n. 2134.

863. 5. "The poverty of a widow who is burdened with numerous offspring and whom a man promises to support. But sometimes by the remedy of a dispensation a widow is assisted for the sole reason that she is younger and is in danger of incontinence."

In this canonical cause two motives are included: a) the burden incumbent upon the widow from her offspring, and b) youth and the danger of incontinence. Both motives are most readily present if a younger widow has children not yet grown, at least three or four; for not only bodily nourishment is necessary for the offspring, but also, and indeed principally, spiritual education, which is most difficult if the mother is deprived of the efficacious aid of a husband.

6. "The good of peace, under which name come not only treaties between kingdoms and princes, but also the extinguishing of grave enmities, quarrels, and civil hatreds. This cause is adduced either for extinguishing grave enmities which have arisen among the blood relatives or relatives by affinity of the contracting parties and which would be wholly settled by the celebration of the matrimony; or when grave enmities have prevailed among the blood relatives and relatives by affinity of the contracting parties and, although peace has already been made among them, the celebration of the matrimony would nevertheless conduce to the strengthening of that peace."

7. "Excessive, suspicious, or dangerous familiarity, and also cohabitation under the same roof, which cannot easily be prevented."

This cause could occur if, for example, a maid lives with a man alone and sinister rumors about their life are spread. Below, under nn. 14 and 15, similar and still graver causes are adduced.

8. "Intercourse previously had with a blood relative, relative by affinity, or another person laboring under an impediment, and pregnancy and therefore the legitimation of offspring, so that provision may be made for the good of the offspring itself and for the honor of the woman, who otherwise would remain unmarried. This certainly is one of the more urgent causes for which a dispensation is wont to be given even to common persons."

In the Instruction the words are added: "provided that the intercourse was not committed in the hope of obtaining a dispensation more easily; which circumstance would have to be expressed in the supplication."[264] But these words were abolished by the Decree of the Holy Office of June 25, 1885, which established that "matrimonial dispensations granted thereafter would be valid even if incestuous intercourse, or the design and intention of obtaining a dispensation more easily by means of it, had been withheld." This canonical cause of intercourse is among the defaming causes, and accordingly it is often acknowledged only in the internal forum and therefore pertains to the Tribunal of the Sacred Penitentiary. If the intercourse was publicly known, recourse must be made not to the Sacred Penitentiary but to the Sacred Congregation of the Sacraments.

9. "The infamy of the woman arising from the suspicion that, being excessively familiar with her blood relative or relative by affinity, she has been carnally known by him, even if the suspicion is false, when, unless the matrimony is contracted, the woman would remain gravely defamed or unmarried, would have to marry a man of unequal condition, or grave harms would arise."

10. "The revalidation of a matrimony which was contracted in good faith and publicly... because its dissolution can scarcely be made without public scandal and grave harm, especially to the woman. But if the spouses entered the nuptials in bad faith, they least of all merit the favor of a dispensation, as the Council of Trent provides, sess. 24, c. 5, *De reform. matrim.*"

Although the spouses do not merit a dispensation from the impediment if they contracted an invalid matrimony in bad faith, nevertheless the present discipline is milder. For a dispensation is granted not only if one party alone contracted in bad faith, but even if both contracting parties were indeed in bad faith but now promise a serious and trustworthy amendment. The reason is that so many harms are wont to arise from the separation of the spouses that it is preferable to grant the dispensation. In seeking a dispensation for convalidating an invalid matrimony, however, mention must always be made of whether the spouses contracted the matrimony in good or bad faith.

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[264] Whether by the Holy Office decree of March 18, 1891 (*Collectan. de Prop. Fide*, n. 1749), all marriages contracted with this intercourse withheld were convalidated is not certainly established.

864. 11. "Danger of celebrating a mixed matrimony or of celebrating before a non-Catholic minister. When there is danger that those who wish to contract matrimony in some degree, even one of the greater degrees, may, because of the denial of a dispensation, approach a non-Catholic minister for the celebration of the nuptials, in contempt of the authority of the Church, a just cause for dispensing is found; for there is present not only a most grave scandal of the faithful, but also the fear of the perversion and defection from the faith of those acting in this way and despising the impediments of matrimony, especially in regions where

heresies spread with impunity.... The same must be said concerning the danger that the Catholic party may dare to celebrate matrimony with a non-Catholic."

12. "Danger of incestuous concubinage...."

13. "Danger of civil matrimony. From what has been said it follows that the probable danger that those who seek a dispensation, if they do not obtain it, will celebrate only a civil matrimony, as they say, is a legitimate cause for dispensing."

14. "The removal of grave scandals."

15. "The cessation of public concubinage."

16. "Excellence of merits, when someone has deserved exceedingly well of religion, whether by combat against the enemies of the Catholic faith, by liberality toward the Church, by learning, by virtue, or in another manner."

These merits need not be those of the contracting parties themselves, but can also be those of their parents or ancestors.

"These are the more common and more important causes which are wont to be adduced for obtaining matrimonial dispensations." Thus the cited Instruction. Therefore, other causes which can move the legislator to grant the dispensation sought are not excluded.

865. Non-canonical or impulsive causes, which are wont to suffice for obtaining a dispensation at least of the lesser degree,[265] can be enumerated as follows:

1. On the part of the female petitioner: a) difficulty in finding a man equally commendable in character, faith, and morals; b) infirmity and other defects, for example, illegitimacy of birth, the loss of virginity already suffered, etc.; c) orphanhood, that is, if the female petitioner is bereaved of both parents; d) assistance to be furnished to her parents, especially if they are poor.

2. On the part of the male petitioner: a) infirmity, so that he needs the care and consolation of a good wife; b) the care of offspring received from a preceding matrimony; c) the help of a wife for managing the household.

3. On the part of both: a) the intention of matrimony already made known, so that it cannot be abandoned without infamy; b) the virtues and good morals of each; c) the good of the parents.

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[265] Cf. above, n. 778 (e).

§ 4. On the Methods of Seeking a Dispensation

866. It must be distinguished most carefully whether a dispensation is to be sought from a public impediment, from an occult impediment, or from both at the same time. All matrimonial dispensations, however, are sought in the name of the contracting parties, and therefore the petition is to be made in the third and not the first person, for example, "Titius seeks." According to the style of the Curia, contracting parties seeking a dispensation are called: male petitioner (*orator*), female petitioner (*oratrix*), petitioners (*oratores*), male bearer (*lator*), female bearer (*latrix*), bearers (*latores*).

A dispensation for the external forum is sought by the parish priest through the episcopal curia. The parish priest of the bride is wont to seek the dispensation, unless a reasonable cause suggests otherwise; and if a

mixed matrimony is contracted, the parish priest of the Catholic party sends the petition.

A dispensation for the internal forum is sought by the confessor, and likewise through the episcopal curia, unless the danger of violating the sacramental seal obliges him to send the petition to the Sacred Penitentiary. Nor is it required that the dispensation be sought by the confessor of each penitent, because the dispensation proceeds from the Pope, and when the impediment has been removed from one party, the other party also becomes free.[266] Hence, if, for example, an occult impediment of crime is present, it suffices that the confessor of the bridegroom seek the dispensation. But if there is an impediment which affects only one party, such as an occult simple vow, then certainly the confessor of that party must seek the dispensation; and if each party is bound by a vow, a double dispensation must be sought.

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[266] Thus the Sacred Penitentiary, September 4, 1839.

867. 1. The method of seeking a dispensation from a public impediment. The following must be expressed in the petition:

a) "The name and surname of the petitioners, each to be written distinctly and clearly and without any abbreviation of letters."[267]

If someone has several surnames, it is not required that absolutely all be indicated, provided that the petitioner can clearly be recognized from the name indicated. It is advantageous, although it is not commonly necessary, that the age of the contracting parties also be indicated. It must be indicated, however, if one party is non-Catholic.

b) "The diocese of origin or of actual domicile."

The reason is that the Roman Curia is wont to commit the execution of the dispensation to the bishop of the domicile or quasi-domicile of the contracting parties.

c) "Even the lowest species of the impediment."

Hence, in consanguinity and affinity not only the degree, whether equal or unequal, but also the line must be indicated.[268]

d) "The number of impediments."

Therefore, it must be indicated whether simple or multiple consanguinity or affinity is present; besides diriment impediments, impedient impediments also, if any are present, must be reported, and especially the impediment of mixed religion must not be passed over in silence. Formerly, for the validity of a dispensation, incestuous intercourse perhaps had between the spouses had to be expressed in the petition; likewise, it had to be indicated whether the intercourse had been had with the intention that a dispensation be obtained more easily. All these requirements have now been abolished, because it could have been hard for the spouses to have to confess these sins outside confession. Hence it happened that because this incestuous intercourse was concealed, the dispensation and the matrimony itself were invalidated, which was certainly a very great inconvenience.[269]

e) "The various circumstances."

Whether the matrimony has been contracted or is to be contracted; if already contracted, it must be disclosed whether it was contracted in good faith, at least on the part of one party, or with knowledge of the impediment; likewise, whether after the proclamations had been made and according to the form prescribed by canon law; finally, whether it has been consummated.

f) The causes of the dispensation.

Insofar as possible, the canonical causes described above must be adduced. It is advantageous that all causes, whether canonical or non-canonical, be adduced. For the stronger and more numerous these causes are, the more easily the dispensation is obtained.

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[267] Thus the Instruction of the Sacred Congregation for the Propagation of the Faith of May 9, 1877, from which all the following things also are taken.

[268] Hence it is very advantageous, and indeed is required in certain dioceses, that a genealogical diagram of the petitioners be added.

[269] Cf. Holy Office, June 25, 1885, and March 18, 1891 (*Collectan. de Prop. Fide*, nn. 1639 and 1749).

868. g) The state of the petitioners' fortune. Although the Council of Trent[270] commanded that dispensations be granted gratuitously, because to accept money for the spiritual favor of a dispensation is simony, nevertheless nothing prevents something from being exacted for the support of officials and for other honorable causes. Accordingly, in granting a dispensation some charge is wont to be imposed, in which four things are comprised:

a) the charge properly so called, which serves for the support of the officials of the Roman Curia;

b) the *componenda* or composition, which is a sum of money to be paid to the Roman Dicasteries on the occasion of the dispensation, beyond the charge, so that it may be expended upon pious works. This *componenda* often, though not always, has the character of a penalty or fine, so that the faithful may be deterred from entering marriages to which impediments, especially of the greater degree, stand opposed;

c) the agency fee (*agentia*), that is, the remuneration which is owed to those persons who conduct business in the Roman Curia either for a diocese or for individual petitioners and are called "Agents." They are private persons and not rarely laymen;

d) money to be paid to Ordinaries for the execution of the dispensation obtained. This money or charge is to be determined once for all by the provincial council or by a meeting of bishops and approved by the Apostolic See.[271]

The money to be paid in matrimonial dispensations is measured according to two rules: 1. according to the quality of the impediments, and 2. according to the fortune of the petitioners. For the greater the impediment is, the greater the charge imposed; and the smaller the petitioners' fortune is, the smaller the charge exacted from them.

According to the discipline now in force, four or five classes of petitioners are distinguished:

a) the poor and wretched, who have no fortune and live by manual labor or industry. These are bound to pay nothing for obtaining a dispensation;

b) the truly poor, whose goods, after debts and other burdens have been deducted, do not much exceed 3,000 francs. A moderate charge to be paid is imposed upon them;[272]

c) the almost poor, whose fortune, after debts have been deducted, does not much exceed the value of 10,000 francs. Besides the charge, a moderate *componenda*, for example, of 10 francs, is imposed upon these;

d) those of common means, whose fortune much exceeds the sum of 10,000 francs;

e) the rich or noble are held to be those whose fortune, after all debts have been deducted, produces very great revenues. The sole difference between the common form and the form for the rich or noble in a dispensation is that a greater *componenda* is imposed upon the rich. The charge, however, is the same. Since today it is not rarely difficult to establish the fortune of the petitioners, some suitable and free offering is sometimes wont to be offered in the petition for the dispensation; for example: "The poor petitioners offer 20 lire in all," or, if the petitioners are not poor: "The petitioners offer 50 (100) lire in all, which offering is just and reasonable according to the circumstances of the place, persons, and possessions." It must be noted that in computing the fortune, the means of each person about to marry are to be added together, unless one party is non-Catholic. For that party's fortune is not computed. If persons with an unjust will refuse to pay the charge for obtaining some dispensation whose grant is nevertheless morally necessary for avoiding sins and scandals, this is to be indicated by the Ordinary in the petition. The necessary dispensation will then nevertheless be granted, but the Ordinary communicating the dispensation sought must admonish the petitioners, if this can be done suitably and prudently, that in justice something is owed to the Holy See. Even an error or fraud unjustly committed concerning the condition of the petitioners' fortune does not render the dispensation obtained invalid.[273] Apart from some moderate payment under the title of chancery expenses, dispensations granted by bishops are not subject to any charge, unless, however, by an apostolic indult some sufficiently moderate sum can be exacted.[274] All dispensations for the internal forum granted by the Sacred Penitentiary are given gratuitously;[275] postal expenses, however, must be paid.

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[270] Sess. 24, c. 5, *De reform. matrim.*

[271] Code of Canon Law, can. 1507.

[272] This charge was wont to be: 32 francs in a dispensation from the impediments of affinity in the first degree and of the second degree touching the first in affinity or consanguinity; 26 francs for the equal second degree both of affinity and of consanguinity; 21 francs in all other degrees of consanguinity and affinity.

[273] Cf. *Ordo servandus in Curia Rom.*, common norms, c. 11, n. 3 (*Acta Apost. Sed.* I, 56).

[274] Cf. Vogt, *Das kirchl. Eherecht*, § 50, where the charges customary in the Archdiocese of Cologne are indicated. If a bishop exacted a charge, he would be bound to restitution. Code of Canon Law, can. 1056.

[275] *Ordo serv. in C. R.*, special norms, c. 8, a. 1 (*Acta Apost. Sed.* I, 102).

869. 2. The method of seeking a dispensation from an occult impediment. Since in seeking dispensations from occult impediments entrusted or even sacramental secrecy must be diligently observed, the parish priest or confessor must prudently consider whether the petition is to be sent to the Sacred Penitentiary or to the diocesan bishop. In small places the danger of violating secrecy is more imminent than in large cities. In the petition, not true but fictitious names, for example, Titius, Caius, Anna, Cornelia, etc., must be written. The lowest species of the impediment and its circumstances must be declared, and finally the cause of the dispensation sought must be adduced. By way of example, we give here a petition directed to the Sacred Penitentiary:

> Most Eminent Prince,
>
> Titius, a Catholic widower, had carnal intercourse with Titia, a Catholic, during his first matrimony and promised matrimony to her; and therefore he is prohibited from entering the promised matrimony with Titia. For the impediment of crime arising from adultery with a promise of matrimony stands in the way. This impediment is wholly occult, and unless matrimony is truly contracted between Titius and Titia, great scandals and quarrels will arise. Therefore Titius humbly asks Your Eminence that a

dispensation be granted to him. May it please Your Eminence to direct the Rescript to me, the confessor signed below.

Fribourg (Switzerland) Rue de Romont 4 Your most humble servant, Carl Müller.

On the outside, however, upon the envelope of the letter let there be written:

To the Most Eminent Cardinal Major Penitentiary Palace of the Holy Office Rome.

Note. On December 10, 1891, Leo XIII prohibited petitions for dispensations from being admitted in the Roman Curia by means of the telegraph because of the great inconveniences which might otherwise occur. The same has been established by several bishops for their dioceses. Nevertheless, in a case of most urgent necessity it is permissible to seek and to give matrimonial dispensations by means of telegraph or telephone;[276] yet such a method is never necessary, and therefore if the Ordinary cannot be approached personally or by letter, there is judged to be a moral impossibility of approaching him, in which the parish priest and confessor can dispense according to what was said above, n. 860.[277] It is indeed always fitting that the Latin language be employed in seeking a dispensation; nevertheless, in itself nothing prevents the language of the country from being employed in letters directed to the diocesan bishop; in letters to be directed to the Roman Curia it is also permissible to employ the Italian language or another sufficiently well-known language.

[276] Cf. Vogt, loc. cit., § 52.

[277] Cf. Pontifical Commission, November 12, 1922 (*Acta Apost. Sed.* XIV, 663).

870. 3. The method of seeking a dispensation when occult and public impediments occur at the same time.

A dispensation from the public impediment must be sought as was said above, n. 867. In the petition for a dispensation from the occult impediment, however, mention must also be made of the public impediment from which a dispensation has already been obtained or at least sought in the competent forum.[278] Because of the danger of defamation, it is rarely permissible to seek a dispensation from both impediments in the episcopal curia. Accordingly, in practice it is preferable to send the petition for a dispensation from the public impediment to the episcopal curia and to seek the dispensation from the occult impediment from the Sacred Penitentiary. But since sometimes time does not suffice for having recourse to the Sacred Penitentiary, the defamation of the petitioners is also sufficiently guarded against in the following manner: the dispensation to be sought from the public impediment is directed to the bishop's vicar general, while the dispensation from the occult impediment is sought from the bishop himself, who is asked to grant the dispensation by himself and without the mediation of an official. As is readily evident to one considering the matter, not every danger of defamation is avoided in this manner, and consequently it is not permissible to employ it except with the express consent of the persons about to marry.

[278] Here is an example of such a petition: Caius and Sempronia, related by consanguinity in the equal second degree of the collateral line, intend to contract matrimony. Besides the impediment of consanguinity, from which a legitimate dispensation has already been granted (will be sought), there stands in the way the occult impediment of crime arising from adultery with a promise of matrimony, etc. Cf. Vogt, loc. cit., § 51.

§ 5. On the Methods of Executing a Dispensation Obtained

871. The general rule, to which only a few exceptions stand opposed, can be stated as follows:

According to the discipline now in force, the Roman Curia is wont to grant matrimonial dispensations in commissorial form; bishops, however, using either their own or delegated authority, dispense in gracious form, at least if it is a question of public impediments.

Dispensations granted in gracious form do not of their own nature require an executor.[279] Dispensations granted in commissorial form, however, obtain their effect only when they are legitimately committed to execution, or, as they say, "fulminated." For public impediments the Roman Curia is wont to commit the execution of the dispensation to the Ordinary of the petitioners or to the Ordinary of the place. Such an Ordinary is the one "who gave the testimonial letters or transmitted the prayers to the Apostolic See, whether he be the Ordinary of origin or of domicile, of each spouse or of either of them."[280] This Ordinary must execute the dispensation in writing and can dispense "even if the spouses, at the time when the dispensation is to be committed to execution, have left their domicile or quasi-domicile in that diocese and have departed into another diocese, never to return, provided, however, that the Ordinary of the place in which they desire to contract matrimony has been notified."[281] For occult impediments, the execution of the dispensation is wont to be committed "to the proper parish priest of the bearers, or to a confessor chosen, or to be chosen, by them from among those approved by the local Ordinary." In practice, dispensations of this kind are wont to be committed to execution in the confessional. If the impediment affects only one penitent, for example, a vow of chastity, that one alone is to be dispensed; but if the impediment affects both contracting parties, for example, the impediment of crime, each is then to be dispensed, although by different confessors. But even in this case, a dispensation granted and fulminated to one and not to both is valid, as was already indicated above, n. 866, concerning the petition for a dispensation.

Note. All who grant a dispensation by power delegated by the Apostolic See are to make express mention of the pontifical indult in that dispensation.[282]

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[279] *Ordo serv. in C. R.*, special norms, c. 3, a. 4 (*Acta Apost. Sed.* I, 63).

[280] Holy Office, February 20, 1888.

[281] Code of Canon Law, can. 1055.

[282] Ibid., can. 1057.

872. Clauses added. Upon receiving the Rescript, the delegate must diligently attend to all the clauses added,[283] of which the principal ones are the following:

1. "If the things stated are true." Regularly, for the validity of the dispensation it is required that, at the moment of fulmination, all the things stated in the petition be true, at least as regards their substance. Only impediments of the lesser degree are excepted;[284] concerning these it is established that all such dispensations are subject to no defect of obreption or subreption. It matters little whether, in impediments of this kind, the dispensation was obtained immediately from the Sacred Congregation of the Sacraments or through the mediation of bishops to whom a habitual faculty of dispensing has been granted. It is not so certainly established whether obreption, the statement of what is false, and subreption, the withholding of what is true, which do not invalidate the dispensation granted, can extend to the impediments themselves, of the lesser degree, from which dispensation is to be given, or only to the causes alleged for obtaining the dispensation. It seems more probable that obreption and subreption can extend only to the causes of the dispensation; and therefore, even according to the modern discipline, the dispensation obtained is invalid if the impediment itself has been declared in an altogether false manner.[285] This is sufficiently evident because the Pontiff does not speak of the impediments themselves, but only of the causes of the dispensation, saying that in these cases

he always grants a dispensation "for reasonable causes," that is, not moved by the causes adduced by the petitioners.[286] From the things said, and supposing them to be true, follows the solution of the two following cases:

Caius seeks a dispensation from the impediment of affinity in the second degree of the collateral line; but in fact he has contracted consanguinity in the third degree of the collateral line. The dispensation obtained seems to be invalid because obreption was committed concerning the impediment itself; for affinity and consanguinity are entirely different things, although each is numbered among the impediments of the lesser degree.

Peter seeks a dispensation from the impediment of consanguinity in the third degree of the collateral line, alleging as the cause for the dispensation sought the preservation of the woman's reputation, since she is pregnant from illicit intercourse. The dispensation is granted, but the alleged cause was false because the woman was not pregnant. Nevertheless, the dispensation remains valid notwithstanding the defect of obreption. Thus, saving a better opinion.

Therefore, before the execution of the dispensation, it must be investigated whether the things stated in the petition presented were true, or the so-called "verification of the prayers" is necessary. By common law no special method of this verification is prescribed, but it suffices to make a brief investigation as to whether the things adduced in the petition are in fact true. In certain dioceses, however, determined questions to which answers must be given are indicated by particular law.[287]

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[283] Concerning the observance of these clauses, three things must be noted: 1. "The clauses are to be observed exactly, insofar, however, as the circumstances of affairs, times, and places can permit." Thus the Holy Office, June 15, 1875 (*Collectan. de Prop. Fide*, n. 1444). 2. "The omission of clauses does not affect the validity of the grant, provided that the woman was not in fact abducted, or, if abducted, is not in the power of the abductor." Thus the Sacred Congregation for the Propagation of the Faith, January 26, 1877 (*Collectan. de Prop. Fide*, n. 1466). 3. "Conditions in Rescripts are then alone judged essential for their validity when they are expressed by the particles *if*, *provided that*, or another of the same signification." Thus the Code of Canon Law, can. 39.

[284] Cf. above, n. 778 (e).

[285] Thus also De Smet, loc. cit., n. 867.

[286] Cf. Code of Canon Law, can. 1054.

[287] Such questions prescribed for the Archdiocese of Cologne may be seen in Vogt, *Das kirchl. Eherecht*, § 52; for the Diocese of Bruges, in De Smet, *De sponsal. et matrim.*, n. 873.

873. 2. "A grave salutary penance having been imposed upon them according to the measure of the fault at your discretion." This penance is wont to be called juridical and is distinct from sacramental penance. According to an admonition of the Sacred Penitentiary of April 8, 1890, the executor of the dispensation, "in determining the quality, gravity, duration, etc., of the penance, is to exceed the bounds neither of severity nor of humanity and is to take account of the condition, age, infirmity, office, sex, etc., of those upon whom the penalty to be inflicted is enjoined." Moreover, the same Sacred Penitentiary replied on December 14, 1891 that "the omission of this imposed penance does not render the dispensations sought invalid"; but it must be imposed even if the confessor, without recourse made to the Sacred Penitentiary, dispenses in an urgent case from a culpable impediment, for example, crime. The penance to be imposed is distinguished as salutary, grave, or grave and prolonged.[288]

3. "These having been torn immediately," that is, the Rescript obtained from the Sacred Penitentiary must be torn or burned at least within three days after the dispensation has been fulminated.[289] Nothing prevents

the confessor, however, from transcribing this Rescript for his instruction and prudently preserving the transcript for himself. In the transcription, however, everything which could perhaps lead to knowledge of the penitent for whom the dispensation was obtained must be omitted. If it sometimes happens that the penitent for whom the dispensation was sought does not immediately return, or does not return at all, to the confessor, the response of the Sacred Penitentiary of February 29, 1904 is to be observed: "The faculty endures even after the letters have been burned; nevertheless, it is permissible to retain them, the danger of loss having been removed, as long as it is probable that the penitent will appear."[290]

There are still several other customary clauses which can easily be understood, for example, "after sacramental confession has first been heard," "the occasion of sin having been removed," etc. For understanding the clause "provided that the impediment is occult," however, the things said above, n. 778, concerning the division of impediments must be recalled. The execution of the dispensation itself must be given in writing for the external forum. Therefore, the parish priest must note in the matrimonial register that a dispensation from such an impediment has been granted; but he must preserve the Rescript itself in the parish archive. For the internal forum it is wont to be prescribed that absolution from censures and sins be given and the dispensation pronounced; this can be done in this or a similar manner: after the customary absolution from censures and sins, let the confessor say: "Moreover, by apostolic authority specially delegated to me, I dispense you from the impediment of affinity, or of crime, so that, notwithstanding it, you may be able to contract matrimony with the said woman. By the same authority I declare the offspring received or to be received legitimate. In the name of the Father and of the Son and of the Holy Spirit. Amen. May the Passion of Our Lord Jesus Christ, the merits of the Blessed Virgin Mary, etc."[291] For a reasonable cause, the fulmination of the dispensation can also be made in the vernacular language.[292]

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[288] According to De Smet, loc. cit., n. 871, the Ordinary of the Diocese of Bruges is wont to impose as a salutary penance the daily recitation of five Our Fathers and Hail Marys for fifteen days; as a grave salutary penance, the daily recitation, for four weeks, of three Our Fathers and Hail Marys and, once, acts of faith, hope, charity, and contrition; as a grave and prolonged penance, the performance of this grave penance for two months. When the clause concerning confession once in each month for a time to be established at the discretion of the one dispensing is added, it is prescribed that they confess once in each month for four months.

[289] Cf. St. Alphonsus, *Theol. mor.*, bk. 6, n. 1143.

[290] Cf. *Linzer Theol. Quartalschrift* (1905), 382.

[291] Other authors prefer that a dispensation from impediments be given before sacramental absolution. Here is an example of a formula proposed by De Smet, loc. cit., n. 886: "May Our Lord Jesus Christ absolve you, and by His authority I absolve you from every bond of excommunication and interdict, especially from the excesses committed, and also from the penalties and censures which you may perhaps have incurred because of the foregoing, insofar as I am able and you are in need. Moreover, by apostolic authority specially delegated to me, I dispense you from the impediment of crime arising from adultery and a promise given, so that, notwithstanding it, you may be able publicly to contract matrimony with the woman whom you intend to marry, in the form of can. 1094, to consummate it, and to remain in it. By the same authority I announce and declare that the offspring received and to be received will be legitimate. In the name of the Father, etc. Thereafter, I absolve you from your sins in the name of the Father, etc. May the Passion of the Lord, etc." This formula seems to be too long for the confessional and contains several superfluous things.

[292] Cf. Leitner, *Lehrb. d. kirchl. Eherechtes*, 454.

874. Scholion. On defects of a dispensation and their sanation. A matrimonial dispensation can be vitiated in various ways, namely, a) on the part of the one granting it, who lacks the necessary authority, for example, if a dispensation was denied by the bishop and afterward granted by his vicar general without the express consent of the bishop; b) on the part of the one executing the dispensation, who does not observe the essential clauses;[293] c) on the part of the one seeking the dispensation, who in good or bad faith has alleged a

falsehood, or against whom some censure has been imposed by a condemnatory or declaratory sentence.[294] Today, after the Roman Curia was reformed by Pius X, defects invalidating a dispensation can occur quite rarely.

In the first place, a dispensation is vitiated if in bad faith something false was declared in the petition for the dispensation. For "fraud and deceit ought not to support anyone," and "a lying petitioner ought to be deprived entirely of the things obtained." Thus at least if it is a question of a dispensation from the impediments of the greater degree enumerated above, n. 778.[295] Therefore, any fraud voluntarily employed to obtain a dispensation from impediments of this kind vitiates the dispensation. Perhaps the matter is otherwise if it is a question of a dispensation obtained from an impediment of the lesser degree, where obreption or subreption no longer stands in the way of the validity of the dispensation, as was said above, n. 872.

If an error has entered the petition in good faith, the grant of the dispensation is invalid if the error was substantial. An error is judged to be substantial a) if it concerns the single motive cause; but if, among several motive causes adduced, at least one is true, the dispensation is not invalidated;[296] b) if at the time of the grant of the dispensation a notable difference in the impediment supervenes or is discovered, for example, if it is discovered that not only simple but also multiple consanguinity is present. A dispensation granted from an impediment of consanguinity or affinity in some degree of the impediment is valid, however, even if an error concerning the degree entered the petition or the grant, provided that the degree truly existing is lower; or even if another impediment of the same species in an equal or lower degree was withheld. Thus the Code of Canon Law, can. 1052.

When a defect invalidating the dispensation has been discovered, either a new dispensation or the so-called letters *Perinde valere*, "To Have Equal Force," must be sought. The whole case must be set forth in the competent forum in exactly the same manner as if nothing had thus far been done. Accordingly, for an error committed concerning public impediments, recourse must be made to the bishop, who is wont to have broad faculties concerning these letters *Perinde valere*. But if the dispensation obtained was invalid because of an occult defect, the dispensation from which pertains to the Sacred Penitentiary, recourse must also be made to this tribunal for the sanation of the vitiated dispensation. In this last case recourse to the bishop also lies open, provided that there is no danger of violating secrecy or the sacramental seal.

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[293] Which clauses are essential was said above, n. 872, note 283.

[294] Code of Canon Law, can. 36, § 2.

[295] Cf. *Ordo serv. in C. R.*, special norms, c. 7, a. 3, n. 20 (*Acta Apost. Sed.* I, 91).

[296] Code of Canon Law, can. 42.

Article V. On the Convalidation of a Matrimony Invalidly Contracted

875. Preliminary note. When some contracted matrimony is discovered to be certainly null because of an existing diriment impediment, both the parish priest and the confessor must proceed with great circumspection. There are four ways of proceeding:

1. Separation of the spouses. This separation must be required if an indispensable impediment, for example, the bond, stands opposed to the matrimony, and there is no well-founded hope that the spouses can live together as brother and sister and that public scandal can be avoided. Apart from this case it is rarely expedient to procure the separation of spouses living in an invalid matrimony. For many inconveniences are wont to arise from such a separation, both for the spouses themselves and for offspring perhaps born.

Before the pseudo-spouses are separated, a matrimonial process is ordinarily required, concerning which see our *Manual of Canon Law*, q. 537 ff. A juridical process is not necessary if the matrimony is invalid a) because of the seven impediments enumerated in can. 1990; b) because of the former impediment of clandestinity.[297] But it belongs neither to parish priests nor, a fortiori, to confessors, but to the local Ordinary, to pronounce the nullity of such marriages.

2. To leave the putative spouses in good faith. This method is not licit unless a) both spouses are truly in good faith and there exists a well-founded hope that this good faith will remain perpetually; b) there is an urgent cause for permitting material sins. Such an urgent cause is, for example, a grave danger that the putative spouses, after learning of the nullity of the matrimony, may nevertheless continue to live together maritally and thus remain in perpetual formal concubinage, with harm to themselves, harm to the offspring, and the greatest scandal of the people.

3. Fraternal cohabitation. Fraternal cohabitation can be permitted to putative spouses if the nullity of the matrimony is occult, so that no scandal arises from their living together, and then if their age or virtue is such that there is no proximate danger of incontinence. This absence of the danger of incontinence cannot be known with certainty except through long experience.

4. Convalidation of the invalid matrimony. An invalid matrimony can be convalidated in three ways: 1. by a simple renewal of consent without a dispensation; 2. by a simple dispensation from competent authority; 3. by a radical sanation. Each must be treated individually.

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[297] Pontifical Commission, October 16, 1919 (*Acta Apost. Sed.* XI, 479).

§ 1. On the Convalidation of a Matrimony by Renewal of Consent

876. By renewal of consent an invalid matrimony can be convalidated in three cases: 1. when the matrimony was invalid because of a defect of consent, for example, consent which was given fictitiously, under fear or force, or with substantial error; 2. when an impediment stood in the way which ceased of itself,[298] for example, lack of puberty or the bond; 3. when an impediment stood in the way which can be freely removed by the act of either spouse, for example, disparity of worship or a defect of legitimate form. In all these cases an invalid matrimony can be convalidated by an express renewal of matrimonial consent, without any ecclesiastical dispensation being necessary. As regards the form of this renewal of consent, the following things must be noted:

a) If the nullity of the matrimony is notorious, matrimonial consent must be renewed publicly[299] according to the norm established in law. The reason is obvious; otherwise it is scarcely possible for scandal to be sufficiently removed. Therefore, the pseudo-spouses must publicly manifest matrimonial consent before the parish priest and two witnesses. But if, because of particular circumstances, the Ordinary judges it expedient that the matrimony instead be celebrated secretly before their own parish priest and two witnesses, it can be celebrated secretly, provided, however, that public scandal can be removed in another manner and is removed as soon as possible.[300]

b) If the nullity of the matrimony is indeed known to each spouse but otherwise has remained occult, matrimonial consent must then be renewed before the parish priest and two witnesses **if at the first celebration of the matrimony the form prescribed by law was neglected, or, briefly, if the former impediment of clandestinity stands in the way.** In this case, if the nullity of the matrimony is discovered by a confessor who is not the parish priest, and the pseudo-spouses refuse to approach the parish priest, the

confessor can seek delegation from the bishop so that the matrimony can be celebrated in the manner of a marriage of conscience. What things are required for a marriage of conscience may be seen above, n. 639. But if at the first celebration of the matrimony the form prescribed by canon law was observed, a private and secret renewal of consent suffices.[301]

c) If the occult nullity of a matrimony duly celebrated is known to either spouse but not to both, the older theologians[302] devised diverse methods by which the spouse ignorant of the impediment could be induced implicitly to renew matrimonial consent. All these things are now without practical utility, since the Code of Canon Law, can. 1135, § 3, establishes: "If the impediment is occult and unknown to one party, it is enough that only the party conscious of the impediment renew consent privately and secretly, provided that the other party perseveres in the consent given." This renewal of consent, however, must be a new act of the will toward the matrimony which is established to have been null from the beginning.[303]

d) If the matrimony was null because of a defect of form, that is, because of the sole impediment of clandestinity, which often has place in mixed marriages entered before the civil magistrate alone, it must be contracted anew in legitimate form[304] according to the particular statutes of the places. For bishops are wont to establish special norms not only for invalid marriages of this kind, but also for marriages valid of themselves which nevertheless were entered without the intervention of the Church.

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[298] This case can occur more frequently today in marriages invalidly contracted before Pentecost 1918 because of impediments which are now abolished by the Code, for example, because of the impediment of affinity arising from illicit intercourse. But if matrimonial consent cannot be renewed in the due form, a radical sanation must be employed.

[299] Code of Canon Law, can. 1135, § 1.

[300] Thus Cardinal Caprara in the Instruction on the revalidation of invalid marriages in France.

[301] Code of Canon Law, can. 1135, § 2.

[302] Cf. St. Alphonsus, *Theol. mor.*, bk. 6, n. 1117.

[303] Code of Canon Law, can. 1134.

[304] Ibid., can. 1137.

§ 2. On the Convalidation of a Matrimony by a Simple Dispensation

877. For the sake of clarity, we distinguish a convalidation of this kind a) in danger of death, b) in a case of urgent necessity, c) in ordinary cases.

a) In danger of death, pseudo-spouses can easily, according to the discipline now in force, obtain a dispensation from all diriment impediments of ecclesiastical law, except the impediments of affinity in the direct line and the order of the priesthood. Therefore, any priest can convalidate an invalid matrimony by a simple dispensation if either pseudo-spouse is in danger of death. This faculty of dispensing and the conditions required were already discussed above, nn. 773 and 860.

b) In a case of urgent necessity, all those things must be observed which were said above, n. 860 ff., concerning the faculty of dispensing granted to local Ordinaries and other priests.

c) In ordinary cases, the pseudo-spouses must obtain, for the convalidation of their matrimony, a dispensation from the impediments standing in the way of validity. As regards the form of renewing consent, the same things hold which were said in the preceding paragraph. This simple dispensation is to be recommended when both spouses are prepared explicitly to renew matrimonial consent; but if it is foreseen

that either party will not renew consent, not a simple dispensation but rather a radical sanation must be sought.

§ 3. On Radical Sanation

878. Notion. A radical sanation is a dispensation granted by the Supreme Pontiff whereby a matrimony hitherto invalid is rendered valid, and indeed, as regards canonical effects, not from the time the dispensation was granted but, through a fiction of law, from the beginning, and consequently all the canonical effects which had followed from the law invalidating the matrimony are removed.[305] More briefly it is said: a radical sanation renders a matrimony hitherto invalid equally valid, as regards canonical effects, as if no diriment impediment had been present from the beginning. Wherefore, after a radical sanation, legitimation of the offspring born is no longer necessary; for through the fiction of law all this offspring is judged to have been born in legitimate matrimony.

From the things explained, the distinction between a simple dispensation and a radical sanation is readily understood. The former does not make the matrimony valid except by means of a renewal of consent; the latter does not require new consent, but renders legitimate the consent placed at the beginning.[306] But if a renewal of consent is nevertheless sometimes required even in a radical sanation, this is accidental, namely, because one party was in bad faith from the beginning and perhaps never gave sincere consent. Another difference between these two dispensations is this: as regards canonical effects, a radical sanation renders the matrimony valid *ex tunc*, that is, from the beginning; a simple dispensation renders the matrimony valid *ex nunc*, that is, from the moment the dispensation was granted. But as regards the character of the sacrament and the other moral effects, both a radical sanation and a simple dispensation render the matrimony valid *ex nunc*.

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[305] Cf. Code of Canon Law, can. 1138.

[306] Cf. Benedict XIV, *De syn. dioec.*, bk. 13, c. 21, n. 7.

879. The proper nature of a radical sanation is explained in diverse ways. There are chiefly two explanations.

The **first explanation**, proposed by Perrone,[307] Müllendorf,[308] Riganti, and others, holds that through a radical sanation the matrimony becomes perfectly valid from the beginning, even under the character of a sacrament, and consequently with all effects, both moral and juridical. In order to explain this marvelous efficacy of a radical sanation, however, these authors assert that ecclesiastical legislation concerning the diriment impediments of matrimony is not wholly absolute but conditional. For example, the impediment of consanguinity ordinarily invalidates all marriages contracted between blood relatives; but if God through the so-called middle knowledge foresees that His Vicar on earth will sanate some particular matrimony contracted between blood relatives, He then holds that matrimony to be valid from the beginning and grants all sacramental graces.

This explanation was indeed set forth with the best intention and some ingenuity, but it entirely lacks every real foundation and brings no small inconveniences with it. For nowhere is even the least trace of this asserted conditional legislation found. Moreover, according to this explanation a radical sanation would be nothing other than a declaration by the Supreme Pontiff that the diriment impediments did not exist at the time of the celebration of this or that matrimony; which is certainly false.

The **second and most common explanation** asserts that through a radical sanation a matrimony which truly was null from the beginning is convalidated, so that it **now** becomes valid under the character of a sacrament, but all juridical effects are granted to the matrimony thus convalidated just as if it had been valid from the beginning. This explanation is also employed in the Decree *Cum super* of Benedict XIV, September 27, 1755: "Through it, namely, a radical sanation, it is not brought about that a matrimony contracted invalidly was not so contracted; rather, the effects which were produced because of the nullity of such a matrimony before the dispensation was granted, and even in the very act of contracting the matrimony, are removed from the midst." The same is established by the Code of Canon Law, can. 1138, § 2: "The convalidation of the matrimony occurs from the moment of the grant of the favor; the retroaction, however, as regards canonical effects, is understood to have been made to the beginning of the matrimony, unless something else is expressly provided." Therefore, since the pseudo-spouses receive the sacrament of matrimony at the moment of the radical sanation, let the confessor take care, according to his powers, that they are then in the state of sanctifying grace, lest they receive unworthily a sacrament of the living.

As regards the history of radical sanation, several things are still uncertain. Neither in the Decretals nor in the *Summa* of St. Raymond is mention made of radical sanation. Certain authors see its first traces in dispensations granted by Boniface VIII, who declared valid the marriages between Maria and Sanchez IV, the already deceased king of Castile, and between Ildephonsus, king of Portugal, and the countess of Poland, notwithstanding the diriment impediments.[309] Benedict XIV clearly set forth the doctrine on radical sanation. At the time of the first French Revolution very many marriages were sanated in their root. Today a radical sanation is wont to be granted when a simple dispensation with renewal of consent is morally impossible.

The power of sanating a matrimony in its root belongs to the Supreme Pontiff alone,[310] who sometimes habitually delegates it to bishops residing outside Europe, but quite rarely to bishops of Europe.

Certain authors[311] distinguish a perfect and an imperfect radical sanation. The former is had when, without a renewal of consent, the matrimony is convalidated with all juridical effects, and especially with the legitimation of all the offspring. The latter is had a) if renewal of consent is required on the part of one putative spouse; b) if, because of the death or insanity of one spouse, the matrimony indeed is not convalidated, but nevertheless all juridical effects are granted to it. This distinction is not of great utility. At least the latter mode would better not be called a radical sanation of the matrimony, because then it is altogether impossible to sanate the matrimony itself, as is self-evident. This mode is in reality nothing other than legitimation of offspring, which certainly can be accomplished without convalidation of the matrimony.

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[307] *De matrim.* II, 161 ff.

[308] *Pastor bonus* XXII (1909), 412 ff.

[309] Cf. Scherer, *Kirchenr.* II, 454.

[310] Code of Canon Law, can. 1141. A radical sanation for the internal forum must be sought from the Sacred Penitentiary, for the external forum from the Sacred Congregation of the Sacraments; but if it is a question of the impediment of disparity of worship, from the Holy Office, as will be said below.

[311] Cf. Wernz-Vidal, *Ius can.* V, n. 659.

880. Four conditions required for a radical sanation.

1. That the diriment impediment in question not be of natural or divine law, but of ecclesiastical law, and indeed one of those from which the Church is accustomed to dispense.[312]

Hence, a radical sanation is not granted if there stands in the way, for example, the impediment of error, the bond, or even lawful affinity in the direct line, the order of the priesthood, etc. Likewise, a sanation was denied in the following case: from a certain fornicarious union or concubinage, two children had been born; afterward the non-Catholic man was rendered perfectly impotent by a surgical operation; later he celebrated a civil matrimony with his concubine. A radical sanation was now sought. The Sacred Congregation of the Inquisition responded on March 8, 1900: "In the case set forth, a radical sanation cannot be granted." Why? In the first union an impediment of natural law stood in the way, namely, the defect of true matrimonial consent; in the second union or civil matrimony true consent was indeed present, but another impediment pertaining to natural law stood in the way, namely, physical impotence.

Similarly, a matrimony to which an impediment of divine law, for example, the bond, stands opposed cannot be sanated. Wherefore, if on April 25, 1890 the Sacred Penitentiary seems to have granted a radical sanation of a certain matrimony to which the impediment of the bond stood opposed from the beginning, but which afterward ceased through the death of the other party, this dispensation is by no means a radical sanation properly so called. For a) the matrimony was not convalidated from the beginning, but from the death of the other party; b) the legitimation of adulterine offspring was expressly denied. And indeed, if this dispensation had been a true and proper radical sanation, there would have been an open contradiction, namely, the Church would have admitted true polyandry. For the woman in question was living in a true matrimony with her first husband and at the same time, through a fiction of law, would be judged to have lived in a true matrimony with the adulterer. Therefore, the Code of Canon Law, can. 1139, establishes: "A matrimony contracted with an impediment of natural or divine law, even if the impediment afterward ceased, is not sanated in its root by the Church, not even from the moment the impediment ceased." In this case, therefore, the matrimony cannot be convalidated otherwise than by a renewal of matrimonial consent, as was explained above, § 1.

2. That true matrimonial affection or consent was present.

For if the contracting parties intended nothing other than mere concubinage, matrimonial consent itself was lacking, which the Church can supply by no dispensation. In other words: in order that a radical sanation be possible, it is required that the matrimonial contract would have been valid if an invalidating ecclesiastical law had not stood in the way. Therefore, a radical sanation is nothing other than a sanation of the root of the matrimony; moreover, the root of matrimony is matrimonial consent, which, if naturally valid consent was present, can be sanated; but if it was not present, neither can it be sanated, as is self-evident. For that which does not exist cannot be sanated. If only one of the putative spouses had true matrimonial affection, while the other intended nothing but the so-called "free union," the matrimony cannot even be convalidated unless the other afterward gives true matrimonial consent. But then this convalidation is not a radical sanation properly so called, as is evident from what was said above.

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[312] Code of Canon Law, can. 1139, § 2.

881. 3. That the matrimonial consent given at the beginning virtually endure at the moment of the sanation and not have been truly and efficaciously revoked by either party.[313]

Thus teach all those who do not admit that unfounded explanation of the nature of radical sanation proposed by Perrone, Müllendorf, and others, which was already refuted above. The reason is obvious: for both the capacity and the consent of the persons about to marry must be present for the validity of matrimony. Although the incapacity of the persons about to marry introduced by ecclesiastical law can be removed through a dispensation, their consent can by no means be supplied if it was truly revoked or virtually no

longer perseveres when the incapacity is removed. The style of the Curia also expressly requires this endurance of the consent of each party; for in Rescripts the clause is wont to be appended: "insofar as each party perseveres in present consent"; likewise the Code of Canon Law, can. 1139, § 1. In practice, matrimonial consent is presumed to persevere unless the contrary is manifestly established. In particular, a revocation of consent is not present:

a) if the party ignorant of the impediment would be ready to dissolve the matrimony because of domestic quarrels or other reasons;

b) if the party ignorant of the impediment has already sought divorce as regards bed and habitation. The reason for these two cases is that the question is not what the ignorant party would do if he knew the impediment, but what he in fact does. Moreover, in fact it is not established that the party has retracted the matrimonial consent previously given;

c) if both spouses have indeed known the nullity of the matrimony for some time but nevertheless continue to live together maritally.[314]

In no way, however, can consent be said virtually to remain if either spouse is dead or has fallen into complete insanity; wherefore, in these cases a true radical sanation properly so called cannot be granted, although offspring received can be declared legitimate.

4. That there be a grave and urgent cause.

For a radical sanation is an extraordinary dispensation which is not wont to be granted without a grave and urgent cause. Hence, a bishop or other delegate who granted a radical sanation without a grave and urgent cause would act not only illicitly but also invalidly. Grave causes of this kind are:

a) if a diriment impediment, for example, crime, which is known to one party cannot be manifested to the other party without great inconvenience;

b) if one party cannot be induced to renew consent, although that party wishes to remain in the matrimony;

c) if both spouses are in good faith but, because of grave reasons, cannot be admonished concerning the nullity of the matrimony, nor is it advantageous to leave them in good faith;

d) if many marriages are null which cannot be convalidated otherwise than through a radical sanation. For this reason Pius X, in the Constitution *Provida*, sanated in their root all mixed and non-Catholic marriages in Germany which had been invalidly contracted before April 15, 1906, because of a defect of the Tridentine form, provided that no other diriment impediment stood in the way and that the mutual consent of the spouses had persevered up to the stated day.

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[313] Code of Canon Law, cann. 1139 and 1140.

[314] Cf. Wernz-Vidal, *Ius can.* V, n. 666, note 34.

882. Petition and execution of a radical sanation. Since a radical sanation can be obtained and applied even without the knowledge of the pseudo-spouses,[315] anyone can seek it. Ordinarily, however, it belongs to the parish priest or confessor to seek and execute this sanation. In the petition all those things which pertain to the nature of the impediment must be explained, just as is done in seeking a simple dispensation. Then the reasons, from the four recounted above, must be adduced why not a simple dispensation but a radical sanation is sought. If it is a question of an occult impediment, as more commonly happens, the petition is to be directed to the Sacred Penitentiary. But if a public impediment is present, it is preferable to seek the sanation, through

the episcopal curia, from the Sacred Congregation of the Sacraments, or, if it is a question of an invalid matrimony of mixed religion or disparity of worship, from the Holy Office.

In executing the sanation obtained, diligent attention must be given to the clauses placed in the Rescript. In the confessional, for the fulmination of the sanation, this or a similar form can be employed: "By apostolic authority specially committed to me, I sanate in its root your matrimony with N., invalidly contracted because of the existence of such an impediment, for example, crime, affinity, etc.; wherefore the offspring received or to be received is legitimate. In the name of the Father and of the Son and of the Holy Spirit. Amen." Because the putative spouses ought to be in the state of grace when the sanation is committed to execution, for they then receive the sacrament of matrimony, this execution must be made after sacramental absolution, insofar as this is possible.

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[315] Cf. Code of Canon Law, can. 1138, § 3.

883. Corollary. From the things said thus far, it is useful to gather briefly the effects of a radical sanation.

1. At the moment when a radical sanation is granted, the matrimonial contract becomes a true sacrament of the New Law, unless, however, one spouse is a non-baptized unbeliever. The matrimonial contract by no means becomes a sacrament from its first beginning; and therefore formal sins which perhaps were committed by the pseudo-spouses before the sanation through intercourse exercised in bad faith are not removed nor rendered not to have been committed.

2. All the effects of ecclesiastical law are attributed to the matrimony thus sanated in the same manner as if it had been valid from the beginning. Hence, the most perfect legitimation of the offspring born is granted. For the offspring is regarded in the same manner as if born in a legitimate matrimony. Therefore, offspring thus legitimated can receive not only sacred orders but also ecclesiastical dignities. It is indeed exceedingly fitting that such legitimated offspring should also be regarded as legitimate before civil law, with all the rights of legitimate children; but a radical sanation does not of itself yet confer such civil rights. Hence, for example, if the civil law of some region excludes offspring of this kind from hereditary succession, it is not permissible to employ occult compensation.[316]

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[316] Cf. Wernz-Vidal, *Ius can.* V, n. 671, note 44.

884. Scholion. On illegitimate children. Since in the course of the treatise on matrimony discussion often occurs concerning the legitimation of offspring, legitimate and illegitimate children must be treated briefly here. St. Thomas[317] teaches: "The state of children is fourfold: for some are natural and legitimate, such as those born from true and legitimate matrimony; some are natural and not legitimate, such as children born from simple fornication; some are legitimate and not natural, such as adopted children; some are neither legitimate nor natural, such as spurious children born from adultery or defloration."

In the ecclesiastical forum, according to the discipline now in force, the following are held to be legitimate children:

All who are conceived or at least born from a valid or putative matrimony. Children begotten after solemn profession or the reception of sacred order are excepted, namely, children of those who indeed contracted a valid matrimony but afterward emitted a solemn vow of chastity or received sacred order and nevertheless begot children.[318] Children who were born at least six months after the day the matrimony was celebrated, or within ten months from the day conjugal life was dissolved, are presumed legitimate.[319] This presumption, however, can be overcome by proof of the truth.

All other children are illegitimate and are wont to be distinguished as natural and spurious. **Natural children** are those who indeed were begotten outside matrimony but by persons between whom a valid matrimony could have existed at the time of conception, pregnancy, or birth; or more briefly: natural children are children born from simple fornication. **Spurious children** are those whose parents, at the time of conception or birth, were incapable of contracting matrimony because of a diriment impediment existing between them. Spurious children are wont to be subdivided into: a) **adulterine**, who were begotten from adultery; b) **sacrilegious**, either or both of whose parents were bound by a solemn or solemnized vow of chastity; c) **incestuous**, whose parents were blood relatives or relatives by affinity in the collateral line; d) **nefarious**, who were begotten by blood relatives or relatives by affinity in the direct line; e) those who were begotten by persons held by the impediment of age or disparity of worship.[319a]

The legitimation of illegitimate children can be obtained in three ways:

1. Through a subsequent matrimony, whether true or putative, newly contracted or convalidated, natural children are legitimated, but not spurious children.[320] Such legitimated natural children, as regards canonical effects, are in all things made equal to legitimate children unless something else was expressly provided,[321] for example, as regards the cardinalate, can. 232, § 2, and the episcopate, can. 331, § 1.

2. Through solemn profession in religious orders, or through simple profession in certain religious institutes having a special privilege,[322] there is obtained by that very fact the legitimation of both natural and spurious children, but only for receiving sacred orders, not for accepting dignities.[323]

3. Through a dispensation granted from a diriment impediment, whether by ordinary power or by delegated power through a general indult, for example, one granted to all priests who dispense in danger of death or in another urgent case, but not through a Rescript in particular cases, the legitimation of offspring is also granted by that very fact, except, however, adulterine and sacrilegious offspring.[324]

4. Through a Rescript of the Supreme Pontiff, all illegitimate children, even spurious children, can be legitimated as regards canonical effects;[325] but whether such perfect legitimation according to all canonical effects was in fact granted must be seen from the Rescript of the Supreme Pontiff itself.

The legitimation obtained must be noted in the baptismal register.

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[317] *Suppl.*, q. 68, a. 1.

[318] Code of Canon Law, can. 1114; c. 2, X, 4, 17.

[319] Code of Canon Law, can. 1115, § 2.

[319a] Pontifical Commission, December 6, 1930 (*Acta Apost. Sed.* XXIII, 25).

[320] c. 3, X, 4, 17; Benedict XIV, Constitution *Redditae*, December 5, 1744; Code of Canon Law, can. 1116.

[321] Code of Canon Law, can. 1117; Sixtus V, Constitution *Postquam*, December 3, 1586.

[322] Gregory XIII, Constitution *Ascendente Domino*, May 25, 1584.

[323] c. 1, X, 1, 17; Code of Canon Law, can. 984, n. 1.

[324] Code of Canon Law, can. 1051.

[325] Cf. St. Thomas, *Suppl.*, q. 68, a. 3, and Benedict XIV, loc. cit.

Chapter X. On Civil Matrimony and Civil Divorce

This chapter is divided into two articles: 1. on civil matrimony; 2. on civil divorce.

Article I. On Civil Matrimony

885. Notion. Civil matrimony is a marital contract (even of Christians) entered before a civil magistrate.

It is called a *marital contract*, that is, one regarding all marital rights and not merely agreements concerning civil effects and the administration of goods. Accordingly, civil matrimony strictly so called is not present if the betrothed have the sole intention of declaring to the civil magistrate their marital union already effected or soon to be effected, thereby assuming merely civil burdens and rights for themselves and their future offspring.[326]

Division. Civil matrimony introduced by modern governments is customarily divided in three ways:

1. Necessary or obligatory civil matrimony,[327] which is prescribed by the civil government under grave penalties for all persons about to marry. Civil matrimony of this obligatory kind exists today in several regions, for example, in Germany, France, Holland, Hungary, Belgium, Switzerland, and Italy. The civil government takes no account of ecclesiastical matrimony or of impediments established by the Church, but judges the entire matrimonial contract in its tribunal according only to the civil laws in force.

2. Facultative civil matrimony,[328] which is had if all persons about to marry, even Christians, are permitted the choice of celebrating matrimony either before the parish priest or a minister of worship legitimately authorized by the civil and ecclesiastical authority, or before the civil magistrate alone, only the civil laws being observed. Civil matrimony of this facultative kind is in force in England, North America, and other states.

3. Subsidiary civil matrimony,[329] which is accepted as valid by the civil government when persons about to marry either cannot or will not contract matrimony in the face of the Church. Civil matrimony of this subsidiary kind is now in force in Spain and Poland,[330] and takes the place of ecclesiastical matrimony. Such matrimony is contracted: a) by non-baptized persons, who are not subject to ecclesiastical jurisdiction; b) by heretics who do not acknowledge the jurisdiction of the Catholic Church; c) by Catholics who wish to contract matrimony although a diriment impediment stands in the way.

Not much need be said concerning the history of civil matrimony. Before the so-called "Reformation" of the sixteenth century, civil matrimony was entirely unknown. It seems to have been introduced for the first time in Holland and Friesland on April 1, 1580. In England, a law concerning civil matrimony was promulgated on August 24, 1653. In France, necessary civil matrimony was prescribed for all citizens of France on September 20, 1792. At the present time civil matrimony is in force in some manner in almost all regions, as is evident from the things said above.

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[326] Wernz-Vidal, *Ius can.* V, n. 583.

[327] "Obligatory or compulsory civil matrimony" (*Die obligatorische oder Zwangszivilehe*).

[328] "Facultative or elective civil matrimony" (*Die fakultative oder Wahlzivilehe*).

[329] "Emergency civil matrimony or substitute civil matrimony" (*Notzivilehe oder Ersatzzivilehe*).

[330] Subsidiary civil matrimony for Protestants also exists in a few other lands. In Russia, Denmark, and Sweden a species of subsidiary civil matrimony is granted.

886. Principle 1. Civil matrimony in the sense explained above cannot be acknowledged by the Church as a true matrimony between Christians; accordingly, it is neither a sacrament nor does it produce any canonical effects.

The discussion concerns only the matrimony of Christians. For non-baptized unbelievers are not subject to the jurisdiction of the Church; and accordingly, since their marriages must nevertheless be governed by some visible authority, the opinion of many is that, by the law of devolution, the civil power can govern the marriages of unbelievers, provided that nothing contrary to natural and divine law is established.[331] Therefore, unbelievers can validly and licitly contract a civil matrimony which is not opposed to natural and divine law.[332] But the Church has always condemned the civil matrimony of Christians; hence proposition 73 was proscribed in the *Syllabus* of Pius IX: "By virtue of a merely civil contract there can exist between Christians a matrimony properly so called."[333]

There are several reasons why the Church has always condemned civil matrimony, of which the principal ones are: 1. through civil matrimony the right of the Church is injured, for she alone has power over the marriages of Christians, inasmuch as they are sacraments; 2. civil matrimony renders matrimony a truly profane affair and a merely profane contract, as Luther taught in express words;[334] 3. it fosters indifferentism among Christians because mixed or other illicit marriages are thereby often concluded; 4. it fosters divorces, for civil marriages are dissolved as easily as they are contracted; hence, where civil matrimony has been introduced, there civil divorce from the matrimonial bond is also in force, with a few regions excepted;[335] 5. Christians are compelled to perform an action which they acknowledge either as something evil or as something not at all obligatory in conscience.

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[331] Cf. above, n. 651.

[332] Cf. Gasparri, *De matrim.*, n. 1221.

[333] Denz., n. 1773.

[334] "Because wedding and the married state are a worldly affair, it does not belong to us clergy and ministers of the Church to regulate it." *Traubüchlein*, cited in Leitner, *Lehrb. d. kirchl. Eherechtes*, 81.

[335] Cf. below, n. 890.

887. Principle 2. Christians about to marry can licitly, and indeed must for a reasonable cause, observe the statutes of civil law concerning the celebration of matrimony, provided that the intention of receiving the sacrament of matrimony itself before the civil magistrate is excluded.[336]

All teach thus. Leo XIII himself says in the celebrated Encyclical *Arcanum*: "It is of the greatest concern to the spouses to have all these things well known; they ought also to have them approved and impressed upon their minds, so that it may be permissible for them in this matter to conform to the laws, the Church herself not refusing, since she wills and desires that the effects of marriages be secure in every respect and that no harm be brought upon the children."

Therefore, Christians about to marry must intend nothing before the civil magistrate other than merely civil effects for themselves and their offspring,[337] nor can they therefore be accused of having committed fraud or falsehood, since the civil laws intend nothing beyond civil effects in civil matrimony. In regions where civil law requires that civil matrimony be contracted before ecclesiastical matrimony, this is indeed licit; but every

diligence must be used so that matrimony before the Church may be contracted as soon as possible and, in the meantime, the contracting parties may remain separated.[338] Therefore, persons about to marry should not enter civil matrimony before all things have been prepared so that matrimony before the Church can certainly be celebrated as soon as possible. For several examples are not lacking in which, after civil matrimony had been contracted, one or the other of the betrothed refused to contract before the Church.

Note. Parish priests must know thoroughly the statutes of the civil law of their country so that they may be able rightly to instruct the faithful with what intention and in what mind those statutes can and ought to be observed. Likewise, this knowledge is necessary lest great harms arise to the parish priest himself and to the Catholic religion from the transgression of these statutes.

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[336] Code of Canon Law, can. 1003, § 3.

[337] Benedict XIV, Brief *Redditae sunt nobis*, September 17, 1746.

[338] Sacred Penitentiary, January 15, 1866.

888. Effects and penalties of civil matrimony. Civil matrimony as such is considered a foul concubinage for Christians and therefore induces all the penalties inflicted upon concubinage. Hence: 1. the impediment of public propriety arises;[339] 2. civil matrimony contracted and consummated after the civil divorce of another legitimate matrimony induces the impediment of crime[340] and infamy of law because of bigamy;[341] 3. if any offspring is born from a union of this kind, it, as born from a wife who is not legitimate, is illegitimate in the eyes of God and the Church;[342] 4. persons living in an invalid civil matrimony are regarded as public sinners, for they are concubinaries,[343] and accordingly cannot be admitted either to receive the sacraments, to ecclesiastical burial, or to legitimate acts;[344] 5. clerics constituted in sacred orders or regulars of either sex after solemn vows who presume to contract civil matrimony, as well as all who presume to enter matrimony with the aforesaid persons, incur excommunication simply reserved to the Apostolic See and other penalties. This excommunication, however, is reserved to the Ordinaries if it is a question of the civil matrimony of a simply professed religious.[345]

Although civil matrimony as such is concubinage, nevertheless, insofar as it is contracted with true marital consent and without other diriment impediments, it is valid under those conditions in which clandestine marriages are valid. Hence, for example, civil marriages contracted between non-Catholics who have true marital consent and are bound by no other diriment impediment are valid. The same was true of mixed civil marriages contracted in Germany and Hungary before May 18, 1918.

In practice a great difficulty arises in determining whether marital consent was truly present in the celebration of a civil matrimony. A distinction must be made. Ordinarily, the presumption stands for insufficient consent, and consequently for the invalidity of the civil matrimony, if it was contracted by a true Catholic who fulfills the duties of religion;[346] contrariwise, the presumption stands for the validity of the consent and of the civil matrimony if it was entered by an indifferent Catholic or a heretic who explicitly neglects the celebration of matrimony in the face of the Church. Therefore, in each case the absence of sufficient marital consent must be proved.

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[339] Cf. above, n. 845.

[340] Cf. above, n. 825.

[341] Can. 2356.

[342] Benedict XIV, loc. cit., § 3.

[343] The Sacred Penitentiary said on January 18, 1866: "He would be a true concubinary who should presume to persist in matrimony by the force of the civil act alone."

[344] Code of Canon Law, can. 2357, § 2.

[345] Ibid., can. 2388; can. 188; can. 646; can. 985.

[346] The Sacred Roman Rota declared on February 23, 1912 the nullity of a certain mixed civil matrimony contracted in Germany because true consent was lacking (*Acta Apost. Sed.* IV, 392). The same in the Argentine case, November 18, 1918 (*Acta Apost. Sed.* XI, 358).

889. You ask: Is it permissible to assist at a civil matrimony as an official of the magistracy or as a witness?

The answer is:

1. If the persons about to marry themselves, as well as the official of the magistracy and the witnesses at the civil matrimony, intend nothing other than a merely civil act with merely civil effects, certainly no one sins. Thus teach all. But if the persons about to marry, with an evil will, contract civil matrimony intending in that act a true and valid matrimony, the persons about to marry themselves certainly sin gravely; nevertheless, for a grave cause the civil magistrate can assist at this evil act as a minister of the government. The reason is that such assistance is nothing but material cooperation in the sin of another, which can be rendered for a grave and proportionate cause. Thus also a parish priest can for a grave cause assist at the gravely illicit matrimony of a public sinner; thus it is permissible for a grave cause to rent a room to a prostitute prepared to commit many sins in that room.[347]

2. The difficulty is greater if the civil magistrate knows for certain that the persons about to marry are entering a matrimony entirely invalid, for example, because of a civil divorce previously obtained or because of other diriment impediments. Even in this case the civil magistrate can, for a most grave cause, assist at the civil matrimony, unless, however, this has been expressly prohibited for some region by ecclesiastical authority. Modern authors commonly teach thus, for example, Gasparri,[348] Génicot,[349] Lehmkuhl,[350] Noldin,[351] De Smet,[352] Gennari,[353] Wernz-Vidal,[354] etc. The reason is that such assistance is indeed proximate cooperation in the sin of another, but it does not seem to be something intrinsically evil. For civil matrimony is customarily considered by modern governments, at least Catholic governments, as a juridical formality instituted chiefly to prevent greater evils.

Now, because of hatred of religion, atheism, or other causes, many persons about to marry today refuse to enter matrimony before the Church; on the other hand, because of the so-called "freedom of worship" everywhere in force, alas, the government cannot compel persons about to marry to present themselves in the face of the Church; nor is it morally possible to establish one set of laws for good Catholics and another for irreligious persons. Therefore, in order to avoid those pernicious free unions between persons of different sex, governments are almost compelled to establish some juridical formality which all inhabitants, whether baptized or non-baptized, who wish to contract matrimony must observe absolutely. After this formality has been completed, they are regarded by the government as spouses having the rights and burdens of true spouses.

Therefore, if otherwise great harm would arise to himself or to religion, the civil magistrate can assist at this formality as an authorized witness without implicitly intending or concerning himself with the moral effects following from the formality of civil matrimony. This assistance seems to have some likeness to the action of a servant who places his shoulder beneath, or carries a ladder for, a master ascending to commit fornication. Now St. Alphonsus[355] does not hold this action of the servant to be intrinsically evil. Why should the same not

be said of the assistance of a magistrate who cooperates less proximately in fornication than does a servant submitting his shoulders to his ascending master?

That this assistance is not in reality an intrinsically evil act seems sufficiently clear. For that act is not intrinsically evil which is not always evil but sometimes good or indifferent. But the assistance of a mayor at civil matrimony is not always an evil act, for example, when he offers his assistance to persons about to marry who will nothing illicit. Therefore, this assistance is not something intrinsically evil but licit when a sufficient cause is present.

A sufficient cause seems to be present if otherwise the mayor would have to resign his office with great harm to himself or even to the Catholic religion. For it would be a truly great harm to the Catholic religion if no good Catholic could now discharge the office of civil magistrate.

I said above, however, that this assistance is not licit if it has been prohibited by ecclesiastical authority for some region. For it belongs to ecclesiastical authority to judge whether in some region there truly are sufficient causes to render honorable so grave a cooperation in the sins of others. In particular cases the Sacred Congregations have several times responded that such assistance is not licit.[356] De Smet,[357] however, prudently warns: "If there are some who think the action of the mayor intrinsically evil, let them hold this as a norm: that they leave the aforesaid magistrates in good faith, but direct those who inquire to the Ordinary."

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[347] Cf. above, I, n. 622, on cooperation.

[348] *De matrim.*, n. 1231.

[349] *Theol. mor.* II, 562, under 4.

[350] *Theol. mor.* II, n. 952, note.

[351] *De sacr.*, n. 681.

[352] *De sponsal. et matrim.*, n. 406.

[353] *Consultazioni mor.* (1902), consultation 41.

[354] *Ius can.* V, n. 591.

[355] *Theol. mor.*, bk. 2, n. 66.

[356] See the responses of the Holy Office and the Sacred Penitentiary in Gasparri, loc. cit., n. 1229 ff., and in Denz., n. 1865.

[357] Loc. cit., n. 406.

Article II. On Civil Divorce

890. Notion. Civil divorce is called a separation of spouses pronounced by the civil power.

Just as in divorce pronounced by the Church there are two species, one perfect, or as regards the matrimonial bond, the other imperfect, or as regards habitation and bed, so also a twofold civil divorce is distinguished: one as regards the bond, so that it is permissible to celebrate new nuptials; the other as regards separation of bodies alone.

In some regions there exists only civil divorce as regards the bond, for example, in Romania, Serbia, Denmark, several states of North America, and partly in Switzerland, where imperfect divorce is indeed permitted, but not beyond three years.[358] In other regions, however, only imperfect divorce or separation of spouses is permitted, for example, in Spain, Portugal, Italy, Argentina, Chile, and also in one state of North America, namely, South Carolina.[359] Finally, there are several regions in which civil law permits either divorce, namely,

either as regards the bond or as regards habitation alone, as in Germany, France, Belgium, England, and some states of North America. In Austria only separation as regards habitation is permitted to Catholics, but divorce as regards the bond is also permitted to other inhabitants.

[358] Cf. Swiss Civil Code, art. 148, and Tuor, *Einführung in das Schweiz. Zivilgesetz*, 126.

[359] Cf. Schulze, *Eherecht und Ehegesetzgebung in den Vereinigten Staaten*, in *Linzer Theol. Quartalschrift* (1909), 748 ff.

891. Principle. A civil law permitting perfect divorce is iniquitous and to be most gravely condemned.[360]

Against this law militate the same reasons which were adduced above against laws concerning civil matrimony. Moreover, as experience proves, the worst effects for religion and good morals follow from civil divorce: the mutual love and inviolate fidelity of spouses are diminished; the education of offspring is endangered; adulteries, quarrels, material losses, and crimes of every kind spring forth from it. Hence, the more frequent divorces are in some region, the worse the morals seen to flourish there.

Moral corollaries.

[360] Cf. Constitution *Arcanum*. An Instruction of the Holy Office, December 21, 1901, admonishes the bishops of Italy to oppose strongly the introduction of divorce into the Civil Code.

892. 1. Concerning spouses. a) It is never permissible for Christians to seek the civil divorce of any valid matrimony for the purpose of being permitted to pass to other nuptials. The reason is that something intrinsically evil would be sought, as being directly opposed to the indissolubility of Christian matrimony.

b) For a grave cause it is permissible to seek imperfect divorce or separation of bodies from a civil tribunal. Such is now the common opinion among authors.[361] Concerning this matter the Holy Office established on December 19, 1860: "Provided that the Catholic party can approach no other tribunal from which he may obtain a sentence of separation as regards bed and board, and provided that the sentence of this tribunal has no other effect than the aforesaid separation, it can be tolerated that Catholics perform in that forum the parts of plaintiff and advocate, provided that just causes of separation are present in the judgment of the bishop."

To the question, however, whether a husband could seek divorce from an adulterous wife while intending only to break merely civil effects, when no other means was available for obtaining the repudiation of paternity concerning adulterine children and their exclusion from the share of legitimate offspring, the Sacred Penitentiary responded on June 30, 1892: "Let the petitioner consult approved authors."[362] From this response it seems to follow that not only separation of bodies, but even perfect divorce in a case of most grave necessity, may licitly be sought from a civil judge; for a) the question concerned a true divorce, and b) approved authors teach that not only imperfect divorce, but even perfect civil divorce, is licit if no other means is at hand for preventing grave harms.

Hence, in those regions in which separation of bodies alone does not exist, a Catholic spouse can, when a grave cause is present and the permission of the bishop has been obtained, directly solicit a civil divorce for the purpose, not indeed of attempting new nuptials, but of obtaining the merely civil effects of divorce. The reason is that to seek civil divorce does not seem to be something intrinsically evil. Therefore, unless a special prohibition of the Church is present, it is permissible to act thus.

[361] De Smet, *De sponsal. et matrim.*, n. 401; Noldin-Schmitt, *De sacr.*, 17th ed., n. 671; Lehmkuhl, *Theol. mor.* II, n. 922, note.

[362] Cited in De Smet, loc. cit.

893. 2. Concerning the civil judge. Among all Catholic authors the following are established:

a) The civil judge must acknowledge his incompetence in matters which touch the sacrament of matrimony.

b) The judge can in no way render judgment concerning civil divorce if a special prohibition of the Church exists in some region.

c) The civil judge can protect the indissolubility of matrimony and reject spouses soliciting civil divorce; likewise, he can decree the perfect civil divorce of some matrimony which either was null in itself, for example, the civil matrimony of Catholics, or was previously dissolved by the Church as regards the bond.

d) The civil judge cannot pronounce the perfect divorce of any Christian matrimony without a most grave cause. The reason is that the judge cannot cooperate in some evil action, such as divorce, without a grave necessitating cause.

It is sharply disputed whether, even when a most grave cause exists, the civil judge can licitly pronounce civil divorce while intending only the civil effects of dissolution. Several authors, among whom Bucceroni[363] and Gasparri[364] are prominent, teach that the judicial pronouncement of the civil divorce of a Christian matrimony is an intrinsically evil act and therefore is never licit. Other authors, however, among whom are De Smet,[365] Noldin-Schmitt,[366] Lehmkuhl,[367] Göpfert,[368] Marc,[369] Waffelaert,[370] Ballerini-Palmieri,[371] De Becker,[372] Génicot,[373] Grandclaude,[374] and Leitner,[375] teach that this pronouncement of divorce is not an intrinsically evil action and is therefore licit in grave necessity.

This second opinion seems to be solidly probable not only extrinsically, because of the authority of the doctors, but also intrinsically; and therefore a Catholic judge cannot be obliged to resign his office rather than pronounce a sentence of divorce. For the pronouncement of divorce made by a judge with regard to civil effects alone is not intrinsically evil either by reason of its object or by reason of circumstances necessarily connected with it.

Indeed, it is not intrinsically evil by reason of its object; for through the pronouncement of divorce nothing else is done except that a matrimony legitimate before God is deprived of civil effects and legal recognition, and legal impunity is granted to the spouses if they wish to enter a new civil matrimony. All these things, however, do not seem to be intrinsically evil when a grave necessitating cause is present, because in all these things the judge does not at all touch the very nature of Christian matrimony, but only the civil bond which was contracted in the civil matrimony. Or, in other words: **Civil divorce is nothing other than the destruction of civil matrimony.** Now, just as the destruction of civil matrimony for an entire region is not something intrinsically evil by reason of its object, so *a fortiori* the destruction of civil matrimony in a particular case through a divorce pronounced by a judge is not intrinsically evil.

Nor is a sentence of divorce intrinsically evil by reason of circumstances necessarily connected with it. For, supposing the clearly expressed will of the judge to touch nothing but the civil effects of matrimony, no other evil circumstances can be connected with the sentence of divorce except scandal to the people and cooperation in the sins of others. Certainly, grave scandal can sometimes arise from a sentence of divorce, especially if divorce had hitherto been unheard of in some region and a new law of divorce was enacted in hatred of religion. Then a sentence of divorce could certainly be expressly prohibited by ecclesiastical authority. But if the law of divorce has already been in force for a long time in some region and is often applied, as is usually the case in several states of Europe, then a Catholic judge, pressed by necessity, causes no true scandal by pronouncing divorce. For all know that the judge cannot act otherwise unless he wishes to lose his office.

Nor is a sentence of divorce intrinsically evil by reason of cooperation in the sins of others, both because this cooperation is not so proximate and because it is permissible for a most grave cause to cooperate in the sin of another, provided that this cooperation is not rendered through an action intrinsically evil by reason of its object.

These things being so, a Catholic judge is not to be disturbed if, pressed by most grave necessity, he pronounces a sentence of divorce, provided that no special prohibition of ecclesiastical authority stands in the way and provided that he openly professes that he dissolves only the civil effects of the matrimony.[376] This opinion indeed receives great strength from a response of the Sacred Penitentiary given on September 24, 1887 to the Bishop of Luçon: "To the question whether a mayor can pronounce a divorce which he is compelled to pronounce under penalty of resigning his office, on the supposition that he openly professes the incompetence of the civil judge in a matrimonial matter and the ineffectiveness of the divorce as regards the bond, the response is that it can be tolerated that the petitioner, the mayor, proceed to the act concerning which the petition was made."[377]

The Holy Office, however, wrote to the Bishop of St. Gall in Switzerland on April 3, 1877 that judges ought to have recourse in individual cases. From these two responses it seems manifestly to follow that a sentence of civil divorce is not something intrinsically evil; for otherwise the Sacred Penitentiary could not have tolerated it, and the Holy Office could not fittingly have prescribed recourse for individual cases. For what need is there of consultative recourse if it is clear from the outset that a sentence of divorce is intrinsically, and therefore always, evil?

We are not unaware, indeed, that there also exist certain responses of the Holy Office, for example, those of June 26, 1885 and May 27, 1886, from which it rather follows that a sentence of civil divorce is intrinsically evil; but the answer is that these decrees were particular by reason of the peculiar circumstances present. For it is certain and admitted by all that hitherto no general decree of ecclesiastical authority concerning this controversy exists; indeed, the Holy See has deliberately abstained from settling the question to this day. Therefore, an apodictic argument for the stricter opinion cannot be taken from authority. In practice, then, it is permissible to follow the benign opinion, since it is solidly probable both intrinsically and extrinsically.[378] It is nevertheless to be desired that all Catholics, and especially deputies, labor strenuously to reform civil legislation, so that no public official may now be compelled to pronounce the civil divorce of a valid matrimony.

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[363] *Theol. mor.* II, n. 983.

[364] *De matrim.*, n. 1248, where he says that he inclines to the stricter opinion.

[365] Loc. cit., n. 393.

[366] *De sacr.*, n. 669.

[367] *Theol. mor.* II, n. 921, note.

[368] *Moraltheol.* III, n. 284.

[369] *Instit. mor.* II, n. 2126.

[370] *Sur la coopération*, 66.

[371] *Opus theol. mor.* VI, n. 819 ff.

[372] *De matrim.*, 426 ff.

[373] *Theol. mor.* II, n. 561.

[374] *Règles pratiques touchant la coopération au divorce civil*, 8.

[375] *Lehrb. d. kirchl. Eherechtes*, 618.

[376] For Germany and Holland this opinion seems morally certain, since in their civil codes it is clearly stated that ecclesiastical statutes concerning matrimony are not at all touched by civil legislation. Dutch Code, art. 83; German Civil Code, § 1588: "The ecclesiastical obligations with respect to marriage are not affected by the provisions of this section." Aertnys, *Theol. mor.*, bk. 3, n. 522, is also of this opinion, although for other regions he defends the stricter opinion.

[377] Cited in De Smet, *De sponsal. et matrim.*, n. 398.

[378] Thus also Linneborn, *Grundriß des Eherechtes*, 2nd ed., § 4.

894. 3. Concerning advocates. Almost the same holds for advocates as was said concerning judges. For if the sentence of divorce itself is not something intrinsically evil, it is permissible not only to pronounce it when grave necessity exists, but also to plead in its support. Nevertheless, a sufficient necessitating cause is more rarely present for an advocate than for a judge. For an advocate is accustomed to undertake a divorce case freely, not by force of office. Nevertheless, it can happen that even for an advocate there exists a sufficient cause for seeking the divorce of his client, especially if an imperfect divorce has already been obtained in an ecclesiastical tribunal.[379] For the rest, in practice a confessor ought not to disturb Catholic advocates who cannot decline the office of plaintiff in a divorce without most grave inconvenience, provided that no scandal arises therefrom and merely civil effects are openly intended.

Scholion. It would remain for us to treat the judicial process in matrimonial cases; but because this whole matter pertains to canon law and cannot be treated sufficiently in a brief *Manual of Moral Theology*, we refer the reader to the canonists who treat this matter expressly, for example, to Wernz-Vidal, *Ius can.* V, seventh part; to Linneborn, *Grundriß des Eherechtes*, §§ 59–66; and to our *Manual of Canon Law*, q. 537 ff.

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[379] Cf. Holy Office, December 19, 1860.

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